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California State Senate

EDUCATION

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AGENDA

Wednesday, April 20, 2022
1 p.m. -- 1021 O Street, Room 2100
(Please note time and room change)

MEASURES HEARD IN FILE ORDER

1.	SB 830	Portantino	Education finance: supplemental education funding.
2.	SB 906	Portantino	School safety: mass casualty threats.
3.	SB 905	Skinner	Decarbonized Cement and Geologic Carbon Sequestration Demonstration Act.
4.	SB 1160	Durazo	Public postsecondary education: exemption from nonresident tuition.
5.	SB 1308	Caballero	Public educational institutions: purchase of nondomestic agricultural food products.
6.	SB 1381	Allen	School districts and community college districts: governing board elections: charter cities.
7.	SB 1401	Bradford	College Athlete Race and Gender Equity Act.
8.	SB 1431	Rubio	Local control funding formula: base grants: adjustment: class size reduction.
9.	SB 1236	Glazer	School districts: governing boards: pupil members.
10.	SB 1343	Leyva	Public employees' retirement: charter schools.

SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No: SB 830
Author: Portantino
Version: April 18, 2022
Urgency: No
Consultant: Ian Johnson
Hearing Date: April 20, 2022
Fiscal: Yes

Subject: Education finance: supplemental education funding

SUMMARY

This bill provides supplemental Local Control Funding Formula (LCFF) funding to local educational agencies (LEAs) based on a calculation of how much additional funding the LEA would receive if the student count methodology of the LCFF were based on enrollment instead of attendance.

BACKGROUND

Approved by the voters in November 1988, Proposition 98 amended Section 8 of Article XVI of the California Constitution. Specifically, Proposition 98—commonly referred to as the minimum guarantee—added constitutional provisions setting forth rules for calculating a minimum annual funding level for K–14 education. The state meets the guarantee using both state General Fund and local property tax revenue.

In 2013, the LCFF was enacted. The LCFF establishes per-pupil funding targets, with adjustments for different student grade levels, and includes supplemental funding for LEAs serving students who are low-income, English learners, or foster youth. The LCFF replaced almost all sources of state funding for LEAs, including most categorical programs, with general purpose funding including few spending restrictions.

The largest component of the LCFF is a base grant generated by each student. Current law establishes base grant target amounts for the 2013-14 fiscal year, which are increased each year by the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States.

The base grant target rates for each grade span for the 2021-22 fiscal year are as follows:

1) $8,935 for grades K-3 (includes a 10.4 percent adjustment for class size reduction);

2) $8,215 for grades 4-6;

3) $8,458 for grades 7-8;

4) $10,057 for grades 9-12 (includes a 2.6 percent adjustment for career technical education).

For each disadvantaged student, a district receives a supplemental grant equal to 20 percent of its adjusted base grant. A district serving a student population with more than 55 percent of disadvantaged students receives concentration grant funding equal to 50 percent of the adjusted base grant for each disadvantaged student above the 55 percent threshold.

The LCFF funds LEAs based on their average daily attendance (ADA). Total ADA is defined as the total days of student attendance divided by the total days of instruction.

ANALYSIS

This bill:

1) Defines "average daily membership" as the quotient of the aggregate enrollment days for all pupils in a LEA, from transitional kindergarten to grade 12, inclusive, as applicable, divided by the total number of instructional days for the local educational agency in an academic year. The data used for this calculation shall be from the same fiscal year used to calculate the LEA's ADA.

2) Requires that commencing with the 2022–23 fiscal year, LEAs receive supplemental education funding, in addition to their LCFF entitlement, in an amount equal to the difference between what the LEA would have received under the LCFF if it were based on average daily membership instead of ADA, and what the LEA received under the LCFF based on ADA for that fiscal year.

3) Requires the Superintendent of Public Instruction (SPI), for the purpose of the supplemental education funding calculation, to apply the funding difference to the LCFF base, supplemental, and concentration grants for each LEA.

4) Specifies that LEAs are eligible for the supplemental education funding if they meet the following requirements:

    a) Submit to the SPI by January 15 the unduplicated primary and short-term enrollments for their first term enrollment totals and final enrollment data for the entire academic year under timeframes and procedures established by the Superintendent.

    b) Demonstrate a maintenance of effort, subject to annual audit, to address chronic absenteeism and habitual truancy by maintaining at least the same per-pupil spending level on staff who address these issues as the LEA did in 2019-20.

5) Requires that at least 30 percent of the supplemental education funds be used for LEA expenditures to address chronic absenteeism and habitual truancy by providing services and supports that have been determined to improve school attendance, or addressing the root causes that contribute to pupils being chronically absent or habitually truant.

6) Requires LEAs to continue to implement a system to accurately track pupil attendance to raise the awareness of the effects of truancy and chronic

absenteeism, identify and address factors contributing to habitual truancy and chronic absenteeism, and ensure that pupils with attendance problems are identified as early as possible to provide applicable support services and interventions.

7) Requires the SPI, for purposes of calculating average daily membership, to issue directives and guidance on determining the date of withdrawal for a pupil deemed habitually truant.

8) Requires the Legislative Analyst's Office, by November 1, 2028, to submit a report to the Legislature on the implementation of the funding provisions of this section that includes information from local educational agencies selected by the Legislative Analyst's Office.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "California is one of six states that does not consider enrollment figures for determining state aid to school districts. Districts plan their budgets and expend funds based on enrollment but receive funds based on attendance. For example, if a school district enrolls 100 students but their attendance rate is 95%, the school district must still prepare as if 100 students will attend class every day.

   "While school districts are morally and legally required to comply with compulsory education laws and conduct outreach to re-engage students who are chronically absent or habitually truant, California funds schools based on average daily attendance (ADA). As such, school districts do not receive funding if a student does not attend school on any given day despite having fixed educational, programmatic and operational costs."

2) ***Student enrollment and attendance in California are counted in varying ways and for varying purposes.*** Currently, LEAs collect data on the number of students they serve each year in three basic ways—census day enrollment counts, cumulative enrollment, and ADA.

   Census day enrollment counts are taken on the first Wednesday in October (known as Census Day) to establish a baseline count of the students attending a particular school along with information such as race/ethnicity, whether the students are English learners, how many qualify for free and reduced-price meals, and more. Cumulative enrollment is collected at the end of the year and is used to measure chronic absenteeism and suspension and expulsion rates for the State School Dashboard. Finally, ADA is used to apportion funding for schools and is based on the days of school attended by students, not the number of students enrolled.

3) ***California is one of a handful of states that allocates funding to LEAs based on attendance.*** While all states use an enrollment number of some kind to allocate revenue to LEAs on a per-pupil basis, California is one of only six states that use ADA. California established its ADA system in 1911, with the most

notable change occurring in 1998 when the state stopped funding LEAs for excused student absences.

As shown in the table below, the most common method used by other states is average daily membership, with LEAs funded based on an enrollment count averaged across the school year. Seat counts, where students are counted on a specified census day, days, or period, are also commonly used.

Student Count Method	**States**
Average Daily Membership	Arkansas, Minnesota, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia
Single Seat Count Date	Colorado, Delaware, Connecticut, Indiana, Iowa, Kansas, Maryland, Massachusetts, Nevada, New Jersey, New York, South Dakota, West Virginia
Multiple Seat Count Dates	Arizona, Georgia, Hawaii, Louisiana, Maine, Michigan, Montana, Washington, Wisconsin
ADA	California, Idaho, Illinois, Kentucky, Mississippi, Missouri, Texas
Single Seat Count Period	Alabama, Alaska, New Mexico, Wyoming
Multiple Seat Count Periods	Florida, Ohio

4) ***Existing law provides attendance exceptions for districts in declining enrollment and for emergencies.*** While LEAs in California are generally funded based solely on attendance, there are exceptions in existing law. Further, the Legislature and Governor have taken recent actions through the state budget process to hold LEAs fiscally harmless for COVID-19 related absences.

For school districts with declining enrollment, existing law provides a one-year reprieve from ADA loss by using the greater of the current year or prior year ADA for funding purposes. This reprieve is an acknowledgment that school districts must make program and staffing decisions before data on enrollment and available state funding is available. Additionally, the state provides a waiver process (via Form J-13A) so that LEAs are not penalized for ADA losses due to a material decrease, school closure, or lost/destroyed records.

In response to COVID-19, the 2020-21 Budget Act included a hold-harmless clause for calculating LCFF funding for the 2020-21 year by allowing 2020-21 funding to be based on 2019-20 ADA rather than 2020-21 ADA. Subsequent legislation amended the Budget Act to provide 2020-21 growth funding for LEAs that anticipated enrollment or ADA growth. While the 2021-22 Budget Act does not include a similar ADA hold-harmless provision, the one-year reprieve described above ensures school district funding remains stable for the current fiscal year.

5) ***Recent report on funding enrollment versus attendance identifies important tradeoffs and the need to continue to encourage student attendance and engagement.*** A March 2022 report by Policy Analysis for California Education (PACE), "Student Count Options for School Funding: Trade-offs and Policy Alternatives for California", observes that changing the LCFF student count methodology creates tradeoffs and should be analyzed with other alternatives for increasing funding equity. Specifically, attendance-based funding incentivizes LEAs to reach out to families to ensure students show up to school. This incentive may be the reason why California ranks among the top 10 states nationally in student attendance, with a pre-COVID average of over 95 percent. However, LEAs serving more English-learner, low-income, and foster and homeless students tend to have lower attendance rates for multiple reasons, which results in additional fiscal penalties under the existing system.

After exploring California's existing student count system, historical attendance figures, and various policy considerations, the report concludes the following:

> "The method California uses to count students for funding purposes is an important decision that drives both resources and behaviors. California leaders should examine their policy goals related to fiscal stability, equity, attendance, and more in order to determine whether the current ADA-based funding system is helping to meet those goals. It is clear to us that a new count method, by itself, cannot achieve all goals. Switching from attendance to enrollment may help districts achieve greater fiscal stability, and it may help redistribute resources to school districts with greater student needs. It could also offer districts more flexibility around how to serve students instructionally—especially students who might learn better through a competency-based model. On the other hand, the current system includes a fiscal incentive that, most agree, encourages higher attendance, even if that attendance definition is relatively weak. If the state dispensed with this incentive, it would likely need to find other ways to drive positive practices related to student attendance and engagement."

6) ***This bill increases and redistributes LCFF funding without increasing the minimum Proposition 98 guarantee.*** By allocating LCFF funds based on enrollment instead of attendance, this bill increases the overall costs of the LCFF by about $3.4 billion. This is because all LEAs have enrollment that is higher than attendance, with rare exceptions. However, because the annual funding level for education (the Proposition 98 guarantee) would remain unchanged, this bill is ultimately a reallocation of existing education resources—from LEAs with average or better ADA (95 percent or more of enrollment) to LEAs with below average ADA (less than 95 percent of enrollment). While most LEAs with below average attendance tend to serve higher proportions of students that are English-learners, low-income, or foster youth, there are several exceptions (e.g. LEAs serving a low proportion of student needs with below average attendance).

7) ***Directing funding to LEAs with greater student needs has merit, but are there alternative methods that require fewer policy tradeoffs?*** The LCFF was adopted as a progressive funding system to increase equity by providing additional funding (supplemental and concentration grants) to LEAs serving

larger portions of English-learner, low-income, and foster youth students. By redistributing LCFF funding to LEAs with lower than average attendance, this bill would further increase the equity of the LCFF (with exceptions)—but at what cost? Most agree that the current system effectively incentivizes higher student attendance and removing this incentive could result in lower attendance, negatively impacting student outcomes and widening the achievement gap. The author appears to acknowledge this tradeoff by proposing a maintenance of effort and a seemingly arbitrary 30 percent ongoing spending requirement on personnel addressing absenteeism and truancy. This spending requirement, in essence, creates a new categorical program which cuts against the intent of the LCFF to encourage LEAs to identify their needs and develop goals locally.

Are there other ways in which to change the LCFF that increase equity and require fewer tradeoffs? For example, would increasing the amount of supplemental and concentration grants relative to the base grant or providing additional funding for "duplicated" students (e.g. students who are both English-learners and low-income or English-learners and foster youth) achieve the same equity goal while preserving the incentive for student attendance and the flexible premise of the LCFF?

8) ***Arguments in support.*** The Los Angeles Unified School District, co-sponsor of this bill, states, "When students are facing trauma, economic uncertainty, or dangerous routes to school, the simple act of showing up to class is not so simple. SB 830 is a necessary measure to address existing flaws in the state's funding system by providing more equitable funding so school districts across the state can meet students' needs and address the root causes of absenteeism. School districts need these critical resources to ensure all students receive support to be in class and learning every day.

"SB 830 underscores the robust existing accountability requirements for school districts to track pupil attendance and examine chronic absenteeism data, provide truancy notification notices to parents, and continue the work of the School Attendance Review Boards to meet regularly to diagnose and resolve persistent student attendance or behavior problems."

9) ***Arguments in opposition.*** The California Association of School Business Officials states, "The bill does not provide safeguards in ensuring that the funds are targeted to the issue it claims to be focused on: chronic absenteeism and truancy. The bill would provide additional funding to LEAs with lower attendance rates, without any state or county office of education analysis or review prior to distribution of funds to determine that LEAs with high chronic absenteeism rates have prioritized and impacted their chronic absenteeism and/or truancy rates.

"The bill also creates a new funding source outside of the LCFF, which will complicate how LEAs report all available funds on their local control and accountability plans (LCAPs) to address each statewide priority. Lastly, the bill allows for "supplanting" of these resources, which will have varying results on how LEAs will determine how they address this one LCFF statewide priority, whether that is to spend additional funds on their current chronic absenteeism services and programs or maintain current funding and divert available local

funds for other purposes, neither of which, again, are tied to chronic absenteeism or truancy."

10) ***Committee Amendments.*** As currently drafted, the fiscal, programmatic, and administrative impacts of this bill are difficult to assess. Further, stakeholders representing education management and labor organizations have expressed concerns that this bill is premature and requires more thoughtful consideration to avoid substantial unintended consequences. Lastly, the recent PACE report summarized above concludes that dispensing with the incentive for LEAs to ensure high attendance would necessitate that the state "find other ways to drive positive practices related to student attendance and engagement."

If it is the desire of the Committee to pass this measure, ***staff recommends*** striking the contents of the bill and replacing with the following:

"Section XX is added to the Education Code, to read:

XX. (a) On or before January 1, 2024, the Legislative Analyst's Office shall submit a report to the Legislature on the short-and-long term impacts of changing the student count methodology of the Local Control Funding Formula from average daily attendance to student enrollment. The report, at minimum, shall analyze all of the following:

(1) The methods used by other states to count students for education funding purposes, including the ways in which high student attendance is incentivized for local educational agencies.

(2) The fiscal, programmatic, and administrative impacts of changing the student count methodology of the Local Control Funding Formula from average daily attendance to student enrollment for the state and for local educational agencies of varying sizes, locations, and student demographics. This analysis shall also assess the impact to students from varying pupil subgroups.

(3) Alternative methods of changing the distribution of funding from the Local Control Funding Formula that would increase state funding for local educational agencies serving a higher percentage of English learners, low-income, and foster youth students while preserving the incentive for high student attendance.

(4) If the student count methodology for the Local Control Funding Formula is changed, the appropriateness of continuing to use average daily attendance for the Proposition 98 funding calculation and for other education programs, such as special education and lottery funding."

SUPPORT

California School Employees Association (co-sponsor)
Los Angeles Unified School District (co-sponsor)

After-school All-stars, Los Angeles
American Federation of State, County and Municipal Employees
Arc
Boys & Girls Clubs of Carson
Burbank Unified School District
California Association of Black School Educators
California Charter Schools Association
California Federation of Teachers
California Labor Federation
California Teamsters Public Affairs Council
Central American Resource Center
Central City Association of Los Angeles
Charter Schools Development Center
City of Oakland
City of San Francisco
Coalition for Humane Immigrant Rights of Los Angeles
Communities in Schools of Los Angeles
Community Coalition
Compton Unified School District
Educare Foundation
Families in Schools
Generation Up
Great Public Schools Now
Innercity Struggle
Keep Youth Doing Something
Kipp Socal Public Schools
Learn4life
Los Angeles Conservation Corps
Los Angeles United Methodist Urban Foundation
Mayor Eric Garcetti, City of Los Angeles
City of Oakland
Our Turn
Para Los Ninos
Parent Engagement Academy
Powermylearning
Promesa Boyle Heights
San Diego Unified School District
Santa Clara County Office of Education
SEIU California
State Superintendent of Public Instruction Tony Thurmond
United Parents and Students
Woodcraft Rangers

OPPOSITION

California Association of School Business Officials
San Diego Schools

-- END --

Bill No:	SB 906	**Hearing Date:**	April 20, 2022
Author:	Portantino		
Version:	April 7, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Lynn Lorber		

Subject: School safety: mass casualty threats: firearm disclosure.

