

ASSEMBLY BILL**No. 656****Introduced by Assembly Member Torrico**

February 25, 2009

An act to add Chapter 8 (commencing with Section 99500) to Part 65 of Division 14 of Title 3 of the Education Code, and to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to postsecondary education, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 656, as introduced, Torrico. California Higher Education Endowment Corporation: oil and gas severance tax.

(1) Existing law establishes the University of California, under the administration of the Regents of the University of California, the California State University, under the administration of the Trustees of the California State University, and the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as the 3 segments of public postsecondary education in this state.

This bill would establish the California Higher Education Endowment Corporation (CHEEC). The bill would establish an oversight board to govern the CHEEC and would require that board to appoint the chief executive officer of the CHEEC. The bill would require the CHEEC to annually allocate an unspecified percentage of the moneys in the continuously appropriated California Higher Education Fund, which would be created in the General Fund, to the California Community Colleges for curriculum and programs related to renewable energy and to annually allocate remaining moneys in the fund to the California

State University and the University of California. The bill also would authorize the board to invest the moneys in the fund in accordance with prescribed procedures.

(2) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil and gas severance tax on and after January 1, 2010, upon any producer for the privilege of severing oil or gas from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at a specified rate. The tax would be administered by the State Board of Equalization, and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to deposit all tax revenues, penalties, and interest collected pursuant to these provisions, except as specified, in the California Higher Education Fund.

Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

(3) This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

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

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

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

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

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

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

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

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

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

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

31

32 CHAPTER 8. THE CALIFORNIA HIGHER EDUCATION
 33 ENDOWMENT CORPORATION

34

35 Article 1. General Provisions

36

37 99500. As used in this chapter, the following terms have the
 38 following meanings:

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

1 (b) “Corporation” means the California Higher Education
2 Endowment Corporation established pursuant to Section 99502.

3 (c) “Director” means the chief executive officer of the
4 corporation appointed pursuant to Section 99506.

5 (d) “Fund” means the California Higher Education Fund
6 established pursuant to Section 42147 of the Revenue and Taxation
7 Code.

8 (e) “Green collar job” means a job in the renewable energy field,
9 including a job in the renewable energy manufacturing,
10 construction, installation, maintenance, or operation sectors.

11 (f) “Public postsecondary education institution” means the
12 California Community Colleges, the California State University,
13 and the University of California.

14 99502. The California Higher Education Endowment
15 Corporation is hereby established for purposes of implementing
16 this chapter.

17

18 Article 2. Oversight Board

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20 99505. (a) (1) The corporation shall be governed by an
21 oversight board, which shall be composed of the following voting
22 members:

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

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

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

28 (D) Two members appointed by the Speaker of the Assembly.

29 (E) One member appointed by the Treasurer.

30 (2) (A) At least one member appointed pursuant to paragraph
31 (1) shall be a student enrolled in a public postsecondary educational
32 institution at the time of the appointment, and shall be enrolled in
33 a public postsecondary educational institution for the duration of
34 his or her term, which shall be two years.

35 (B) At least one member appointed pursuant to paragraph (1)
36 shall be a member of the faculty employed by the California State
37 University.

38 (C) At least one member appointed pursuant to paragraph (1)
39 shall be a member of the faculty employed by the University of
40 California.

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

3 (1) The Chancellor of the California State University.

4 (2) The President of the University of California.

5 (3) The Chancellor of the California Community Colleges.

6 (c) The Legislature requests the Regents of the University of
7 California and the President of the University of California to
8 comply with the membership requirements in subparagraph (B)
9 of paragraph (1) of subdivision (a) and paragraph (2) of subdivision
10 (b).

11 (d) Except as specified in subparagraph (A) of paragraph (2) of
12 subdivision (a), each of the members identified in subdivisions (a)
13 and (b) shall be appointed to serve a term of four years.

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

16 99506. (a) The board shall appoint a director, who shall be
17 the chief executive officer of the corporation. This position is
18 designated as a confidential position and is exempt from civil
19 service under subdivision (e) of Section 4 of Article VII of the
20 California Constitution.