NOTE: This bill has been referred to the Committees on Education and Public Safety. A "do pass" motion should include a referral to the Committee on Public Safety.

NOTE: This bill was previously heard by this Committee on March 30, 2022, and failed passage. This bill has since been significantly amended and is being heard on reconsideration.

SUMMARY

This bill 1) requires local educational agencies (LEAs) to annually provide information to parents or guardians about California's child access prevention laws and laws relating to the safe storage of firearms; 2) requires school officials to report to law enforcement any threat or perceived threat of an incident of mass casualties; 3) requires law enforcement or the school police to conduct an investigation and threat assessment, including a review of Department of Justice's (DOJ's) firearm registry and a search of the school and/or students' property by law enforcement or school police.

BACKGROUND

Existing law:

1) Requires each school district or county office of education to be responsible for the overall development of all comprehensive school safety plans for its schools. Existing law provides that the schoolsite council or a school safety planning committee is responsible for developing the comprehensive school safety plan. (Education Code § 32281)

2) Requires school safety plans to include an (a) assessment of the current status of school crime committed on school campuses and at school-related functions, and (b) identification of appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, including the development of, among other things, policies for students who committed serious acts that would lead to suspension, expulsion, or mandatory expulsion recommendations, and procedures to notify teachers of dangerous students. (EC § 32282)

3) Prohibits school employees from conducting a body cavity search of a student, or removing or arranging any or all of the clothing of a student to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the student. (EC

§ 49050)

4) Requires LEA, at the beginning of the first semester or quarter of the regular school term, to send several specified notifications to parents or guardians. (EC § 48980)

5) Authorizes the governing board of a school district to establish a security department under the supervision of a chief of security as designated by, and under the direction of, the superintendent of the school district, and authorizes the employment of personnel in the security department. States it is the intent of the Legislature that a school district security department is supplementary to city and county law enforcement agencies and is *not* vested with general police powers. (EC § 38000)

6) Authorizes the governing board of a school district to establish a school police department under the supervision of a school chief of police and to employ peace officers. (EC § 38000)

7) Provides for qualifications of and training for school security officers. (EC § 38001.5)

8) Requires a personal firearm importer to report specified information to the Department of Justice (DOJ), within 60 days of bringing any firearm into this state. (Penal Code § 27560)

9) Provides that it is "criminal storage of a firearm" if a person should have known that a child could gain access to a firearm, and sets forth penalties. (Penal Code § 25000 et seq)

ANALYSIS

This bill 1) requires LEAs to annually provide information to parents or guardians about California's child access prevention laws and laws relating to the safe storage of firearms; 2) requires school officials to report to law enforcement any threat or perceived threat of an incident of mass casualties; 3) requires law enforcement or the school police to conduct an investigation and threat assessment, including a review of DOJ's firearm registry and a search of the school and/or students' property by law enforcement or school police. Specifically, this bill:

Notification

1) Requires, beginning with the 2023–24 school year, a LEA to include in the existing annual notifications to parents and guardians information related to the safe storage of firearms using the model content developed by the California Department of Education (CDE) (see # 9-11 below).

Reporting threat to law enforcement

2) Requires a school official to immediately report to law enforcement if the school official is alerted to or observes any threat or perceived threat of an incident of

mass casualties at a school.

3) Requires the report to include copies of any documentary or other evidence associated with the threat or perceived threat.

4) Authorizes a single report to be made when two or more school officials jointly have an obligation to report and when there is agreement among them.

5) Requires a school official who has knowledge that the designated reporting school official has failed to make the single report to thereafter make the report.

6) Requires law enforcement to keep a record of any report received from an LEA.

Investigation, assessment, and searches

7) Requires the local law enforcement agency or the schoolsite police, as appropriate and with the support of the LEA or school, to immediately conduct an investigation and assessment of any threat or perceived threat to prevent an incident of mass casualties at the school.

8) Requires the investigation and threat assessment to include, but not be limited to, both of the following:

   a) A review of DOJ's firearm registry.

   b) Appropriate searches conducted by the local law enforcement agency or the schoolsite police, as appropriate. Authorizes the search to include, as appropriate, either or both of the following:

      i) A search of the schoolsite.

      ii) A search of the student's property located at the schoolsite.

Model content

9) Requires CDE, on or before June 1, 2023, in consultation with relevant LEAs and the DOJ, to assess best practices currently being used and develop model content for use by LEAs to inform parents or guardians of California's child access prevention laws and laws relating to the safe storage of firearms.

10) Requires the model content to include, at a minimum, content that informs parents or guardians of California's child access prevention laws and laws relating to the safe storage of firearms, including but not limited to criminal penalties for storage of a firearm where a child gains access to that firearm.

11) Requires CDE to annually update the model content as necessary to reflect any changes in law.

Miscellaneous

12) Provides that a LEA and school is immune from civil liability for any damages allegedly caused by, arising out of, or relating to the requirements of this article.

Definitions

13) Provides the following definitions:

a) "Law enforcement" means any of the following:

i) A peace officer employed or contracted by a school, school district, or local educational agency for school safety purposes.

ii) A police or security department of a school, school district, or local educational agency.

iii) A local law enforcement agency with geographic jurisdiction over a school.

b) "Local educational agency" means a school district, county office of education, or charter school serving students in any of grades 6 to 12 as part of a middle school or high school.

c) "Reasonable suspicion" means articulable facts, together with rational inferences from those facts, warranting an objective suspicion.

d) "School" means a school of a school district or county office of education or a charter school serving students in any of grades 6 to 12 as part of a middle school or high school.

e) "School official" means any individual who has any oversight responsibility of a LEA or a school, or whose official duties bring the individual in contact with students in any of grades 6 to 12 as part of a middle school or high school, on a regular basis. "School official" includes, but is not limited to, any of the following:

i) An administrator, principal, superintendent, corporate officer, or board member.

ii) A teacher.

iii) An instructional aide.

iv) A teacher's aide or teacher's assistant employed by a school.

v) A classified employee of a school.

vi) A certificated pupil personnel employee of a school.

vii) An employee of a local educational agency whose duties bring the employee into contact with students on a regular basis.

viii) An employee of a school district police or security department.

ix) A school resource officer.

x) An athletic coach, athletic administrator, or athletic director employed or contracted by a school.

xi) A school counselor that provides education counseling.

f) "Threat or perceived threat" means any of the following:

i) Any writing or other content of a student that, based on a reasonable suspicion, is homicidal in nature. The content may include depictions of firearms, ammunition, shootings, or targets in association with infliction of physical harm, destruction, or death. The content may be from a social media post, journal, class note, or other media associated with the pupil. Excludes content that is reasonably part of or included in a school-sanctioned activity such as Reserve Officers' Training Corps (ROTC).

ii) Any student behavior that leads to a reasonable suspicion that the student has homicidal thoughts or urges, including the student's unlawful possession or use of a firearm, or acts described above. Excludes content that is reasonably part of or included in a school-sanctioned activity such as Reserve Officers' Training Corps (ROTC).

iii) Any warning by a parent, student, or other individual that leads to a reasonable suspicion that the student is preparing to commit a homicidal act.

STAFF COMMENTS

1) *Need for the bill.* According to the author, "While California has adopted strenuous fire-arm storage safety laws in recent years, in-creased measures are needed to ensure that parents are aware of safe storage regulations that protect their children and their peers. Warning signs frequently forecast subsequent school tragedies, and local educators should be able to investigate perceived threats to their students' safety. Prioritizing the safety of students by increasing transparency, ensuring safe at-home storage, and empowering educators and law enforcement to investigate threats is crucial to keeping California students safe.

"In California, it is illegal to negligently store firearms. However, in approximately 68% of firearm-related incidents that occur in schools, the firearm was taken from the student's home, friend, or relative. Many parents also wrongly believe that their children do not know the lo-cation of their household firearm. Including in the parent handbook information on safe storage and accessibility of firearms, as

outlined by the California Department of Education (CDE), can increase accountability and aware-ness of safety precautions. Teachers and school administrators can also help educate parents and guardians about the safe storage of firearms.

"In almost every case of a school shooting, there were clear warning signs, and research shows that knowing the signs of gun violence can help prevent it. In 93% of incidents, school shooters planned their attack in advance. Most made threatening or concerning communications prior to the attack that elicited concern from parents, friends, or educators. Allowing concerned teachers or school administrators to investigate perceived threats would lessen the chance of a tragedy."

2) *Significant changes from prior version of this bill.* This bill has been significantly amended since it was heard by this Committee on March 30, 2022. The most significant changes are:

   a) This bill no longer requires LEAs to send a questionnaire to parents about their possession and storage of firearms, or in any way inquire or collect information about firearms.

   b) The definition of "threat or perceived threat" has been narrowed to no longer reference "disobedience of school rules or policies related to school safety or firearms, such as a ban on backpacks in classrooms."

   c) This bill requires law enforcement or school police to conduct the investigations and threat assessment, rather than requiring LEAs or schools to conduct investigations and assessments.

   d) Searches are limited to the schoolsite and a student's property that is on the schoolsite (no searches of a student's body).

   e) Limits the scope of this bill to middle and high schools (grades 6-12, but not grade 6 that is part of an elementary school).

   f) Exempts ROTC activities.

3) *Firearms used in school shootings.* A 2004 report by the United States Secret Service and United States Department of Education found that over two-thirds of school shooters acquired the gun (or guns) used in their attacks from their own home or that of a relative (68 percent). The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the US (PDF) (ed.gov)

4) *Existing DOJ firearm registry.* The California DOJ maintains several reports submitted by owners of firearms, such as when firearms are transferred to a new owner, or a person owns a curio or assault weapon. *This bill does not create a new registry of firearms and does not affect DOJ's registry.* The only reference to a firearm registry in this bill is its requirement that investigations and assessments of threats by law enforcement or school police include a review of

DOJ's firearm registry.

5) *Searching students.* The 4th Amendment of the United States Constitution states "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Existing law prohibits school employees from conducting a body cavity search of a student or removing or arranging any or all of the clothing of a student to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the student. In *New Jersey v. T.L.O.*, the United States Supreme Court held that a) "The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and is not limited to searches carried out by law enforcement officers; b) Schoolchildren have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them onto school grounds. But striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances, the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction."

This bill requires investigations and assessments of threats or perceived threats, based on reasonable suspicion, to include appropriate searches by law enforcement or school police of the schoolsite and/or a student's property on the schoolsite. Limiting searches to those circumstances is consistent with the aforementioned case law.

6) *Civil immunity.* This bill provides that a LEA and school is immune from civil liability for any damages allegedly caused by, arising out of, or relating to the requirements of this bill. Consideration of whether this provision is appropriate policy is within the jurisdiction of the Senate Judiciary Committee.

7) *Double-referred to Senate Public Safety.* This bill has been double-referred to this Committee and the Senate Public Safety Committee.

8) *Related legislation.* AB 452 (Friedman) requires LEAs to annually inform parents or guardians of enrolled students about California's child access prevention laws and laws relating to the safe storage of firearms. AB 452 is awaiting referral in the Senate.

   SB 1273 (Bradford) eliminates criminal penalties for "willful disturbance" of a school or school meeting, and grants a school principal discretion to report an incident to law enforcement if it does not include a firearm. SB 1273 is scheduled to be heard in this committee on March 30.

9) *Prior legislation.* SB 1203 (Bates, 2018) required each public, charter, and private school to establish lockdown training procedures. SB 1203 was held in the Assembly Appropriations Committee.

   AB 1747 (Rodriguez, Chapter 806, 2018) expanded the required elements of school safety plans, including procedures to respond to active shooter situations, required schools to conduct annual active shooter drills, and required the CDE to provide additional guidance and oversight of safety plans.

   AB 58 (Rodriguez, 2015) would have made each COE the entity responsible for the overall development of all comprehensive school safety plans and requires school safety plans to include procedures in response to individuals with guns on school campuses. AB 58 was held in the Senate Appropriations Committee.

   SB 49 (Lieu, 2013) would have required school safety plans to include procedures related to response to a person with a gun on campus, extended from annually to every third year the frequency of review of safety plans, and required charter school petitions to include a description of a school safety plan. SB 49 was held in the Assembly Appropriations Committee.

SUPPORT {for amended version of bill}

Democratic Party of the San Fernando Valley
Riverside County Superintendent of Schools
Women Against Gun Violence

OPPOSITION {for amended version of bill}

ACLU California Action

-- END --

SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 905	**Hearing Date:**	April 20, 2022
Author:	Skinner		
Version:	April 18, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Olgalilia Ramirez		

Subject: Decarbonized Cement and Geologic Carbon Sequestration Demonstration Act.

SUMMARY

This bill tasks the California Air Resources Board (ARB) with a number of responsibilities surrounding geologic carbon sequestration demonstration projects, including but not limited to: developing a geologic carbon sequestration demonstration initiative; funding 1-3 projects therein by January 1, 2024; developing program guidelines and criteria; and acting as lead agency under the California Environmental Quality Act (CEQA) for any geologic carbon sequestration demonstration projects. The bill further establishes a Hub for Research and Innovation in Geologic Carbon Sequestration, administered by the ARB, to study geologic carbon sequestration technology and specified demonstration projects to be located at a California public postsecondary institution.

BACKGROUND

1) Existing law stipulates that public higher education consists of, the California Community Colleges (CCC), the California State University (CSU), and each campus of the University of California (UC). (Education Code (EC) § 66602 (a))

2) Existing law declares the UC as the primary state-supported academic agency for research. (EC § 66010.4 (c))

3) Existing federal law sets, through the Clean Air Act (CAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants: ground-level ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide. (42 U.S.C. §7401 et seq.)

4) Existing state law, under the California Global Warming Solutions Act of 2006 (Health and Safety Code (HSC) §38500 et seq.):

    a) Establishes the State Air Resources Board (ARB) as the state agency responsible for monitoring and regulating sources emitting greenhouse gases.

    b) Requires ARB to approve a statewide greenhouse gas (GHG) emissions limit equivalent to the statewide GHG emissions level in 1990 to be achieved by 2020 (AB 32, 2006) and to ensure that statewide greenhouse

gas emissions are reduced to at least 40% below the 1990 level by 2030. (SB 32, 2015)

c) Requires ARB to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions and to update the scoping plan at least once every 5 years.

d) Requires ARB when adopting regulations, to the extent feasible and in furtherance of achieving the statewide GHG emissions goal, to do the following:

   i. Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

   ii. Ensure that activities pursuant to the regulations do not interfere with efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

   iii. Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

   iv. Consider cost-effectiveness of these regulations.

e) Requires, under SB 596 (Becker, Chapter 246, Statutes of 2021), ARB, by July 1, 2023, to develop a comprehensive strategy for the state's cement sector to achieve net-zero GHG emissions no later than December 31, 2045.

ANALYSIS

This bill:

1) Tasks ARB with developing and administering the Geologic Carbon Sequestration Demonstration Initiative, to:

   a) Evaluate and demonstrate the efficacy, safety, and viability of geologic sequestration of carbon dioxide not associated with enhanced oil recovery or fossil fuel production.

   b) Enhance air quality and reduce greenhouse gas emissions.

   c) Promote workforce and community benefits.

2) Requires ARB and the State Water Resources Control Board (Water Board) to award funding under the initiative by January 1, 2024 to one to three geologic carbon sequestration demonstration projects, which:

a) Demonstrate the feasibility of one or more geologic carbon sequestration strategies by facilitating the capture, removal, and geologic sequestration of carbon dioxide generated at one or more new or existing cement production facilities in the state to one or more geologic storage complexes.

b) Achieve the capability to sequester at least one million metric tons of CO2 equivalents annually in a storage complex capable of storing at least 50 million metric tons.

c) Incorporate strategies to reduce co-pollutant emissions and limit air pollution, water pollution, and construction and transportation-related impacts from the project in the community or communities adjacent to any geologic storage complexes used for the project.

d) Incorporate strategies to minimize the risk of seismic impacts to the project and commitments to conduct regular monitoring and reporting of seismic activity related to geologic sequestration of carbon dioxide.

e) Include monitoring and reporting schedules to state regulatory agencies.

f) Promote workforce development and create employment opportunities in the community.

g) Advance the state's net-zero cement industry goal and the strategy developed by the state board pursuant to SB 596 (Becker, Chapter 246, Statutes of 2021).

h) Include an infrastructure path for construction of, or reuse of existing, pipelines to connect geologic storage complexes to carbon dioxide sources.

i) Include facilities, site access, and technical capacity available to support the research hub.

j) Have the technical capacity to begin operation no later than September 1, 2023.

3) Directs ARB to prioritize demonstration projects that:

a) Are likely to generate the greatest net reduction in GHG emissions.

b) Represent appropriate land use and minimize potential environmental, noise, air quality, traffic, and other construction-related impacts to the community.

c) Promote the goals of the environmental justice element of any applicable general plan, as specified.

d) Provide benefits to disadvantaged communities, as specified.

e) Leverage private funding sources and public-private partnership structures alongside state funding sources.

4) States that a geologic carbon sequestration demonstration project is a public works project under Labor Code § 1720 et seq, and must pay prevailing wages.

5) Directs ARB to require funded projects use skilled and trained workforce, as defined, to perform all project work, as specified.

6) Requires ARB to, no later than January 1, 2024, approve between one to three geologic carbon sequestration demonstration projects.

7) Prohibits ARB from approving projects associated with or incorporating enhanced oil recovery or fossil fuel production as qualifying geologic carbon sequestration projects.

8) Authorizes ARB to employ methods, including, but not limited to, grants, direct loans and debt instruments, loan guarantees and credit enhancements, and other forms of financial assistance.

9) Tasks ARB, in consultation with the California Energy Resources Conservation and Development Commission (CEC), California Geological Survey, State Water Board, State Fire Marshal, Department of Fish and Wildlife, State Lands Commission, local air districts, regional water quality control boards, and other state entities as needed, and after holding at least three public workshops located throughout the state, as specified, to develop both the following (which are exempted from administrative regulations in Government Code § 11340 et seq, neither affect Low Carbon Fuel Standard regulations, and they do not include enhanced oil recovery or fossil fuel production):

   a) Guidelines for the implementation of the initiative and development of geological carbon sequestration demonstration projects, including specified technical and labor best practices.

   b) Criteria for the selection of eligible carbon sequestration demonstration projects.

10) Establishes the Hub for Research and Innovation In Geologic Carbon Sequestration (hub), and provides that:

   a) The hub, if feasible, be located at a CCC, CSU or UC, and include facilities for use by myriad specified researchers and organizations.

   b) The hub be administered by ARB to do all of the following:

      i) Study the development of geologic carbon sequestration technology and demonstration projects associated with the initiative, and not associated with enhanced oil recovery or fossil fuel production.

ii) Coordinate research efforts regarding geologic carbon sequestration technology piloted through the initiative.

iii) Evaluate the feasibility and effectiveness of commercial applications of geologic carbon sequestration technology in furtherance of the state's greenhouse gas reduction goals.

11) States that the unitization agreements established in 1971 (and contained in PRC § 3640 et seq) apply to this part as well.

12) Declares that the title to any geologic storage reservoir is vested in the owner of the overlying surface estate unless it has been severed and separately conveyed, and details specifics regarding conveyance of ownership, transferring of rights and notification requirements.

13) States that for any geologic carbon sequestration project other than ones approved by the state board pursuant to this part, the geologic carbon sequestration project operator, or its designee, shall have title to the carbon dioxide injected into and stored in a geologic storage reservoir associated with the project, including all rights and interests in, and all responsibilities associated with, carbon dioxide stored in the geologic storage reservoir, and liability for any and all damages caused by the project.

14) Stipulates that, pursuant to CEQA, ARB is the lead agency for a geologic carbon sequestration demonstration projects, and further specifies the responsible agencies for specific features of the demonstration projects.

15) Requires ARB to, on or before January 1, 2025, adopt regulations creating a coordinated state permitting process, as specified, for approval of geologic carbon sequestration projects, including a single unified permit for submission by developers or sponsors of geologic carbon sequestration projects.

16) States that the single unified permit process developed by the stat board shall not impair any rights or obligations under CEQA.

STAFF COMMENTS

1) **Need for the bill.** According to the author, "CA is the second largest cement producing state in the US, accounting for 10-15% of the cement production and industry employment in the US. The workforce is heavily unionized, and provides thousands of high paid jobs that support CA families. Most of the cement used in CA is produced in state.

"Cement production is extremely carbon intensive, accounting for about 7% of global carbon emissions. The GHG emissions from making cement are approximately 40% from energy use (for heating and driving the processing) and 60% from the chemical reaction that occurs when limestone is heated at high temperatures to make cement, known as "process emissions."

"SB 596 (Becker) which became law this January requires cement producers in CA to reduce emissions 40% by 2035 and achieve carbon neutrality by 2045. In order to meet these goals, the cement industry must capture carbon released as process emissions and permanently sequester that carbon – likely underground. However, the permitting and legal frameworks around how to sequester technologically captured carbon geologically is all but non-existent. It has never been tried in California. Additionally, there are significant legal questions about ownership of underground pore space, carbon storage accounting, and permitting requirements to safely sequester carbon underground. If we are to retain a cement industry in California, much work needs to be done to make a carbon capture and sequestration pathway available to the industry.

"California's research institutions have been at the forefront in studying how carbon can be safely captured and sequestered geologically. Lawrence Livermore Labs released a study in 2020 showing that CA has great natural potential for geologic carbon sequestration, and that several opportunities exist in California to sequester carbon from non-fossil industry sources, or from directly capturing carbon from the atmosphere, for permanent storage underground. Lawrence Berkeley Labs has a Carbon Storage program conducting cutting-edge simulations of how to safely sequester carbon underground. California's research institutions are well positioned to aid the state in administering and studying outcomes from a limited set of demonstration projects allowing for carbon capture from the cement industry and geological sequestration of that carbon."

2) **Research and Innovation Hub**. This bill establishes the Hub for Research and Innovation in Geologic Carbon Sequestration for purposes of coordinating research efforts to study the development of geologic carbon sequestration technology and demonstration projects. Eligible demonstration projects are required to make certain resources available including site access to support Hub activities. Hub facilities would be open for use by a variety of entities including economic development organizations, and industry members, as well as, researchers from the UC, CSU, or CCC. In prior years, the Legislature has acted to address various statewide needs by establishing and funding research centers specifically within the UC system. This bill calls for the Hub to be housed, if feasible, at a CSU, CCC or UC campus but the administration and coordination responsibility would fall under the Air Resources Board. The bill is silent on state support for costs associated with Hub activity but presumably covered through the administrator. Campus involvement is voluntary.

3) **Triple referral**. This bill has been referred to the Committees on Environmental Quality Committee, Education and Natural Resources and Water. This bill was previously heard by the Senate Environmental Quality Committee where it passed by a vote of 5-2. The committee has jurisdiction over bills related to environmental quality, air quality, water quality, climate change, California Environmental Quality Act, waste management, pesticides, and hazardous materials.

This bill will not receive a hearing in the Senate Natural Resources and Water Committee. Due to the COVID-19 Pandemic and the unprecedented nature of the 2021 Legislative Session, all Senate Policy Committees are working under a

compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees, as a typical timeline would allow.

4) **About Carbon Capture and Storage.** The Senate Environmental and Quality Committee analysis stated, in part, the following background information relevant to the bill:

a) *Concrete GHG Emissions*. Cement alone accounts for 1.8% of the California's GHG emissions and 7% of CO_2 emissions worldwide. It is often referred to as one of the most "hard to abate" industrial sectors. According to a February 2019 report by Global Efficiency Intelligence, the state's cement factories are the largest consumers of coal and petroleum coke in California. In fact, California's cement factories have higher emissions per ton of cement than similar factories in China, India, and other major cement-producing regions. California's aging and inefficient cement production facilities are substantially dirtier than new facilities in countries like China and India. The opportunity to clean up California's cement industry is significant.

The GHG emissions from making cement are approximately 40% from energy use (for heating and driving the processing) and 60% from the chemical reaction that occurs when limestone is heated at high temperatures to make cement, known as "process emissions."

a) *Cement Decarbonization Roadmap*. In September of 2019, Global Efficiency Intelligence also published a report called Deep Decarbonization Roadmap for the Cement and Concrete Industries in California. They identified four key decarbonization levers for the cement industry. In order of greatest reduction potential to least, they are (1) carbon capture, utilization, and storage (CCUS) – capturing and compressing CO_2 emitted during cement production to be permanently stored; (2) clinker substitution; (3) fuel switching; and (4) energy efficiency, including waste heat recovery. Implementing these levers could potentially reduce GHG emissions from concrete and cement by up to 68% compared to 2015 levels by 2040. A more conservative estimate with moderate improvements and low adoption of CCUS is around a 13% reduction by 2040.

The scenario analyzed in the report which had the greatest use of CCUS determined that it would result in 4 million metric tons of CO_2 emission reductions in 2040.

b) *Impact on Communities*. Cement kilns release numerous harmful pollutants, including nitrogen oxides, sulfur dioxide, and particulate matter. Research shows that local air pollution from cement kilns are both damaging to the environment and cause numerous adverse health effects, including heart and lung disease. Communities near these cement kilns, especially low-income communities, which are often communities of color and children, bear the largest brunt of these health issues. California is home to 9 cement plants, many of which are concentrated in the Inland

Empire and Eastern Kern County regions. These areas already face existing air quality challenges as well.

In 2019, the Lehigh Cement Company reached a settlement for alleged violations of the Clean Air Act. As part of the settlement, Lehigh has to invest $12 million in pollution control technology at 11 of their cement manufacturing plants, three of which are in California.

c) *Carbon Capture and Storage (CCS).* CCS is a process of separating CO2 from a point source, such as the flue of a gas-fired power plant or a cement plant, and putting it into long-term storage, usually by injecting CO2 into a geological reservoir. CCS is generally considered by experts to be a CO2 reduction strategy, not a CO2 removal strategy, since it is only reducing CO2 from anthropogenic sources that would have otherwise entered the atmosphere, rather than removing what was already there.

CCS is adoptable in California due to the existing geological storage from the state's history of fossil fuel extraction. However, according to a Lawrence Livermore National Laboratory (LLNL) report published in 2021, no CCS projects exist today in California, and it is unlikely that CCS could be scaled up at the pace needed due to the current regulatory framework for screening and authorizing projects. ARB has already adopted a CCS protocol under the Low Carbon Fuel Standard (LCFS), including for out-of-state CCS projects. CCS remains controversial because of fears it could prolong the life of fossil fuels and delay the transition to more sustainable fuels.

d) *Carbon capture is not a new idea*. According to the 2021 Global CCS Institute (GCCSI) Global Status of CCS Report, the earliest example of carbon capture technology being used was in 1972 in Texas at a natural gas processing plant where it supplied CO2 to a nearby oilfield for enhanced oil recovery. After decades of development and investment, there are 27 commercial-scale carbon capture projects operating worldwide today, capturing a total of 36.6 million tons of carbon per year, an amount equivalent to nearly 9% of California's annual emissions. The majority of global CCS capacity operating today was built prior to 2011, and captures carbon from natural gas processing plants.

In 2010, the California Carbon Capture and Storage Review Panel (formed by the California Public Utilities Commission, CEC, and ARB and composed of experts from industry, trade groups, academia, and environmental organizations) issued findings and recommendations for how to deploy CCS at a greater scale in California. Those findings and recommendations were based in part on deliberations made at the Sixteenth session of the Conference of the Parties (COP 16) and the issuance of federal subsurface CO2 injection regulations, both of which happened in 2010. Some of the key findings from that 2010 report included, "Technology currently exists for the safe and effective capture, transport, and geological storage of CO2 from power plants and other large industrial facilities…There is a need for clear, efficient, and

consistent regulatory requirements and authority for permitting all phases of CCS projects in California, including CO2 capture, transport, and storage"

There is increasing acceptance of the need to increase CCS to limit global warming as much as possible. According to the GCCSI report, the current capacity of CCS projects in either construction or development is 60.9 million tons per year—almost twice the total capacity operating today. The largest projects currently under development are intended to capture CO2 from either ethanol production or power generation from coal, but other CO2 sources (direct air capture, cement production, waste-to-energy, hydrogen production, etc.) are planned to be used by other projects as well.

e) *Permitting CCS in California.* California's complex permitting and regulatory framework currently stymies adoption of CCS. A recent report from LLNL posits that California's permitting requirements take 5-6 years to complete. Given California's fast-approaching climate deadlines, slow CCS permitting could cause it to be unusable for meeting those goals.

The report cites a lengthy environmental review process, a lack of jurisdictional clarity, cross-agency input at local, state and federal levels, and an absence of a joint-review process as key determinants of the lengthy timeline. For example, projects injecting CO2 into underground saline reservoirs for long-term storage require a Class VI Underground Injection permit from EPA Region 9. The approval process is extensive, scientifically rigorous, and involves multiple government bodies at the state and federal level. The EPA inventory only lists two Class VI permits, one of which took three years to process and approve. None have been granted in California. In addition to EPA Region 9, the State Water Board, regional Water Boards, and CalGEM may all undergo their own reviews of the Class VI application materials.

Furthermore, CCS projects have the potential to emit air pollutants, requiring an authority to construct from local air districts. This will in turn trigger a CEQA review, significantly lengthening the review timeline. The level of regulatory complexity only increases if extensive pipeline infrastructure is needed or if projects pursue Low Carbon Fuel Standard credits.

Although unitization is the purview of the Senate Natural Resources and Water Committee, due to the rescission of SB 905 from referral to that committee, the topic is addressed briefly here. "Unitization" refers to combining separately owned mineral or leasehold interests related to a common supply such as a reservoir or field to create a joint operation to maximize production and optimize operations. Unitization of an oil or gas producing reservoir is routinely used in the state and elsewhere to facilitate oil and gas production where the reservoir has multiple owners. Unitization provides a method, subject to the approval of the State Oil and Gas Supervisor, for joint development of the oil and gas production of the

reservoir so long as 75% of the ownership agrees, as provided (see Chapter 3.5 of Division 3 of the Public Resources Code, beginning with §3630). However, geologic sequestration of carbon dioxide by injection into a well is appreciably different from the production ("un-sequestration") of oil and gas from a well, not least both physically and economically.

f) *SB 596*. Last year, Senator Becker's SB 596 (Chapter 246, Statutes of 2021) set a decisive path towards net-zero emissions in the cement sector. It required ARB to, by July 1, 2023, develop a comprehensive strategy for the state's cement sector to achieve net-zero emissions of GHGs associated with cement used within the state as soon as possible, but no later than December 31, 2045. SB 596 stated that it was, "the intent of the Legislature that attaining net-zero or net-negative emissions of greenhouse gases from the cement and concrete sector in a manner that enhances California's competitiveness, supports high-paying jobs, improves public health, and aligns with local community priorities becomes a pillar of the state's strategy for achieving carbon neutrality."

Although CCS was not explicitly mentioned in the language of SB 596, as noted above there have been multiple reports that suggested CCS would be all but essential to achieve net-zero operations by 2045. In granting ARB the authority to develop and implement a comprehensive strategy for the state's cement sector to achieve net-zero GHG emissions, SB 596 strongly suggested, but did not outright require, cement-associated CCS projects in California

SUPPORT

Climate Reality Project, San Fernando Valley
Kern Community College District
State Building and Construction Trades Council of Ca

OPPOSITION

350 Humboldt: Grass Roots Climate Action

-- END --

SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1160	**Hearing Date:**	April 20, 2022
Author:	Durazo		
Version:	February 17, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Olgalilia Ramirez		

Subject: Public postsecondary education: exemption from nonresident tuition

SUMMARY

This bill deletes provisions that preclude nonimmigrant students from receiving an exemption from paying non-resident tuition at California's public postsecondary institutions, thereby granting the same postsecondary education benefits to nonresident international students as those extended to California undocumented students (AB 540 students).

BACKGROUND

Existing Federal law:

Nonimmigrants

1) Under the Federal Immigration and Nationality Act, defines certain classes of nonimmigrant foreign nationals admitted temporarily to the United States (U.S.) categorized within 22 classes of admission and a wide array of sub-classifications to include, among others:

   a) Foreign government officials and their dependents.
   b) Temporary visitors for business and pleasure.
   c) Foreign nationals in transit through the U.S.
   d) Treaty traders.
   e) Investors
   f) Students - Academic and vocational and their dependents.
   g) Temporary workers and their dependents.
   h) Exchange visitors.
   i) Athletes and entertainers.
   j) Persons in a Religious Occupation.
   k) Informant Possessing Information on Criminal Activity.
   l) Victims of certain crimes.
   m) Certain family members of U.S. citizens and permanent residents. (8 U.S.C. Sec. 1101 (a) (15))

Existing state law:

California Residency

1) Generally known as the Uniform Residency Law, establishes a variety of residency requirements for students attending the California Community Colleges (CCC) or the

California State University (CSU). The determination of such residency status is required in order to assess either resident or non-resident fees and tuition. The Regents of the University of California (UC) may, by resolution, make these provisions of law applicable to the UC (and historically have done so). (Education Code (EC) § 68000-68134)

2) Under the uniform residency law, stipulates that a person who is not a citizen or national of the United States may establish a residence unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing a domicile in the United States.

AB 540

3) Established by AB 540 (Firebaugh, Ch. 814, Stats. of 2001) and <u>later modified</u>, exempts a student, *other than a person excluded from the term "immigrant," for purposes of the federal Immigration and Nationality Act pursuant to (8 U.S.C. Sec. 1101 (15)(a))*, from paying nonresident tuition at California public colleges and universities who meet all of the following requirements who have graduated from a California high school (or the equivalent) and either:

   a) Satisfaction of the requirements of either (i) or (ii):

      i) A total attendance of, or attainment of credits earned while in California equivalent to, three or more years of full-time attendance or attainment of credits at any of the following:

         (1) California high schools.