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

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

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

28 99508. The board may adopt regulations necessary to
29 implement its powers and duties under this chapter.

30

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

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34 99510. The corporation may hire employees as it deems
35 necessary to implement this chapter.

36 99512. (a) The corporation shall annually allocate the moneys
37 in the California Higher Education Fund as follows:

38 (1) An amount not to exceed ____ percent of the moneys in the
39 fund to the California Community Colleges for all of the following
40 purposes:

1 (A) Curriculum supporting California's leadership in the
2 development of renewable energy technologies and the creation
3 of green collar jobs.

4 (B) Career technical education and advancement programs in
5 renewable energy manufacturing, construction, installation,
6 maintenance, and operation.

7 (2) Moneys remaining in the fund after the allocation pursuant
8 to paragraph (1) shall be annually allocated as follows:

9 (A) ____ percent to the California State University.

10 (B) ____ percent to the University of California.

11 (b) Nothing in this section shall cause state expenditures for
12 postsecondary education from all other sources to be reduced below
13 the expenditures provided from those sources prior to the
14 establishment of the fund.

15 99514. (a) The board has exclusive control of the investment
16 of the fund. Except as otherwise restricted by the California
17 Constitution and by law, the board may, in its discretion, invest
18 the assets of the fund through the purchase, holding, or sale of any
19 investment, financial instrument, or financial transaction, if the
20 investment, financial instrument, or financial transaction is prudent
21 in the informed opinion of the board.

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

35 (c) Any investment transaction decisions made during a closed
36 session pursuant to paragraph (16) of subdivision (c) of Section
37 11126 of the Government Code shall be by rollcall vote entered
38 into the minutes of that meeting. The board, within 12 months of
39 the close of an investment transaction or the transfer of system

1 assets for an investment transaction, whichever occurs first, shall
2 disclose and report the investment transaction at a public meeting.

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

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

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10 PART 21. OIL AND GAS SEVERANCE TAX LAW

11

12 42001. This part shall be known, and may be cited, as the Oil
13 and Gas Severance Tax Law.

14 42002. For purposes of this part, the following definitions shall
15 apply:

16 (a) "Board" means the State Board of Equalization.

17 (b) "California Higher Education Fund" or "CHEF" means the
18 account that is created by Section 42147 for purposes of depositing
19 proceeds generated from the taxes levied pursuant to this part to
20 fund instruction for higher education.

21 (c) "Gas" means all natural gas, including casing head gas, and
22 all other hydrocarbons not defined as oil in subdivision (g).

23 (d) "Green collar jobs" means jobs in the renewable energy
24 field, including within California's renewable energy
25 manufacturing, construction, installation, maintenance, and
26 operation sectors.

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

1 (f) “Higher education” means the California Community
2 Colleges, the California State University, and the University of
3 California.

4 (g) “Oil” means petroleum, or other crude oil, condensate, casing
5 head gasoline, or other mineral oil that is mined, produced, or
6 withdrawn from below the surface of the soil or water in this state.

7 (h) “Producer” means any person who takes oil or gas from the
8 earth or water in this state in any manner; any person who owns,
9 controls, manages, or leases any oil or gas well in the earth or
10 water of this state; any person who produces or extracts in any
11 manner any oil or gas by taking it from the earth or water in this
12 state; any person who acquires the severed oil or gas from a person
13 or agency exempt from property taxation under the United States
14 Constitution or other laws of the United States or under the
15 California Constitution or other laws of the State of California;
16 and any person who owns an interest, including a royalty interest,
17 in oil or gas or its value, whether the oil or gas is produced by the
18 person owning the interest or by another on his, her, or its behalf
19 by lease, contract, or other arrangement.

20 (i) “Product” means either a barrel of oil, which means 42 United
21 States gallons of 231 cubic inches per gallon computed at a
22 temperature of 60 degrees Fahrenheit or gas, as measured per
23 thousand cubic feet (Mfc) at a base pressure of 15.025 pounds per
24 square inch absolute and at a temperature base of 60 degrees
25 Fahrenheit.