         (2) California high schools established by the State Board of Education.

         (3) California adult schools established by any of the following entities:

            (a) A county office of education.
            (b) A unified school district or high school district.
            (c) The Department of Corrections and Rehabilitation.

         (4) Campuses of the CCC.

         (5) A combination of those schools set forth in (1) to (4), inclusive.

      ii) Three or more years of full-time high school coursework in California, and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of California elementary and secondary schools.

   b) Satisfaction of any of the following:

      i) Graduation from a California high school or attainment of the equivalent.

      ii) Attainment of an associate degree from a campus of the CCC.

iii) Fulfillment of the minimum transfer requirements established for UC or CSU for students transferring from a campus of the CCC. (EC § 68130.5.)

4) Specifically, precludes a "nonimmigrant" student, as defined under specified federal law, from the provisions in EC § 68130.5.

5) Provides that a student who meets nonresident tuition exemption requirements under EC § 68130.5 or who meets equivalent requirements adopted by the UC is eligible to apply for any financial aid program administered by the state to the full extent permitted by federal law. (EC § 69508.5)

6) Provides that a student attending a CSU, CCC, or UC who is exempt from paying nonresident tuition under EC § 68130.5 is eligible to receive a scholarship derived from non-state funds received, for the purpose of scholarships, by the segment at which he or she is a student. (EC § 66021.7)

T and U status

7) Exempts students who are victims of trafficking, domestic violence, and other serious crimes (T and U visa students) from paying nonresident tuition at the CSU, and CCC to the same extent as individuals admitted to the U.S. as refugees. (EC § 68122 and 69504.5)

ANALYSIS

1) This bill deletes provisions that preclude nonimmigrant students from receiving an exemption from paying non-resident tuition at California's public postsecondary institutions thereby granting the same postsecondary education benefits to nonresident international students as those extended to undocumented students (AB 540 students). Specifically it:

   a) Removes provisions in EC § 68130.5 that preclude persons with U.S. nonimmigrant status, as defined under the federal Immigration and Nationality Act (8 U.S.C. Sec. 110 (15) (a)), for qualifying for the exemption from paying nonresident tuition at the CSU and the CCC. The UC Regents have made the provisions in EC § 68130.5 applicable to the UC.

   b) Effectively, grants nonimmigrants (in the above paragraph) the same exemption from nonresident tuition and eligibility to apply for state and institutional financial aid programs as those extended to undocumented Californians in EC § 68130.5 (AB 540 students).

STAFF COMMENTS

1) **Need for the bill**. According to the author, "While AB 540 has provided greater college affordability for many students, individuals with international student visas, visitor visas, or other "non-immigrant" statuses are not eligible to apply even if they meet the rest of the eligibility criteria. This includes children of long-

term visa holders who grow up with legal status in the U.S., but age out at age 21 when their dependent visas expire."

The author claims that some nonimmigrants students, suffering from financial hardship who attended the majority of their primary education in California are not eligible for in-state tuition, or state or federal aid for college due to their nonimmigrant visa status.

2) **Nonimmigrant status.** This bill casts a broader postsecondary education benefit net by extending resident tuition to nonimmigrant visa holders. There are approximately 22 nonimmigrant visa classifications (e.g. A, B, C...V) with over 70 subcategories collectively. Nonimmigrant status is a designation for people who enter the U.S. on a temporary basis – whether for tourism, business, temporary work, or study. According to federal law, once a person has entered the U.S. with nonimmigrant status, they are restricted to the activity or reason for which they were allowed entry. In some cases, dependents qualify for entrance through the primary visa holder. Most nonimmigrant visas are issued only to applicants who can demonstrate their intentions to return to their home country.

According to the U.S. State Department multi-year reports, the vast majority of nonimmigrant visa categories issued are either business/tourism (B1/B2), Employment (H), or students (F or J). Because the Immigration and Nationality Act allows certain immigration statuses to establish permanent residency in the U.S. and they are therefore authorized to establish California residency for tuition purposes. As such, several nonimmigrant statuses, under UC, CSU, and CCC policy, and, in compliance with federal law are eligible for resident tuition. Other immigrant statuses are not authorized to establish residency and are therefore required to pay the higher nonresident tuition rate. This bill seeks to benefit that group. This bill would allow persons with ineligible nonimmigrant statuses including most notable international students (F or J), to access the same exemption from nonresident tuition and eligibility to apply for financial aid programs as those extended to California undocumented students (AB 540 students).

Should this bill move forward today, the committee may wish to consider all of the following:

- *California public institutions base residency classification policies for nonimmigrant visa categories on conditions for entrance associated with each visa category imposed under federal law. To what extent should state policy stray from those conditions for purposes of determining eligibility for resident tuition?*

- *Should a significant public postsecondary education benefit be conferred upon a group of students that was not originally intended to receive that benefit? Should legislation intended to confer a public postsecondary education benefit upon a high financial needy population (undocumented students) be extended to international students who may not have any financial need?*

- *This bill would open a pathway for all ineligible nonimmigrant statuses (dependents or not) to become eligible for in-state tuition using criteria based on their attendance or credits attained at California schools. Is it appropriate to apply eligibility to all ineligible nonimmigrant statuses or should the bill precisely focus on a specific group of nonimmigrants such as dependents of certain visa holders?*

3) **Legislative history of nonresident tuition exemption**. Under the provisions of this bill, individuals with temporary U.S. visas would have the same privileges as those given to undocumented students. The original policy, AB 540, provided a means of qualifying long-term Californians, upon graduation from a California high school and regardless of citizenship status, for lower resident fees at our public segments of higher education. It required students and their families to demonstrate long-term presence by confirming attendance at a California high school for three or more years, in order to show a student's invested commitment within the California school system before receiving benefits. In 2014, AB 2000 (Gomez, Ch. 675, Stats. of 2014) sought to extend eligibility to long-term Californians in accelerated learning programs who graduate ahead of the attendance requirement but who attained high school credits equivalent to three or more years of full-time coursework in California from a California high school.

   Subsequent legislation, SB 68 (Lara, Ch. 496, Stats. of 2018) significantly expanded pathways for qualifying either through attendance or through attainment of equivalent credits earned by a student from an expanded list of California schools including community colleges. However, full-time attendance earned at a CCC was restricted to two years. Finally, it added as an alternative to high school graduation, attainment of an associate degree, or fulfillment of minimum transfer requirements as qualifying options. These changes made it possible for undocumented adult learners to earn access to the exemption.

4) **Nonimmigrant statuses excluded from the original policy.** Provisions excluding nonimmigrant statuses including for example nonresident international students for the exemption from nonresident tuition were drafted into AB 1197 (Firebaugh, 2000) and AB 540. According to the committee analysis on AB 540, in response to Governor Davis' veto message on AB 1197, "the Chief Legislative Counsel at that time issued an opinion that AB 1197 (Firebaugh, 2000) did not violate federal law since it did not temper with a student's residency status under federal law and because it excluded from out-of-state tuition exemptions foreign residents as specified in the United States Code (Title 8, Section 1101, Paragraph 15 (a))." *This bill removes provisions that once helped validate the original policy.*

5) **Snapshot of nonresident international students.** According to UC's report on nonresident enrollment, in fall of 2018, nonresident students represented approximately 18% of undergraduates systemwide. Of that, 12% were nonresident international students. Among its campuses, UC, Berkeley enrolls the greatest number of nonresident international students. Common visa types include international student (F-1), exchange visitors (J-1), and temporary workers and families (H-1, H-4, L-1, L-2, and E-2) with the top 3 countries of origin being China (37%), India (9%) and South Korea (9%).

6) **Legislative actions to reduce nonresident enrollment at UC.** The percentage of nonresident enrollment at UC jumped from 5% in 2008 to 17.9% in 2018. In an effort to decrease growth in nonresident undergraduate enrollment and prioritize California residents at UC, the legislature has taken the following actions through the budget process:

   a) The 2015 Budget Act provided $25 million to the UC contingent on increasing California resident enrollment by 5,000 students, holding resident tuition flat in 2015-16 and 2016-17, and redirecting nonresident institutional aid to support resident students.

   b) The 2016 Budget Act provided an additional $18.5 million to the UC, contingent upon enrolling 2,500 more California residents by the 2017-18 academic year and upon the UC Regents' adoption of a university-wide policy capping enrollment of non-residents.

   c) The 2018 Budget Act contained provisions directing the UC to develop a plan starting in fall 2020 to gradually reduce the enrollment of nonresident freshman students to no more than 10 percent of the freshman class at every campus by 2029-30.

   d) The 2021 Budget and AB 132 (Committee on Budget, Chapter 144, statutes of 2021) established a nonresident reduction plan at UC Berkeley, UCLA, and UC San Diego. AB 132 specifies that it is the intent of the Legislature that UC limit the share of nonresident students at every campus to no more than 18 percent of the campus undergraduate enrollment. The budget agreement provides funding to the UC for this purpose.

7) **Nonresident vs resident tuition.** Persons deemed as nonresidents of California for purposes of paying tuition at a California public institution at UC, CSU, or CCC, are charged a significantly higher tuition rate than the amount charged for resident tuition. In the current year, at CCCs, California residents pay $46 per unit while nonresidents pay $346 per unit. At CSU, undergraduate resident students pay $5,742 per year in mandatory systemwide tuition fees, while nonresident students pay $15,246. Within the UC system, undergraduate resident students pay $13,104 per year while nonresident students pay $44,130.

8) **Financial aid and other benefits.** This bill amends the same section of the Education Code that pertains to AB 540 students. As such, students with nonimmigrant visas would be eligible to apply for the Cal Grant Entitlement awards, UC and CSU institutional aid, CCC fee waivers, CCC Transfer Entitlement awards Cal Grant C awards, Cal Grant Competitive awards, Dream loan programs, and other services to support undocumented students.

9) **Amendments**. According to the author, "this bill seeks to expand the AB 540 eligibility criteria to include children of long-term visa holders that entered the country on a dependent visa but age out at 21." As drafted, however, the provisions of the bill are overly broad and therefore confers a significant postsecondary education benefit on all nonimmigrant statuses. Furthermore, the

bill extends eligibility to a host of other postsecondary education benefits in addition to eligibility to pay the lower resident rate. In order to ensure that this bill coincides with the original intent of the AB 540 policy and not confer a public postsecondary education benefit on a group of students that was specifically excluded, and for purposes of aligning its provisions with the author's statement, ***staff recommends that the bill be amended*** *to recast its provisions within the Education Code to read as follows:*

> *(a) Notwithstanding subdivision (a) of Section 68130.5, nonimmigrant students listed in subdivision (e) shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges if the students meet all of the requirements in paragraph (1) to (4), inclusive, of subdivision (a) of Section 68130.5.*
>
> *(b) A student who is exempt from nonresident tuition under this section may be reported by a community college district as a full-time equivalent student for apportionment purposes.*
>
> *(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall prescribe rules and regulations for the implementation of this section.*
>
> *(d) Student information obtained in the implementation of this section is confidential.*
>
> *(e) Individuals who may be exempt from paying nonresident tuition under this Section include students who are:*
> *(1) The dependent of a E, H, or L visa holder, or*
> *(2) An F-1 visa holder who is 21 years of age or older and a former dependent of a E, H, or L visa holder.*

10) **Related and prior legislation**.

SB 1141 (Limon, 2022) expands eligibility for the exemption from paying nonresident tuition at a California public postsecondary institution established for long-term California residents, regardless of citizenship status, by reducing the number of years required to qualify for the exemption, from three to two, in full-time attendance or attainment of equivalent credits from specified California schools or a community college. SB 1141 was heard and approved by this committee on March 30, 2022, by a vote of 5-2.

AB 1620 (Santiago, 2019) would have expanded eligibility for the exemption from paying nonresident union at California's public postsecondary educational institutions by reducing from three to two, the minimum number of years for full-time attendance a qualifying student must attain at a California school. AB 1620 was held in the Assembly Appropriations Committee.

SUPPORT

>

OPPOSITION

>

-- END --

SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1308	**Hearing Date:**	April 20, 2022
Author:	Caballero		
Version:	April 18, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Lynn Lorber		

Subject: Public educational institutions: purchase of nondomestic agricultural food products.

SUMMARY

This bill expands the existing Buy American Provision to 1) prohibit public postsecondary educational institutions and school districts from purchasing agricultural products grown, packed, or processed non-domestically with exceptions; and, 2) specify that an agricultural product that is not California-grown is to be a domestic agricultural product (produced or processed in the United States).

BACKGROUND

Buy American

1) The federal National School Lunch Act requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. (United States Code, Title 7, § 210.21)

2) Defines "domestic commodity or product" as:

   a) An agricultural commodity that is produced in the United States; and

   b) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. (7 U.S.C. § 210.21)

3) Provides exceptions to the Buy American Provision that allow for the purchase of products not meeting the domestic standard, including:

   a) The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

   b) Competitive bids reveal the cost of a United States product are significantly higher than the nondomestic product. (United States Code, Title 42, § 1760(n))

4) Mirrors the provisions above in state statutes, and also includes the following:

a) Defines "substantial" to mean over 51 percent of the final processed product consists of agricultural commodities grown domestically.

b) Requires the California Department of Education (CDE) to make requirements, resources, and best practices for the Buy American provision available on its website.

c) Requires CDE to distribute to school food authorities guidance or regulations from the United States Department of Agriculture for the Buy American provision, as updates are issued. (Education Code § 49563)

Choose California Produce Act

5) Requires a school district that solicits bids for the purchase of an agricultural product to accept a bid or price for that agricultural product when it is grown in California before accepting a bid or price for an agricultural product that is grown outside the state when both of the following are met:

a) The bid or price of the California-grown agricultural product does not exceed the lowest bid or price for an agricultural product produced outside the state.

b) The quality of the California-grown agricultural product is comparable to that agricultural produce produced outside the state. (Food and Agricultural Code § 58595)

6) Limits application of # 5 to a contract to purchase agricultural products for a value that is less than the value of the threshold for supplies and services for which California has obligated itself under the Agreement on Government Procurement of the World Trade Organization. (Food & Ag Code § 58595)

7) Requires all California state-owned or state-run institutions, <u>*except*</u> public universities and colleges and school districts, that solicit bids for the purchase of an agricultural product to accept a bid or price for that agricultural product when it is grown in California (or grown outside the state but packed or processed in California) before accepting a bid or price for an agricultural product that is grown, or packed/processed outside the state, when both of the following are met:

a) The bid or price of the California-grown/packed/processed agricultural product does not <u>exceed</u> by more than 5 percent the lowest bid or price for an agricultural product produced outside the state.

b) The quality of the California-grown or packed/processed agricultural product is comparable to that agricultural produce produced outside the state. (Food & Ag Code § 58595)

ANALYSIS

This bill expands the existing Buy American Provision to 1) prohibit public postsecondary educational institutions and school districts from purchasing agricultural

products grown, packed, or processed non-domestically with exceptions; and, 2) specify that an agricultural product that is not California-grown is to be a domestic agricultural product (produced or processed in the United States). Specifically, this bill:

1) Prohibits the California Community Colleges (CCC), the California State University (CSU), and all local educational agencies (LEAs) that solicit bids for the purchase of an agricultural food product from purchasing, and the University of California (UC) is requested to not purchase, agricultural food products grown, packed, or processed non-domestically unless any of the following applies:

   a) The bid or price of the non-domestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product.

   b) The quality of the domestic agricultural food product is inferior to the quality of the agricultural food product grown or packed/produced non-domestically.

   c) The agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of meals provided under the school meal program of the CCC, CSU, UC, or LEA.

2) Exempts from # 1 above agricultural food products purchased by or provided to the CCC, CSU, UC, or LEA through the United States Department of Agriculture (commodity food).

3) Modifies the existing requirement that school districts accept bids for agricultural products that are California-grown before accepting bids for those grown outside of the state to clarify that the out-of-state agricultural product is to be a domestic agricultural product (grown in the United States).

4) Provides the following definitions:

   a) "Agricultural food product" means a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed beeswax, propolis, royal jelly, flowers, grains, nursery stock, raw sheared wool, livestock meats, poultry meats, rabbit meats, and fish, including shellfish.

   b) "Domestic" means inside of the United States.

   c) "Non-domestic" means outside of the United States.

   d) "Local educational agency" means a school, school district, county office of education, or charter school.

5) States legislative findings and declarations relative to the existing allowance for waivers where the domestic product is priced significantly higher than a nondomestic product, how this creates a loophole that has resulted in widespread noncompliance with Buy American Provision requirements, and that

competition from non-domestic producers hurts California agriculture and threatens to eliminate the jobs that workers depend on to feed their own families.

STAFF COMMENTS

1) *Need for the bill.* According to the author, "California produces more than 400 different agricultural commodities, over one-third of the country's vegetables, and two-thirds of the country's fruits and nuts. Over 99 percent of California's 1,200 dairy farms are family owned and the dairy sector supports approximately 180,000 jobs. Over 500,000 people work in California's agriculture, industry, from farmworkers to workers in food processing and canneries. Union jobs in canneries and food processing – among others – provide good wages, benefits, and retirement security to hundreds of thousands of workers.

   "One of the largest public institutional purchasers of agricultural products are schools and universities and California receives nearly $2 billion each year in federal funding for school meal programs. Under current USDA regulations, school districts can bypass the existing "Buy American" requirement and purchase food products imported from outside the United States if there is a significant cost differential between domestic and imported food products. California schools purchase lower quality goods grown and produced outside of the country under less stringent worker, health, and environmental standards, despite the fact that California is one of the most productive agricultural region of the world that also has strong standards to protect workers, public health, and the environment. The agricultural industry has felt the impact of overseas competition. In 2018, Seneca Foods, a producer of peach and fruit cocktail products, shuttered its Modesto plant laying off 265 full-time workers and nearly 1,000 seasonal workers. The company cited 'import competition from overseas — China and Europe' as the reason for the plant closure."

2) *Buy American.* Several federal child and adult meal programs include the "Buy American Provision." The Buy American Provision of the federal National School Lunch Act requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. Exemptions from the Buy American Provision allow for the purchase of non-domestic products if the cost of a domestic product is "significantly higher than" the non-domestic product or if the domestic product is not produced in sufficient and reasonably available quantities of a satisfactory quality.

   Existing statutes and regulations do not provide a definition of or threshold for what constitutes "significantly higher" costs to allow the purchase of non-domestic commodities or products. The California Department of Education is tasked with monitoring compliance with the Buy American Provision and determining what constitutes "significantly higher" costs.

   This bill essentially establishes a threshold of "more than 25 percent lower than the lowest bid or price" to authorize public colleges/universities and LEAs to purchase non-domestic agricultural products. Therefore, this bill requires public colleges/universities and LEAs to purchase only domestic agricultural products unless the non-domestic product is priced more than 25 percent lower than the

lowest bid or price.

A similar yet much lower threshold exists in the state's Choose California Produce Act for all state-owned or state-run institutions *except public colleges/universities and LEAs*, that authorizes state institutions to purchase an agricultural product that is grown/packed/processed outside of California (not necessarily limited to domestic products) when the cost exceeds the lowest bid by more than 5 percent. The Choose California Produce Act authorizes school districts to purchase an agricultural product that is grown outside of California (not necessarily limited to domestic products) when the cost exceeds the lowest bid for a California-grown product and the quality is comparable.

Is it reasonable to require public colleges/universities to purchase only domestic agricultural products unless the non-domestic product is priced more than 25 percent lower? Is this threshold too high? Could school meal budgets be stretched to afford more expensive domestic agricultural products?

3) *How do schools purchase food*? In the context of K-12 schools, school food authorities first plan meals and menus that align to meal standards (how much protein, fat, salt, etc). According to information provided by the California School Nutrition Association, menus are typically planned at least the prior month or months to service. Some LEAs cycle menus that are adjusted based on new menu items, such as holidays, seasons, or other factors.

After the menu is planned, food is ordered for distribution to school sites. It is possible that the food distributor could have a shortage of or the inability to acquire the food items needed; this necessitates a substitute of the menu item.

School districts are required to have food contracts or pricing agreements based on the amount of purchases that occur during the school year and bid limits according to federal, state, and local regulations. Typically, contracts are written for one year with an option of roll-over for up to two additional years. The contracts include non-commodity, commodity distribution, and commodity processed food/menu items delivered to schools. School districts provide a list of items they plan to use the following school year and the estimated quantity of those items to food distributors for their pricing information.

New items available from food manufacturers can be added to the price list during the school year, and items on the contract can be discontinued from the manufacturer during the school year at any time. This requires additional items to be found as a replacement on the menu, sometimes during the school year.

United States Department of Agriculture (USDA) commodity items are available in January or February to LEAs; at that time, LEAs place an order of quantity of food items by cases, and commodity (raw product) to be sent to processors to manufacture finished items to be distributed back to the LEA for the following school year and part of the subsequent school year. For example, orders placed in February 2022 are for USDA food items for July 2022-September 2023.

Further, LEAs have the option of allocating part of their Commodity Entitlement to

Fresh Fruit & Vegetable/DOD (Department of Defense) Fruit & Vegetable program for the following school year. LEAs typically place these orders only one week prior to delivery, and LEAs have no knowledge of the source of those items other than on the order guide some are listed as "locally grown". Poor labeling of USDA commodities is a long-standing problem.

Local educational agencies gather food from many sources (USDA, food distributors, and food manufacturers). Based on the availability of food items, they can be from local sources, nationally-sourced or non-domestic, based on demand as well as supply.

Are the allowable exemptions in this bill sufficient to provide LEAs with the flexibility to purchase the food items needed to fulfill their menus, receive those items in time, and for a price that fits within their budget?

4) *Allowable exemptions from the Buy American Provision.* Existing law allows for the purchase of non-domestic products if the product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality or the cost are significantly lower than the domestic product. Existing law requires school food authorities to verify cost and availability of domestic and nondomestic foods and retain records for documenting any exceptions.

According to the CDE's website, before using an exception, school food authorities should first consider and document their responses to the following questions:

a) Are there any other domestic sources for this product?

b) Is there a domestic product that could easily be substituted for the nondomestic product on the menu (e.g. substitute domestic pears for nondomestic apples)?

c) Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?

d) Am I using third-party verification, such as through the USDA Agricultural Marketing Service Web page to determine the cost and availability of domestic and nondomestic foods?

It is up to the school food authority to determine, based on their responses to the questions listed above, if they are able to justify one of the exceptions to the Buy American Provision requirements. If a school food authority is using one of the above exceptions, there is no requirement to request a waiver from the CDE in order to purchase a non-domestic product; however, school food authorities must keep documentation that justifies any exception. Federal regulations require school food authorities to maintain records sufficient to detail the history of procurement, including rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price.

5) *Related State Audit.* A 2017 state audit, "California Department of Education: It Has Not Ensured That School Food Authorities Comply With the Federal Buy American Requirement," found that a) CDE compliance review process has weaknesses that have led to inadequate and inconsistent reviews; b) none of the six school districts reviewed had adequate policies and procedures related to the Buy American requirement and they had purchased foreign-sourced food items, but did not have adequate documentation to justify the purchases; c) verifying compliance with the requirement will be challenging because federal food labeling laws do not always mandate that the country of origin for food items or their ingredients be included on labels. California Department of Education It Has Not Ensured That School Food Authorities Comply With the Federal Buy American Requirement

   Subsequent legislation requires CDE to take specified actions in order to monitor compliance with the Buy American Provisions, including posting resources and best practices on their Web site.

6) *California Department of Education (CDE) resources.* The CDE's website includes information about the Buy American Provision, what school food authorities should consider before using an exception, how school food authorities can monitor compliance by their vendors, how CDE will monitor compliance by school food authorities, required documentation, bid process, best practices, and links to regulations and federal policy memos. Procurement in School Nutrition Programs - School Nutrition (CA Dept of Education)

7) *Senate Agriculture Committee.* The Senate Agriculture Committee heard this bill on March 24, 2022. Please see that committee's analysis for information about the Agreement on Government Procurement of the World Trade Organization.

8) *Fiscal impact.* It is possible that colleges/universities and LEAs could have increased costs due to purchasing domestic products that cost up to 25 percent more than non-domestic products.

9) *Prior legislation.* AB 1025 (Rivas, 2021) would have required all California state-owned or state-run institutions, all segments of public postsecondary education, and all LEAs to purchase agricultural food products grown, packed, or processed domestically unless either the bid or price of the non-domestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product or the quality of the domestic agricultural food product is inferior to the non-domestic agricultural food product. AB 1025 was referred to but not heard in the Assembly Accountability and Administrative Review Committee.

   AB 778 (E Garcia, 2021) would have expands the requirement that all state-owned or state-run institutions purchase only California-grown agricultural food products (with exception) to include public colleges/universities and school districts. AB 778 passed the Assembly but was not heard in the Senate.

SUPPORT

Agricultural Council of California (co-sponsor)
California Canning Peach Association (co-sponsor)
Association of California Egg Farmers
Butte County Rice Growers Association
California Apple Commission
California Blueberry Association
California Blueberry Commission
California Cannery Industry Labor-Management Cooperation Committee
California Cherry Growers and Industry Association
California Citrus Mutual
California Fresh Fruit Association
California Olive Oil Council
California Pear Growers Association
California Women for Agriculture
Far West Equipment Dealers Association
Olive Growers Council of California
Pacific Coast Producers
Sun-maid Growers of California
Sunsweet Growers
Teamsters Food Processing Division
Teamsters Local 517
Teamsters Local 856
Teamsters Local 890
Teamsters Local 948
United Ag
United Food and Commercial Workers, Western States Council
Wawona Frozen Foods

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1381	**Hearing Date:**	April 20, 2022
Author:	Allen		
Version:	February 18, 2022		
Urgency:	No	**Fiscal:**	No
Consultant:	Kordell Hampton		

Subject: School districts and community college districts: governing board elections: charter cities

NOTE: This bill has been referred to the Committee on Education and Election and Constitutional amendments. A "do pass" motion should include a referral to the Committee on Elections and Constitutional Amendments.

SUMMARY

This bill would prohibit a county committee on school district organization (county committee) from establishing district-based or trustee elections in a charter city that establishes at-large elections as the manner of electing the governing board of a school district or community college district.

BACKGROUND

Existing law:

Organization and Formation of a County Committee

1) There is in each county, except a county which is also a city and county, a county committee on school district organization. (Education Code § 4000)

2) If all of the territory of a county under the jurisdiction of the county superintendent of schools is included in one unified school district, the governing board of the unified school district shall constitute the county committee. (EC § 4001)

3) Upon the petition of the county committee or of the county board of education, the State Board of Education (SBE) may order the county board of education to act as the county committee on school district organization. (EC § 4020)

4) Upon the order of the SBE, the county board of education succeeds to and is vested with all duties, powers, purposes, responsibilities, and jurisdiction formerly vested in the county committee on school district organization. (EC § 4021)

5) The SBE may, upon its own motion or upon petition of the county board of education or a majority of districts in the county, reestablish a county committee. (EC § 4022)

Powers and Authorities of a County Committee

6) In any school district or community college district, the county committee may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven from five, or decrease from seven to five, the number of members of the governing board, or adopt one of the alternative methods of electing governing board members. Specifically:

   a) For any school district whose average daily attendance during the preceding year was less than 300, the county committee may decrease their board membership from five to three or adopt one of the alternative methods of electing governing board members.

   b) The county committee shall not rearrange trustee area boundaries in a school or community college district that has established a hybrid or independent redistricting commission.

   c) The county committee may establish or abolish a common governing board for a high school and elementary school district within the boundaries of the high school district. The resolution of the county committee approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts. (EC § 5019)

County Committee: Electing School District and Community College Trustee Members

7) The resolution of the county committee approving a proposal to adopt one of the alternative methods of electing governing board members shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board. (EC § 5020)

8) In any school district or community college district having trustee areas, the county committee and the registered voters of a district, may at any time recommend one of the following alternate methods of electing governing board members:

   a) That each member of the governing board be elected by the registered voters of the entire district.

   b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

   c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents. (EC § 5030)

City Charters

9) A school district or community college district may be governed by the provisions of the charter upon approval of a majority of the electors of the districts voting at a regular biennial school district governing board member election. (EC § 5201)

10) Establishes that city charters may provide for the manner in which the members of school district or community college governing boards are elected or appointed. (EC § 5200, 5121, 5222, 5228)

California Voting Rights Act

11) Establishes the California Voting Rights Act of 2001 (CVRA) which prohibits an at-large method of election, as defined, from being imposed or applied in a manner that impairs a protected class's ability to elect candidates of its choice or ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined. (Elections Code § 14025)

12) Authorizes the governing board of a community college district to change election systems, in accordance with the CVRA, by passing a resolution and receiving the approval of the Board of Governors of the California Community Colleges (BOG) (Elections Code § 72036)

California Constitution

13) A county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments. The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body. An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail. (California Constitution Art. XI Sec. 3)

14) Any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith. (California Constitution Art. XI Sec. 5)

15) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for:

    a) The constitution, regulation, and government of the city police force.

    b) Subgovernment in all or part of a city.

c) Conduct of city elections.

d) Plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. (California Constitution Art. XI Sec. 5)

16) In all charters, established pursuant to the California Constitution, for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards. (California Constitution Art. IX Sec. 16)

Definitions

17) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

a) One in which the voters of the entire jurisdiction elect the members to the governing body.

b) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

c) One that combines at-large elections with district-based elections.

18) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

ANALYSIS

This bill prohibits a county committee on school district organization from approving a proposal, petition, resolution, or other request to establish district-based or trustee elections where a city charter establishes at-large elections as the manner of electing the governing board of a school district or community college district.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author "SB 442 (Newman, 2021) was signed into law last year, in part, to delete a previous statutory requirement that a resolution of a county committee on school district organization approving a proposal to establish trustee areas needed to be presented to and approved by

the voters of the school district. The legislative history of SB 442 indicates that this change was made to assist school districts seeking to voluntarily transition to trustee area-based elections by providing a mechanism for all districts to make such a transition without the delay and expense of an election.

"The Santa Monica-Malibu Unified School District (SMMUSD) is established and explicitly defined as an at-large district within Santa Monica's city charter. Article IX, section 16, subdivision (a) of the California Constitution expressly empowers charter cities such as Santa Monica to provide in their charters for 'the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed.' Furthermore, a charter amendment effecting a change in any of those provisions must be "submitted to and approved by a majority of all the qualified electors of the school district . . . voting on the question." (Art. IX, section 16, subdivision (b)) Thus, pursuant to the Constitution, any change in the manner of electing members of the SMMUSD Board of Education from at-large to trustee-area elections requires amending the Santa Monica City Charter, and that in turn can only occur if a majority of all of the qualified electors of SMMUSD approve the change.

"In compliance with California's Constitution, SB 1381 clarifies in statute that a county committee on school district organization is restricted from establishing district-based elections when a city charter has established at-large elections as the manner of electing the members of a school or community college district."

2) ***Santa Monica-Malibu Unified School District and the City of Santa Monica v. Los Angeles County Committee On School Districts***

On March 18, 2022, Santa Monica-Malibu Unified School District and the City of Santa Monica jointly (defendant) filed against the Los Angeles County Committee on School District Organization (respondent) challenging the constitutionality of a newly enacted state law (SB 442 Newman; 2021).

According to the petition submitted to the court by the defendants, "SB 442 (Newman) provides both a school district and county committee the authority to override and effectively amend the City of Santa Monica's City Charter without a vote or consent of the City's residents. The law allows the County Committee to unilaterally establish trustee-area ('by-district') elections for the Santa Monica-Malibu Unified School District (SMMUSD) despite the City of Santa Monica's City Charter's explicit mandate that the SMMUSD Board of Education shall consist of seven members elected from the School District at large' (qtd. In Santa Monica City Charter, § 900)."

"While most school district governing boards in California have historically been elected 'at large,' the CVRA has prompted some districts to transition from at-large elections to trustee area-based elections for their governing boards. These changes have primarily been the result of lawsuits or the threat of litigation brought under the CVRA, which prohibits at-large elections from being imposed or applied in a manner that impairs a protected class's ability to elect candidates of its choice or ability to influence the outcome of an election, as a result of dilution of the rights of voters who are members of a protected class. The intent

of SB 442 (Newman), according to the California League of United Latin American Citizens, "encourages and streamlines the adoption of trustee-area elections for school districts in furtherance of the purposes of the CVRA."

The City of Santa Monica and SMMUSD seek to prohibit the Los Angeles County Committee on School District Reorganization from implementing SB 442 (Newman) and for the court to opine on the constitutionality of SB 442 (Newman). ***This case is set to be heard in Los Angeles County Superior Court on June 23, 2022.***

3) ***County committee on school district reorganization.*** According to the California Department of Education's *School District Organization Handbook* (2019), the county committee on school district organization has a major role in the review and approval of proposals to change school district organization in every county (with the exception of San Francisco which is both a county and a city). In 35 counties in the state, the functions of the county committee on school district organization have been transferred to the county board of education.

Counties with a separate County Committee			Counties in which the County Board of Education serves as the County Committee				
Fresno	Nevada	Santa Barbara	Alameda	El Dorado	Inyo	Napa	Solano
Humboldt	Orange	Santa Clara	Alpine	Glenn	Kings	Plumas	Sutter
Kern	Placer	Sonoma	Amador	Imperial	Lake	Sacramento	Tehema
Lassen	Riverside	Stanislaus	Butte	Inyo	Madera	San Diego	Trinity
Los Angeles	San Benito	Tulare	Calaveras	Kings	Mariposa	San Joaquin	Tuolumne
Marin	San Bernardino	Ventura	Colusa	Lake	Mendocino	Santa Cruz	Yolo
Merced	San Luis Obispo		Contra Costa	Madera	Modoc	Shasta	Yuba
Mono	San Mateo		Del Norte	Mariposa	Montery	Siskiyou	

The county committee is the local initiator, coordinator, analyst, facilitator, and arbitrator for the reorganization of school districts under the direction of the State Board of Education or pursuant to a petition by local electors or certain local entities.

The county committee must examine data on the current status of the school district and the impact of the proposed change on the racial and ethnic composition of the affected districts at both the school and district levels. This includes data on the current educational achievement levels and standardized test scores of pupils and the existence of special educational programs. If any unusual financial situations exist that would adversely affect the district's ability to maintain its

educational programs, that information is also included. This information is reviewed by the secretary to the committee and other county office staff.

The county committee has the power to regulate the election of members to county boards of education, except in chartered counties. In chartered counties the manner of selection of the county board of education shall be prescribed in the county charter or by the county board of supervisors. The county committee has the power to establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, adopt one of the alternative methods of electing governing board members, and increase or decrease governing board members (between five and seven) in any school district or community college district. A county committee has no authority, however, in a situation involving a school district governed by a board of education provided for in the charter of a city or city and county.

All expenses necessary for the county committee to comply with the provisions of the Education Code may be provided by the county board of education. Any expenses of the county superintendent of schools, the county board of education, and the county committee on school district organization required by any section of the Education Code must be paid from the county general fund.

4) ***Charter city.*** The California Constitution (Article XI, section 3(a)) gives cities and counties the ability to establish a charter. By becoming a charter city or county, the city or county governing boards have increased authority over municipal affairs. A charter city's law concerning a municipal affair will, according to Article XI, section 5(a), "supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." According to the California League of Cities, there are 121 charter cities.

Charter Cities in California						
Adelanto	Cypress	Indian Wells	Modesto	Port Hueneme	San Rafael	Temple City
Alameda	Del Mar	Industry	Monterey	Porterville	San Ramon	Torrance
Albany	Deser Hot Springs	Inglewood	Mountain View	Rancho Mirage	Sand City	Truckee
Anaheim	Dinuba	Irvine	Napa	Redondo Beach	Santa Ana	Tulare
Arcadia	Downey	Irwindale	Needles	Redwood City	Santa Barbara	Vallejo
Bakersfield	El Cajon	King City	Newport Beach	Richmond	Santa Clara	Ventura
Bell	El Centro	Kingsburg	Norco	Riverside	Santa Cruz	Vernon
Berkely	Eureka	La Quinta	Oakland	Roseville	Santa Maria	Victorville
Big Bear Lake	Exeter	Lemoore	Palm Desert	Sacramento	Santa Monica	Visalia
Buena Park	Folsom	Lindsay	Palm Springs	Salinas	Santa Rosa	Vista

Charter Cities in California						
Burbank	Fortuna	Loma Linda	Palmdale	San Bernardino	Santee	Watsonville
Carlsbad	Fresno	Long Beach	Palo Alto	San Diego	Seal Beach	Whittier
Cerritos	Gilroy	Los Alamitos	Pasadena	San Francisco	Shafter	Woodlake
Chico	Glendale	Los Angeles	Petaluma	San Jose	Signal Hill	
Chula Vista	Grass Valley	Marina	Piedmont	San Leandro	Solvang	
Compton	Hayward	Marysville	Placentia	San Luis Obispo	Stockton	
Culver City	Huntington Beach	Merced	Pomona	San Marcos	Sunnyvale	

5) ***Municipal affairs.*** Determining what is and is not a "municipal affair" is not always straightforward. The California Constitution does not define "municipal affair." It does, however, set out a nonexclusive list of four "core" categories in Article XI, 5(b):

   a) The constitution, regulation, and government of the city police force
   b) Subgovernment in all or part of a city
   c) Conduct of city elections
   d) Plenary authority is granted, the manner in which, the method by which, the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

6) **The author may wish to consider.** Given that Santa Monica-Malibu Unified School District and the City of Santa Monica are requesting a Court to opine on the constitutionality of SB 442 (Newman), the introduction of SB 1381 is premature. As noted in comment #2, and in the Santa Monica-Malibu Unified School District and the City of Santa Monica's petition, "while most school district governing boards in California have historically been elected 'at large,' the CVRA has prompted some districts to transition from at-large elections to trustee area-based elections for their governing boards. These changes have primarily been the result of lawsuits or the threat of litigation brought under the CVRA, which prohibits at-large elections from being imposed or applied in a manner that impairs a protected class's ability to elect candidates of its choice or ability to influence the outcome of an election, as a result of dilution of the rights of voters who are members of a protected class." As described in comment #2, the City of Santa Monica explicitly has their district governing board written into their charter. There are a total of 128 charter cities that may not have "at large" district governing board elections written into their charter. This bill would severely limit those school districts/ county committees attempting to shift away from "at large" elections to avoid costly litigation, as noted in the findings and declaration of SB 442 (Newman), and come into compliance with the CVRA.

The author's office may wish to consider seeking legislation once a decision has been determined by a Court.

7) Previous legislation.**SB 442 (Newman; 2021)** authorizes a county committee on school district organization (county committee) to approve a proposal to establish trustee areas for the governing board of a community college district or a school district, including a school district whose governing board is provided for in a city's charter, without a vote of the district's electorate. *Chapter 139 (2021).*

    AB 849 (Bonta; 2019) revises and standardizes the criteria and process to be used by counties and cities when they adjust the boundaries of the electoral districts that are used to elect members of the jurisdictions' governing bodies. Requires counties and cities to comply with substantial public hearing and outreach requirements as part of the process for adjusting the boundaries of electoral districts. *Chapter 557 (2019).*

    AB 350 (Alejo; 2016) requires a political subdivision that changes to, or establishes, district-based elections to hold at least two public hearings both before and after drawing a preliminary map or maps of the proposed district boundaries, as specified. Requires that written notice be provided before an action can be brought against a political subdivision under the California Voting Rights Act of 2001 (CVRA). *Chaptered 737 (2016).*

    AB 2220 (Cooper; 2016) allows any city that elects its city council at-large to enact an ordinance switching its election method to by-district without obtaining voter approval. *Chapter 751 (2016).*

    AB 277 (Hernandez; 2015) provides that the California Voting Rights Act of 2001 (CVRA) applies to charter cities, charter counties, and charter cities and counties. *Chapter 724 (2015).*

    SB 493 (Canella; 2015) permits a city that elects its city council at-large to enact an ordinance switching its election method to by-district without submitting the change to voters for approval. *Chapter 735 (2015).*

SUPPORT

None on file.

OPPOSITION

Honorable Senator Richard Polanco (Ret.)

-- END --

SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1401	**Hearing Date:**	April 6, 2022
Author:	Bradford		
Version:	March 16, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Kordell Hampton		

Subject: College Athlete Race and Gender Equity Act

NOTE: This bill has been referred to the Committee on Education and Judiciary. A "do pass" motion should include a referral to the Committee on Judiciary.

SUMMARY

This bill 1) Declares it is the intent of the Legislature to continue to develop policies to ensure appropriate protections are in place to avoid exploitation of student athletes; 2) Creates new definitions and defines a "Qualifying College Athlete" as an athlete that participates in a sport at an Institution of Higher Education (IHE) in which 50 percent of the sport's aggregate revenue exceeds the total aggregate grant-in-aid athletic scholarships amount provided to college athletes in that sport and graduates within 7 years of enrolling into an IHE; 3) Requires a "third party" to establish and maintain an athlete degree completion distribution fund on the behalf of a qualifying college athlete; 4) Establishes new Title IX requirements on IHEs and; 5) Creates a private right of action against an institution of higher education or athletic personnel who harms a qualifying college athlete's degree completion fund or participates in any scheme to disturb a qualifying college athlete's degree completion fund.

BACKGROUND

Existing law:

General Provisions

1) An IHE may establish a degree completion fund, in accordance with applicable rules and bylaws of the governing body of the institution and applicable rules and bylaws of any athletic association of which the institution is a member. (Education Code § 67452.3)

2) Requires each athletic program at an IHE to conduct a financial and life skills workshop for all of its first-year and third-year student athletes at the beginning of the academic year. (EC § 67452)

3) Specifies an IHE shall not intentionally retaliate against a student athlete for making or filing a complaint about a violation of their rights; testifying assisting in any investigation into violations of their rights; and opposing any practices that a student athlete believes are a violation of their rights. (EC § 67455)

4) Clarifies retaliation by an IHE includes but is not necessarily limited to, a reduction in or loss of any education benefits, including scholarships and stipends; meal benefits provided to a student athlete; or any housing benefits provided to a student athlete, including the relocation of a student athlete to different housing owned by the IHE. (EC § 67455)

Title IX

5) States the Legislature finds and declares the following:

   a) On June 23, 1972, Congress enacted Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act. This landmark legislation provides that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."

   b) While Title IX applies to all aspects of educational opportunities, it is well-known for opening the door to athletics for girls and women.

   c) California state law has included several athletic equity provisions similar to those in Title IX since 1976. For example, the Sex Equity in Education Act provides, in subdivision (a) of Section 221.7, that: "It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils." Similar provisions are expressly applicable to community colleges and the California State University.

   d) The United States Department of Education uses a three-part test adopted in 1979 to determine whether an educational institution has met the key Title IX requirement that a school "effectively accommodate the interests and abilities of members of both sexes" when it comes to athletic participation. All three prongs of the test have been used successfully by schools to comply with Title IX, and have given schools flexibility in structuring their athletic programs. The three-part test neither imposes quotas nor requires preferential treatment nor requires a mirror image of men's and women's sports programs. The lawfulness of the three-part test has been affirmed by every federal appellate court to consider the issue. (EC § 66271.6)

6) An IHE must prepare and post the following information in an IHE athletic department, and other athletic training facilities, that are frequented by student athletes to be accessible and readable during campus business hours:

   a) A student athlete's Title IX (pursuant to federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and reporting rights (federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Sec. 1092(f)).

   b) The Office for Civil Rights (as well as the appropriate Office for Civil Rights regional enforcement office); The Office for Civil Rights Title IX enforcement office; The enforcement office of the United States Department of Education

for reporting violations of the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. (EC § 67454)

7) The legislature finds and declares that female students should be granted opportunities for participation in public postsecondary educational institution athletic programs equivalent to male students. (EC § 66271.8)

8) States no public funds should be used in connection with any athletic program conducted under the auspices of a public postsecondary educational institution, or any student organization within the postsecondary educational institution, that does not provide an equivalent opportunity to both sexes for participation and use of facilities. The factors considered when determining whether an educational institution has provided equivalent opportunity include, but are not limited to, Travel arrangements, scholarships, medical facilities, and compensation of coaches. (EC § 66271.8)

Definitions

9) "Athletic association" means any organization that is responsible for governing intercollegiate athletic programs.

10) "Athletic program" means an intercollegiate athletic program at any institution of higher education

11) "Institution of higher education" means any campus of the University of California or the California State University, or any four-year private university located in California, that maintains an intercollegiate athletic program.

12) "Student athlete" means any college student who participates in an intercollegiate athletic program of an institution of higher education, and includes student athletes who participate in basketball, football, and other intercollegiate sports. (EC § 67451)

ANALYSIS

This bill 1) Declares it is the intent of the Legislature to continue to develop policies to ensure appropriate protections are in place to avoid exploitation of student athletes; 2) Creates new definitions and defines a "Qualifying College Athlete" as an athlete that participates in a sport at an institution of higher education (IHE) in which 50 percent of the sport's aggregate revenue exceeds the total aggregate grant-in-aid athletic scholarships amount provided to college athletes in that sport and graduates within 7 years of enrolling into an IHE; 3) Requires a "third party" to establish and maintain an athlete degree completion distribution fund on the behalf of a qualifying college athlete; 4) Establishes new Title IX requirements on IHE and; 5) Creates a private right of action against an institution of higher education or athletic personnel who harms a qualifying college athlete's degree completion fund or participate in any scheme to disturb a qualifying college athlete's degree completion fund. Specifically, this bill:

Degree Completion Fund

1) Requires an athlete degree completion distribution shall be made to a qualifying college athlete who completes an undergraduate baccalaureate degree within seven years from when the college athlete enrolled at an IHE.

2) States the athlete degree completion distribution amount for a college athlete will be determined for each sport, and division or subdivision, by subtracting the total aggregate grant-in-aid athletic scholarships amount provided to college athletes in a sport from 50 percent of the total sports revenue in the state. The quotient difference will be divided by the total number of college athletes receiving a grant-in-aid athletic scholarship in that sport during the reporting year.

3) Provides an alternative distribution mechanism for an IHE to base athlete degree completion distributions on aggregate athletic association division and subdivision total sports revenue and grant-in-aid information if a college athlete in a sport does not qualify under the original distribution mechanism.

4) Prohibits an IHE from changing how it identifies divisions or subdivisions, or generates, receives, accounts for, or reports total sports revenue to purposefully or inadvertently reduce an athlete degree completion distribution.

5) Asserts the IHE has a fiduciary duty to collect athlete degree completion distributions and deposit them, on an annual basis, into a college athlete's Athlete Degree Completion Fund established by the designated third party no later than 15 days after the federal deadline to report total sports revenue to the United States Department of Education, as required by the federal Equity in Athletics Disclosure Act (20 U.S.C. Sec. 1092).

6) Requires that the designated third party shall provide an athlete degree completion distribution to each qualifying college athlete in the amount calculated by the formula.

7) Sets the amount that a qualifying college athlete can withdraw funds from the athlete degree completion distribution cannot exceed $25,000.

8) Requires an IHE to distribute a qualifying college athlete's athlete degree completion distribution within 45 calendar days of showing proof of completing an undergraduate baccalaureate degree within seven years of enrolling in an IHE.

9) Requires a qualifying college athlete degree shall receive all funds within 45 calendar days, from their Athlete Degree Completion Fund, if a qualifying college athlete can show medical proof that a debilitating injury or condition that would significantly interfere with the completion of an undergraduate baccalaureate degree.

10) Specifies that if a qualifying college athlete does not complete an undergraduate baccalaureate degree within seven years of enrolling in IHE, that athlete has forfeited their athlete degree completion distribution. The amount in that qualifying college athlete's account shall be redistributed.

11) Allows a qualifying college athlete to choose to receive their distribution in a lump sum or over a 12-month period.

12) Any portion of an athlete degree completion distribution that remains unallocated because an IHE overestimated how much money should go to the Athlete Degree Completion Fund shall be returned in full to that institution of higher education within 30 days.

13) Clarifies that an athlete degree completion distribution provided to a qualifying college athlete is none of the following:

    a) Property of an IHE.

    b) Payment from an IHE to a college athlete.

    c) Financial aid.

    d) Result in a college athlete's financial aid being reduced.

    e) Does not establish or constitute evidence of an employment relationship between the college athlete and their IHE.

Qualifying College Athlete

14) Specifies that a qualifying college athlete at an IHE in each sport that is designated in an athletic association division or subdivision, in which 50 percent of the sport's revenue exceeds the total grant-in-aid athletic scholarships amount provided to college athletes in that sport.

Financial Development

15) Requires that an IHE must conduct a financial development program of no less than 15 hours in duration once per year for all qualifying college athletes that receive an athlete degree completion distribution. The program must include, but is not limited to:

    a) Assistance in establishing a budget and a long-term financial plan, including retirement, and information on asset appreciation and depreciation, real estate purchasing and investing, the significance of interest rates, the pitfalls of debt, and their tax liability related to their athlete degree completion distribution.

16) Specifies the financial development program should not include any marketing, advertising, referral, or solicitation by providers of financial products or services.

Designated Third Party

17) Requires that a designated third party, that is responsible for establishing an Athlete Degree Completion Fund for each qualifying college athlete, must meet the following specifications and requirements:

    a) Have at least 15 years of experience administering funds, including eligibility management, claims administration, recordkeeping, and compliance with state and federal law.

    b) Have a duty to each qualifying college athlete whose funds it manages.

    c) Possess an up-to-date bond to protect athlete degree completion distributions.

    d) Guarantees a qualifying college athlete shall not be charged for any costs incurred by the third party or an institution of higher education.

18) Stipulates all funds held by the designated third party shall be fully insured by the Federal Deposit Insurance Corporation (FDIC).

19) Requires an IHE to regularly monitor the designated third party to ensure it complies with the intent of this bill.

Private Right of Action

20) Authorizes that an affected college athlete to seek a private right of action against an IHE for any scheme, arrangement, or understanding that seeks to provide sports-specific athletics revenue to an IHE in a way that would cloak its sports-specific purpose is a violation.

21) Specifies a representative or personnel of an IHE who willfully violates the intent of the bill is subject to civil liability and, if found by a court of law to have violated either of these sections, shall be permanently banned from involvement in intercollegiate athletics in the state.

22) States the provisions of this chapter are severable. If any provision of this chapter 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.

23) Clarifies that if a college athlete is harmed by violations of this chapter, that a college athlete has the right to seek private action against that violator.

Title IX

24) Requires that each IHE shall comply with Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.), as it applies to college athletics by performing the following:

    a) Monitoring and evaluating its compliance with Title IX as it applies to athletics, and posting evaluations annually on its internet website.

b) Ensuring that its Title IX coordinator is sufficiently knowledgeable about Title IX compliance, and making the designee's name and contact information publicly available and known to its college athletes.

25) Declares an athletic director will be suspended from involvement in intercollegiate athletics in the state for a period of three years if their IHE Title IX compliance evaluations show, and the United States Department of Education determines, or a court of law rules, that Title IX compliance is not achieved on or before January 1, 2026, and maintained for at least 18 months in each 36-month period after January 1, 2026.

26) Specifies that a newly hired athletic director who does not achieve Title IX compliance within three years of their hire date and does not maintain compliance for at least 18 months in each 36-month period thereafter.

Other

27) Requires an IHE to preserve its athletic program's college athletes' educational opportunities and grant-in-aid athletic scholarship amounts to the greatest extent possible.

28) Requires all other available and prudent athletic program cost-cutting options, including a reduction of all athletic personnel salaries, to be implemented before, or simultaneously with, any reduction in college athletes' aggregate unduplicated participation numbers or grant-in-aid athletic scholarship amounts, as reported to the United States Department of Education in 2019.

29) Specifies that an athletic director shall be suspended from involvement in intercollegiate athletics in the state for a period of three years if their institution of higher education cannot preserve the IHE athletic program to the greatest extent possible.

Findings and Declarations

32) States findings and declarations relative to the importance of compensating student athletes and addressing racial and gender-based inequities among college athletes.

33) States it is the intent of the Legislature to ensure appropriate protections are in place to avoid exploitation of student athletes.

Definitions

34) Defines the following terms:

a) "Athletic program" means an intercollegiate athletic program at an institution of higher education. Club and intramural programs are excluded.

b) "College athlete" means a college or university student who participates in an athletic program at any time during a calendar year and receives an athletic grant-in-aid scholarship.

c) "Institution of higher education" means a public or private four-year college or university located in the state, or a public or private two-year college located in the state that maintains an athletic program.

d) "Qualifying college athlete" means a college athlete that is eligible to receive an athlete degree completion distribution.

e) "Third party" means an athletic conference or other third party designated by an institution of higher education or collectively by multiple institutions of higher education that have qualifying college athletes.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "Colleges' collusive athlete compensation limit runs counter to both the California Unruh Civil Rights Act and federal civil rights laws by creating a disparate impact on Black students. This is underscored by the National College Players Association's civil rights complaint filed with the US Department of Education's Office for Civil Rights regarding civil rights violations committed by all NCAA Division I colleges, including all of California's Division I colleges. Because a high percentage of Black students are also college athletes at these colleges, the colleges' industry-wide compensation limit causes a disparate impact on Black college students.

   "The disparate impact is a civil rights violation resulting from the application of a standard, or in this case, an athlete compensation limit, that—though appearing neutral—has an adverse effect on individuals who belong to a legally protected class. In this case, the colleges' compensation limit has an adverse impact on their Black students.

   "This position is bolstered by US Supreme Court Justice Brett Kavanaugh's concurring opinion in the *NCAA v. Alston* antitrust lawsuit which stated in part, "...the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate *billions* of dollars in revenues for colleges every year... But the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing"

   "Colleges' collusive athlete compensation limit runs counter to the California Antitrust and Unfair Competition Law and federal antitrust laws. In 2021, the US Supreme Court ruled unanimously in the plaintiffs' favor in the *NCAA v. Alston* antitrust lawsuit. The court found that the NCAA illegally fixed the price of athlete compensation at an amount that is below market value and that the NCAA was not exempt from antitrust laws. Because the appeal considered price-fixing educational-related expenses, the US Supreme Court said it would not address NCAA sports remaining athlete compensation price-fixing. The limited scope of *NCAA v. Alston* resulted left the remaining illegal price-fixing of California's college athletes intact. SB 1401 seeks to remedy this injustice."

2) ***NCAA v. Alston (Jan. 2021).*** Justice Gorsuch found that by limiting education-related compensation that college athletes are permitted to receive from their schools, the NCAA is acting in violation of Section 1 of the Sherman Act, which prohibits any "contract, combination, or conspiracy in restraint of trade or commerce." The Court reached this conclusion by affirming the lower court's application of the "rule of reason" – a judicial doctrine of antitrust law.

   In *Alston*, the athletes challenged the NCAA compensation limits as reducing competition among colleges and universities as to what those schools would otherwise provide the athletes. Given this restriction on competition, the NCAA relied on its longstanding position that the uniqueness of its product – the status of student athletes as amateurs – required antitrust deference and pointed for support to the 1984 decision in *NCAA v. Board of Regents*. Specifically, the NCAA's procompetitive justification for the status quo (whereby the NCAA limits athlete compensation tied to academics and athletics and mostly prohibits athlete monetization of name, image, and likeness rights) was that the survival of the *product* of college athletics depends on such restrictions by the NCAA. It reasoned that intercollegiate athletics differentiates itself from professional sports chiefly through the amateur (read, *unpaid*) status of its athletes, therefore diminishing the purity of amateurism through unrestrained athlete payment—even for academic expenses—would render intercollegiate athletics obsolete.

   The *Alston* Court rejected this argument, holding that the *Board of Regents* was inapplicable to questions of athlete compensation and that the decision's oft-cited commentary that the NCAA enjoys "ample latitude" under federal antitrust law was mere dicta that could not insulate the NCAA from antitrust scrutiny. Specifically, the Court found the NCAA had failed to show any economic analysis as to how or why the consumer market for college sports might be irrevocably destroyed by teenage athletes receiving from their school's unrestrained *educational benefits*. The Court noted, in contrast, that the *Alston* plaintiffs were able to show the very opposite—namely that the popularity of college sports had *increased* in the years following increased allowances in educational benefits allocation.

   In its unanimous 9-0 decision in *NCAA v. Alston*, the Supreme Court upheld a ruling by the U.S. Court of Appeals for the Ninth Circuit that struck down NCAA caps on student athlete academic benefits (*i.e.* reimbursements and pay for academic-related expenses) on antitrust grounds.

3) ***How Are College Athletics Funded?*** Athletic departments finance their programs using a variety of different revenue sources. In fact, student fees or institutional subsidies (coming from tuition, state appropriations, endowments, or other revenue generating activities on campus) often support even the largest NCAA Division I college sports programs.

   In a 2013 study published by the Delta Project at the American Research Institute, they found that only the programs at the very top of the. Football Bowl Subdivision (FBS) (I.e. Rose Bowl, Sugar Bowl, Fiesta Bowl, etc.) generate more money from athletics than they spend. The study, *Academic Spending Versus Athletic*

Spending: Who Wins?, goes on to find that "even among the largest FBS programs, student fees and institutional subsidies typically provided between 4 percent and 14 percent of total athletic revenues. And without access to lucrative television contracts and large stadiums with sizable ticket sales revenue, the budgets at smaller Football Championship Subdivision (FCS) and Division I, No Football (DI-NF) subdivisions programs are heavily subsidized, although FCS programs are more likely to rely on institutional support, while DI-NF schools rely on student fees to fund much of their budget." It was also found that in 2010, more than 80 percent of the budget at the typical FBS college or university came from "*generated*" revenues, such as ticket sales, conference payouts, and donations. In contrast, more than 70 percent of athletic budgets in the smaller FCS and DI-NF programs came from revenues "*allocated*" by the university; this athletic subsidy includes money from student fees, institutional support, and government appropriations.

The study concludes that "College sports are certainly valuable in that they allow students to pursue healthy, competitive activities that they are passionate about. But big-time college sports programs often seem to serve as advertising vehicles, boosting exposure and prestige for those universities that are successful. While a winning team may generate some new students and donors, the price of participating in Division I athletics is high."

4) ***Recommended Committee Amendments.*** *Staff recommends that the bill be amended as follows:*

- Align the terms and definitions created in this section with existing law.
- Delete all provisions and references related to a "third party", as created in this bill, and recast provisions designating IHE as the responsible party for establishing, managing, and maintaining their student athlete's degree completion fund.
- Decrease the number of years a student athletes has to receive their baccalaureate degree from seven to six, to align with State and Federal graduation reporting requirements, and increase from 45 days to 60 an IHE has to dispense of a student athletes degree completion fund upon a student athlete submitting proof of completing their baccalaureate degree.
- Delete and recast the provisions that determine how a student athlete receives a portion of the revenue generated in a sport for which an athlete competes in at that IHE.
- Remove the requirement that an IHE make public and provide its student athletes all sport-specific revenue data, including athlete degree completion distribution calculations and payments.
- Strike the provision require an IHE provide financial development courses to student athletes.

- Remove the option for a student athlete to receive their degree completion fund, upon submittal proof of completing their baccalaureate degree, in a lump sum or 12-month period.

- Delete and recast the provision specifying that funds any funds a student athlete received pursuant to this section is considered payment, but not does not constitute as an employer employee relationship between the IHE and student athlete.

- Eliminate the private right of action against an IHE or athletic personnel for composing any scheme, arrangement, or understanding that seeks to provide sports-specific athletics revenue to an institution of higher education.

- Delete the Title IX requirements and the associated suspension of the athletic director for failure to comply with the Title IX requirements as set in this bill.

- Remove the provision that requires, and suspends the athletic director at an IHE, to preserve its athletic programs to the greatest extent possible.

- Strike the private right of action against an IHE or athletic personnel if a student is harmed by an IHE or athletic personnel's action of establishing, managing, and maintaining a student athlete's degree completion fund.

5) ***Additional things to consider.*** *Should this bill pass this Committee, the author may consider the following:*

   Contract Agreements. Coaching contracts are a complex procedure for both parties due to non –standardization. *The author may consider working with stakeholders as to not disrupt current and future contracts.*

   Degree Completion Fund Distribution Amounts. The provision of this bill requires colleges to take 50 percent of their revenue from each sport in their athletic program and subtract that amount from the total of grant-in-aid-scholarships offered. The quotient is then distributed equally among those players in that sport. *The author may consider working with stakeholders to find an appropriate mechanism that properly compensates student athletes while ensuring an institution of higher education's athletic program continues to be sustained and equitable.*

   Revenue. Student fees or institutional subsidies (coming from tuition, state appropriations, endowments, or other revenue generating activities on campus) often support athletic programs. *The author may consider working with stakeholders to ensure that appropriate revenue (ticket sales, apparel, television contracts, etc.) is captured when calculating the amount a student athlete receives in their degree completion fund.*

   Immediate Access to Cash. *The author may consider working with stakeholders on determining an amount a student athlete can withdraw from their degree*

completion fund per academic year and specify instances in which a student athlete withdrawing from their degree completion fund is appropriate.

6) ***Related Legislation. AB 1573 (Holden)*** This bill added three provisions of law designed to support and protect the rights of student athletes at institutions of higher learning. Specifically, the bill: 1) authorizes schools to establish degree completion funds; 2) directs schools to develop, post, and disseminate specified information regarding existing student athlete rights; and, 3) prohibits schools from retaliating against student athletes who report violations of student athletes' rights. *(Chapter 382; 2019)*

SB 26 (Skinner) This bill expanded the existing authority for a collegiate student athlete to receive compensation to also include compensation earned from the use of the student's athletic reputation and moves up the implementation date of existing statutes relative to compensation earned from the use of a student athlete's name, image, or likeness. *(Chapter 159; 2021)*

SB 206 (Skinner) This bill allows, commencing on January 1, 2023, college student athletes to earn compensation for the use of their own name, image, or likeness (athletic endorsements). This bill allows student athletes to obtain professional legal representation, such as that provided by a sports agent, in relation to their college athletics. This bill provides protections for student athletes that elect to engage in the compensation and representation activities described therein. *(Chapter 383; 2019)*

SB 1525 (Padilla; 2012) This bill enacted a Student Athlete Bill of Rights and places specified requirements on collegiate athletic programs commencing with the 2013-14 academic year and ending January 1, 2021. *(Chapter 625; 2012)*

SUPPORT

United Steelworkers District 12
National Alliance of African American Athletes
National College Players Association

OPPOSITION

None on file.

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SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1431	**Hearing Date:**	April 20, 2022
Author:	Rubio		
Version:	April 18, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Ian Johnson		

Subject: Local control funding formula: base grants: adjustment: class size reduction

SUMMARY

This bill provides a Local Control Funding Formula (LCFF) base grant increase for school districts and charter schools that have an average class size at each schoolsite for kindergarten and grades 1 to 3, inclusive, of not more than 20 pupils.

BACKGROUND

In 2013, the LCFF was enacted. The LCFF establishes per-pupil funding targets, with adjustments for different student grade levels, and includes supplemental funding for local educational agencies (LEAs) serving students who are low-income, English learners, or foster youth. The LCFF replaced almost all sources of state funding for LEAs, including most categorical programs, with general purpose funding including few spending restrictions.

The largest component of the LCFF is a base grant generated by each student. Current law establishes base grant target amounts for the 2013-14 fiscal year, which are increased each year by the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States.

The base grant target rates for each grade span for the 2021-22 fiscal year are as follows:

1) $8,935 for grades K-3 (includes a 10.4 percent adjustment for class size reduction);

2) $8,215 for grades 4-6;

3) $8,458 for grades 7-8;

4) $10,057 for grades 9-12 (includes a 2.6 percent adjustment for career technical education).

The K-3 base grant amount above includes a 10.4 percent increase, which districts receive for maintaining an average class enrollment of not more than 24 pupils for each schoolsite in kindergarten and grades 1 to 3, inclusive, unless a collectively bargained alternative annual average class enrollment for each schoolsite in those grades is agreed to.

For each disadvantaged student, a district receives a supplemental grant equal to 20 percent of its adjusted base grant. A district serving a student population with more than 55 percent of disadvantaged students receives concentration grant funding equal to 50 percent of the adjusted base grant for each disadvantaged student above the 55 percent threshold.

ANALYSIS

This bill:

1) Commencing with the 2022-23 school year, provides a 32.5 percent base grant increase for school districts or charter schools with an average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, of not more than 20 pupils.

2) Specifies that districts or charter schools qualifying for the 32.5 percent base grant increase for pupils in kindergarten and grades 1 to 3, inclusive, are not eligible for the existing 10.4 percent increase provided for maintaining an average class size not exceeding 24:1, unless otherwise collectively bargained.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "The first few years of a student's formal education is critical. In grades K-3, students learn foundational skills and further their physical, intellectual and socio-emotional development that will set up students for a lifetime of success.

   "In 1996, former California Governor Pete Wilson established the K-3 CSR Program to improve the state's education. With a strong emphasis on improving reading and mathematics outcomes, this voluntary program provided funds to school districts and charter schools that reduced one or more classes to 20 students or less, per certified teacher. During the financial crisis of 2007, the state made several changes to state education policy, including reducing incentives for smaller class sizes, which resulted in ending the CSR program in 2013. Before the financial crisis, approximately 98% of California school districts participated in the program.

   "Princeton University published research stating that students who participated in the California's CSR program performed better than students who remained in larger classes; these effects were even greater among lower-income and students of color. Studies also found that California fourth-graders' National Assessment of Educational Progress (NAEP) test scores in mathematics increased slightly between 1996 and 2000. In addition, students who were in CSR classrooms were shown to have better outcomes in contrast to their peers in non-CSR as it pertained to juvenile criminal behavior, teen pregnancy, high school graduation, and college enrollment and completion.

   "SB 1431 amends the Education Code Section 42238.02 by adding an incentive for school districts and charter schools to receive additional funding, an

adjustment of 32.5% of the base grant, if they maintain an average class enrollment of no more than 20 students for grades K-3."

2) ***Class Size Reduction Program.*** In 1996, California enacted the Class Size Reduction (CSR) Program. The CSR program provided substantial funds, roughly $650 per-student, to schools that limited their enrollment to 20 or fewer students in their K-3 classes. Districts were required to first reduce all first-grade classes in a school, followed by all second grade classes, and finally either kindergarten or third-grade classes. The cost to the state in the first year was roughly $1 billion dollars, with various increases provided in most subsequent years.

3) ***Was the former CSR program effective?*** A number of studies have attempted to determine whether California's CSR program was successful in meeting its goal of better academic achievement. However, inconsistent results reported in these studies have prevented firm conclusions, in part due to the lack of baseline data as there was no state-wide testing program in California prior to the introduction of CSR. In 2002, the California Department of Education (CDE) and a group of California foundations headed a consortium to do a four-year evaluation of the effects of CSR on achievement, the quality of the state's teaching corps, on special needs students, and on other practices. The major findings from that evaluation can be summarized as follows:

   a) Implementation of CSR occurred rapidly, although it lagged in schools serving minority and low-income students.

   b) The relationship of CSR to student achievement was inconclusive.

   c) CSR was associated with declines in teacher qualifications and a more inequitable distribution of credentialed teachers.

   d) CSR had only a modest effect on teacher mobility.

   e) CSR implementation did not affect special education identification or placement.

   f) Students in reduced size third-grade classes received more individual attention, but similar instruction and curriculum.

   g) Parents liked reduced size classes.

   h) Classroom space and dollars were taken from other programs to support CSR.

4) ***Universal transitional kindergarten currently being phased in, with smaller class sizes required.*** This bill offers a financial incentive for districts to lower their class enrollment for each schoolsite for kindergarten—including transitional kindergarten—and grades 1 to 3, inclusive, to not more than 20 pupils. Proponents of reduced class sizes unanimously agree that smaller class size, particularly in the early grades, is one of the few educational strategies shown to

increase learning and narrow the achievement gap. Moreover, advocates stress that for transitional kindergarten to best nurture young minds, it must have small teacher-to-student ratios and a developmentally appropriate curriculum.

As part of the 2021-22 Budget, the state adopted a five-year phase in of universal transitional kindergarten for all four-year olds. As part of that phase in, the state adopted unique class size and student-to-teacher ratio requirements along with additional funding to support this work. The five-year phase in includes the following year-by-year requirements:

a) 2021-22 is a planning year. TK serves children born between September 2nd and December 1st (current eligibility). State funding is available for districts for the purposes of planning, professional development, and building or renovating facilities to prepare for implementation.

b) 2022-23 begins implementation. TK eligibility extended to children born between September 2nd and February 2nd. New class size maximum of 24 with a 12:1 student to adult ratio required for all TK classrooms.

c) 2023-24 continued implementation. TK eligibility extended to children born between September 2nd and April 2nd. Student to adult ratio reduced to 10:1 (contingent on available funding). All TK teachers must possess a teaching credential plus additional training or experience in early childhood education.

d) 2024-25 continued implementation. TK eligibility extended to children born between September 2nd and June 2nd.

e) 2025-26 implementation complete. All children who turn 4 by September 1st can enroll in TK.

5) ***Charter schools would be required to demonstrate smaller class sizes to receive additional funding.*** As summarized above, the LCFF currently provides a 10.4 percent adjustment to the K-3 base grant for school districts that maintain an average class enrollment of not more than 24 pupils for each schoolsite in kindergarten and grades 1 to 3, inclusive, unless a collectively bargained alternative annual average class enrollment for each schoolsite in those grades is agreed to. Charter schools also receive this adjustment, however, they are not required to comply with the class size requirement.

As currently drafted, this bill would allow charter schools to receive the proposed 32.5 percent adjustment instead of the existing 10.4 percent adjustment, as long as the new student-to-teacher ratio is met.

SUPPORT

None received

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1236	**Hearing Date:**	April 20, 2022
Author:	Glazer		
Version:	April 18, 2022		
Urgency:	No	**Fiscal:**	No
Consultant:	Ian Johnson		

Subject: School districts: governing boards: pupil members

SUMMARY

This bill allows the governing board of a school district to adopt a resolution to make a preferential voting pupil member a full voting pupil member, as specified.

BACKGROUND

Existing law:

1) Authorizes a student petition to be submitted to the governing board of a school district maintaining one or more high schools requesting the governing board to appoint one or more non-voting student members to the board.

2) Authorizes a student petition to be submitted to the governing board of a school district maintaining one or more high schools requesting the governing board to allow preferential voting for the student member or members of the board.

3) Requires the governing board of a school district, upon receipt of a petition for student representation, to order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, at least one nonvoting pupil member. Existing law authorizes the governing board to order the inclusion of more than one non-voting student member.

4) Requires any student selected to serve as a non-voting or preferential voting member of the governing board of a school district to be enrolled in a high school of the district, authorizes the student to be less than 18 years of age, and requires the student to be chosen by the students enrolled in the high school or high schools of the district in accordance with procedures prescribed by the governing board. Existing law provides that the term of a student member is one year, beginning on July 1 of each year.

5) Requires a non-voting or preferential voting student member to be seated with the members of the governing board of the school district and to be recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and the discussion of issues.

6) Prohibits the non-voting or preferential voting student member from being included in determining the vote required to carry any measure before the school district governing board.

ANALYSIS

This bill:

1) Authorizes the governing board of a school district to adopt a resolution to make a preferential voting pupil member a full voting pupil member of the governing board.

2) Specifies that the governing board, when adopting a resolution authorizing the change of the preferential voting pupil member to a fulling voting member, may, in a separate motion, restrict the pupil member from voting on the following:

    a) Pupil disciplinary matters if the pupil member attends the same school as the pupil under consideration or shares a direct association to the pupil in some capacity.

    b) Negative personnel matters if the pupil member shares a direct association to a classified or certificated employee under consideration in the matter.

    c) Other business of a specific nature that is clearly identified in the motion.

3) Authorizes the governing board to adopt a resolution to grant the pupil member full member voting rights on matters that the pupil member was previously restricted from having full voting rights on.

4) Authorizes the governing board to adopt a resolution further restricting the matters on which a full voting pupil member shall have full voting rights, as specified.

5) Allows the pupil member to abstain from discussion or voting on any item if there is a perceived conflict of interest.

6) Allows a pupil member to be provided stipends at the governing board's discretion.

7) Authorizes the governing board to adopt a resolution granting each pupil member the right to received closed session materials, as well as attend and cast a preferential vote, on closed session matters.

8) Requires that a pupil member's name, contact, and biographical information be listed on the school district's internet website akin to regular board members.

9) Specifies that a full voting pupil member shall be included in determining the vote required to carry any measure before the governing board of the school district.

10) Requires a governing board with six or eight members as a result of a full voting pupil member shall establish an affirmative vote and quorum at four and five members, respectively.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "A growing body of research suggests allowing students to actively participate in their education results in positive changes. School districts that amplify student voices achieve higher student academic achievement, have higher quality curriculum and teaching techniques, improvements in teacher-student relationships, and reduced inequities and injustices. Essentially, including students in decision-making roles has led to stronger, better-informed decisions.

   "Students are the largest stakeholder in our education system. Their lives and futures are directly impacted by the decisions of their school boards. Students have proven they can be catalysts for positive change in their schools and communities. Empowering their voices through genuine representation can help them realize that potential."

2) ***School district governing board role and responsibilities.*** In California, there are approximately 1,000 school districts and county offices of education that are governed by more than 5,000 school board members. California's is the largest public school system in the nation, serving about six million students—a collective student body larger than the total population of many other states.

   The role of the school board is to ensure that school districts are responsive to the values, beliefs, and priorities of their communities. Boards fulfill this role by: (1) setting direction, (2) establishing an optimal structure, (3) providing support, (4) ensuring accountability, and (5) providing community leadership. Authority is granted to the board as a whole, not each member individually. Therefore, board members fulfill these responsibilities by working together as a governance team with the superintendent to make decisions that will best serve all the students in the community.

3) ***Pupil members and preferential voting.*** Existing law allows for the submittal of a petition to the governing board of a school district maintaining one or more high schools for the appointment of one or more pupil members. Pupil members are restricted to "preferential voting" rights, defined as formal expression of the opinion that is recorded in the minutes and cast before the official vote of the school district governing board. Existing law prohibits a preferential vote from serving in determining the final numerical outcome of a vote, and from being solicited on matters subject to closed session discussion.

   This bill allows governing boards to adopt a resolution to make a preferential voting pupil member a full voting pupil member, as specified.

4) ***Previous Legislation.***

AB 261 (Thurmond, Chapter 257, Statutes of 2017) provides that student members of school district governing boards are to have preferential voting rights.

AB 532 (Leyva, Chapter 317, Statutes of 2015) requires that a school district governing board act on a request for pupil representation on the board within 60 days of receipt of the request.

SUPPORT

Association of Pleasanton Teachers
Student Board Member Association
GenUP

OPPOSITION

California School Employees Association

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SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2021 - 2022 Regular

Bill No:	SB 1343	**Hearing Date:**	April 20, 2022
Author:	Leyva		
Version:	March 22, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Ian Johnson		

Subject: Public employees' retirement: charter schools.

SUMMARY

This bill requires all charter schools to participate in the state's public employee retirement systems and establishes an automatic payment mechanism from the charter schools to the retirement systems.

BACKGROUND

Existing law:

1) Establishes the California State Teachers' Retirement System (CalSTRS) to provide a financially sound plan for the retirement of public school educators and mandates that any person employed to perform creditable service on a full-time basis shall become a member of CalSTRS' Defined Benefit Plan, as specified.

2) Establishes the California Public Employees' Retirement System (CalPERS) to provide a defined benefit retirement plan to eligible state, public agency, and school employees, as specified.

3) Provides opportunities for teachers, parents, pupils, and community members to establish and maintain charter schools that operate independently from the existing school district structure, as a method to accomplish specified objectives.

4) Allows charter schools to choose to participate in CalSTRS and CalPERS, and provides that if they do, they must comply with laws related to those systems, as specified.

5) Requires each CalSTRS employer to deduct from its employees' creditable compensation CalSTRS' required member contributions.

6) Requires CalSTRS employers to draw requisitions for contributions to the Defined Benefit Plan that shall constitute a warrant against the employer's county treasurer and which the employers shall forward to CalSTRS, who shall immediately deposit the warrants in the State Treasury to the Teachers' Retirement Fund, as specified.

7) Establishes the CalSTRS Cash Benefit Program as part of the State Teachers' Retirement Plan as an optional program designed specifically for part-time educators and adjunct faculty, as specified.

8) Requires each employer to deduct from the salary of Cash Benefit Program participants the required participant contributions plus corresponding employer contributions and remit them to CalSTRS, as specified.

9) Provides that if a charter school chooses to make the CalSTRS Retirement Plan available, all employees of the charter school who perform creditable service shall be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program, as specified.

10) Requires the charter school to inform employee applicants whether the school offers CalSTRS or CalPERS retirement benefits, or both, and that employment with the school may result in the applicant's exclusion from further coverage in the applicant's current retirement system, depending on the retirement options offered by the charter of the charter school.

11) Requires a county school superintendent to enter into contracts with CalPERS for coverage of all the county school employees and school district employees in its jurisdiction, as specified.

12) Requires the county superintendent and school employers to collect and deposit funds to provide for the employer and employee contributions for their employees and transfer those funds to CalPERS, as specified.

ANALYSIS

This bill:

1) Requires a charter school authorized on or after January 1, 2023, to participate in CalSTRS or CalPERS, or both.

2) Requires the county superintendent or appropriate school employer that reports directly to the retirement systems to requisition from the charter school's state apportionment an amount for transfer to CalSTRS and CalPERS to pay for the charter school's employer and employee retirement contributions, as specified, not to exceed an estimated 3 months contributions plus amounts for fees and penalties, as specified.

3) Requires the chartering authority, within 30 calendar days of its approval of the charter school petition, to notify CalSTRS or CalPERS, as applicable, on a form prescribed by the respective system.

4) Clarifies that CalSTRS and CalPERS can exclude a charter school from participation in their respective systems if inclusion would result in adverse tax consequences or endanger their tax-qualified status under federal tax law.

5) Prohibits the state board of education from waiving the requirement that charter schools participate in CalSTRS or CalPERS.

6) Provides that the bill's provisions shall not apply to any charter school employee if, prior to January 1, 2023, the employee was not already a CalSTRS or CalPERS member, unless the employee requests to become a CalSTRS or CalPERS member when the charter school is reauthorized on or after January 1, 2023.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "Unlike a traditional public school, a charter school can select whether to allow its employees to join the state's public pension system or offer an alternative retirement benefit, such as Social Security or a 401(k). Since the enactment of the 2014 CalSTRS Funding Plan, an increasing number of charter schools are choosing alternative retirement benefit options because of the increased costs associated with the state's public retirement system.

   "Before the 2014 CalSTRS Funding Plan was adopted, only about 10 percent of newly created charter schools each year chose not to participate in CalSTRS. Since the Funding Plan's enactment, however, nearly 33 percent of newly created charter schools each year choose not to allow their employees to participate in CalSTRS.

   "A well-managed pension provides the greatest retirement security for public employees by far. Charter schools funded with public dollars should ensure their employees are afforded the same retirement opportunities as all other public employees. In some instances, charter school employees are not made aware of their limited retirement options until after they've provided decades of service. Further, teachers who must switch between public schools with and without CalSTRS may not realize the detriment to their retirement security until very late in their careers.

   "The recent rise in charter schools choosing not to participate in the public retirement systems affects other government entities as well. For example, there have been instances of charter schools closing down while delinquent on their financial obligations to CalPERS and CalSTRS. When this occurs, the county office of education in which the charter school was located has been required to pay the bill. Further, the employer contribution rate for all government entities increases over time as more and more charter schools refuse to allow their employees to participate."

2) ***Arguments in support.*** The California Federation of Teachers state, "SB 1343 will bring every charter school in line with traditional schools in terms of participation in the public retirement systems, thus protecting individual employees as well as the buying power and security of the retirement systems as a whole. The bill's process for automatic payments to the system also eases the burden on individual charter schools by removing the need to manage individual retirement programs.

"According to the California Retired Teachers Association, which recommends amendments to require charter schools to provide new employees with an educational document regarding how CalSTRS benefits work.

"The lack of participation by numerous charter schools over the years has created a reduction of the number of active to retired teachers within CalSTRS. More active teachers participating in CalSTRS will strengthen the long-term funding of the plan."

3) ***Arguments in opposition.*** According to the California Charter School Association, "The March 22 amendments to SB 1343 seem to suggest that individual employees would have a choice to opt into STRS or PERS upon charter renewal. While offering employees choice in this matter might seem reasonable, it could be an administrative nightmare for schools to track and report some employees in and others out. Further, unraveling significant investments of employees in Social Security and private retirement savings plans could have significant detriment on current employee's retirement security, particularly for employees in mid-late career. Further, this opt-in provision for employees seems to conflict with the overall requirements of STRS and PERS which specifically require all eligible employees to participate in a plan if it is selected.

   "Provisions for the bill related to establishing a reserve of projected payments might provide some assurance for County Offices of Education related to charter school payments to the plan. However, we are not convinced that the lack of a reserve has created significant problems to warrant such a drastic solution. This new requirement would impose a significant cash flow challenge for new charter schools."

4) ***Committee amendments.*** As currently drafted, this bill would create two potentially problematic scenarios for existing charter schools and their employees. First, it could require existing charter schools not currently participating in CalPERS and CalSTRS that seek to reauthorize their charter on or after January 1, 2023 to switch retirement systems. This could have negative consequences on employees who may have already invested significantly in other retirement instruments. Second, the opt-in provision for employees at charter schools participating in CalPERS and CalSTRS would result in many charter schools being required to track their employees for reporting to multiple retirement systems, creating confusion for employees and administrative challenges for charter schools.

   To address these issues, ***staff recommends*** amending Education Code Section (ECS) 47611.1, as proposed, to: (1) remove the employee opt-in provision, and (2) clarify that charter schools seeking a renewal authorization on or after January 1, 2023 shall not be required to participate in CalPERS and CalSTRS.

   In addition, ***staff recommends*** the following amendments, which the State Controller's Office, CalSTRS, and CalPERS have cited are necessary to ensure proper implementation of the funding mechanism included in this bill:

a) Add the following paragraph to subdivision (b) of ECS 23001:

i) "The county superintendent, district superintendent, or other employing agency that reports directly to the system shall use any unencumbered funds, otherwise legally available for this purpose, to pay for any amounts due the system that remain unpaid."

b) Add the following paragraph to subdivision (b) of ECS 26301.5:

i) "The employer shall use any unencumbered funds, otherwise legally available for this purpose, to pay for any amount due the system that remain unpaid."

c) Amend subdivision (b) of ECS 47611.1 to require a chartering authority to provide notice to the State Teachers' Retirement System or the Public Employees' Retirement System, within 30 days of the event, if any of the following occur:

i) A charter school petition is approved.

ii) A charter school renewal petitions is granted or denied.

iii) A charter school charter is revoked.

iv) A charter school has ceased operations for any reason.

5) ***Previous Legislation.***

AB 1819 (Ammiano, 2012) would have mandated public charter schools to cover their employees under CalSTRS or CalPERS, as applicable. The bill died in the Senate Appropriations committee.

AB 816 (Assembly PERSS Committee, Chapter 1025, Statutes of 2000) required charter schools to inform prospective employees about the retirement system options they offer.

SUPPORT

California Federation of Teachers (sponsor)
California Labor Federation
California Teachers Association

OPPOSITION

California Charter Schools Association
Charter Schools Development Center

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