26 (j) “Production” means the total gross amount of oil or gas
27 produced, including the gross amount thereof attributable to a
28 royalty or other interest.

29 (k) “Severed” or “severing” means the extraction or withdrawing
30 from below the surface of the earth or water of any oil or gas,
31 regardless of whether the extraction or withdrawal shall be by
32 natural flow, mechanical flow, forced flow, pumping, or any other
33 means employed to get the oil or gas from below the surface of
34 the earth or water, and shall include the extraction or withdrawal
35 by any means whatsoever of oil or gas upon which the tax has not
36 been paid, from any surface reservoir, natural or artificial, or from
37 a water surface.

38 (l) “Stripper well” means a well that has been certified by the
39 board as an oil well incapable of producing an average of more
40 than 10 barrels of oil per day during the entire taxable month. Once

1 a well has been certified as a stripper well, that stripper well shall
2 remain certified as a stripper well until the well produces an
3 average of more than 10 barrels of oil per day during an entire
4 taxable month.

5 42010. On and after January 1, 2010, there is hereby imposed
6 an oil and gas severance tax upon any producer for the privilege
7 of severing oil or gas from the earth or water in this state for sale,
8 transport, consumption, storage, profit, or use. The tax shall be
9 applied equally to all portions of the gross value of the product
10 and shall be imposed at the rate of __ percent of the gross product.

11 42011. Except as otherwise provided in this part, the tax shall
12 be upon the entire production in this state, regardless of the place
13 of sale or to whom sold or by whom used, or the fact that the
14 delivery may be made to points outside the state.

15 42012. The tax imposed by this part shall be in addition to any
16 other tax that may be imposed with respect to the severing of oil
17 or gas or transactions related thereto, including, without limitation,
18 any ad valorem taxes imposed by the state, or any of its political
19 subdivisions, or any local business license taxes that may be
20 incurred as a privilege of severing oil or gas from the earth or water
21 or doing business in that locality. There shall be no exemption
22 from payment of an ad valorem tax related to equipment, material,
23 or property by reason of the payment of the gross severance tax
24 pursuant to this part.

25 42013. The tax imposed by this part shall not be passed through
26 to consumers by way of higher prices for oil, natural gas, gasoline,
27 diesel, or other oil or gas consumable byproducts, such as propane
28 and heating oil. The board shall monitor and, if necessary,
29 investigate any instance where producers or purchasers of the oil
30 or gas have attempted to gouge consumers by using the tax as a
31 pretext to materially raise the price of oil, natural gas, gasoline,
32 diesel, or other oil or gas consumable byproducts, such as propane
33 and heating oil.

34 42014. Two or more producers that are corporations and are
35 owned or controlled directly or indirectly, as defined in Section
36 25105, by the same interests shall be considered as a single
37 producer for purposes of application of the tax prescribed in this
38 part.

39 42015. There shall be exempted from the imposition of the oil
40 and gas severance tax imposed pursuant to this part, oil or gas

1 produced by a stripper well in which the average value of oil or
2 gas is less than three-quarters of the average gross value of the
3 product as of January 1 of the prior year.

4 42016. There shall be exempted from the imposition of the oil
5 or gas severance tax imposed pursuant to this part, all oil or gas
6 owned or produced by any political subdivision of this state,
7 including that political subdivision's proprietary share of oil or
8 gas produced under any unit, cooperative, or other pooling
9 agreement.

10 42020. The tax imposed by this part is due and payable to the
11 board quarterly on or before the last day of the month next
12 succeeding each calendar quarter.

13 42022. The board may prescribe those forms and reporting
14 requirements as are necessary to implement the tax, including, but
15 not limited to, information regarding the location of the well by
16 county, the gross amount of oil or gas produced, the price paid
17 therefor, the prevailing market price of oil or gas, and the amount
18 of tax due.

19 42112. In all proceedings under this part, the board may act
20 on behalf of the people of the State of California.

21 42145. The board shall administer and collect the tax imposed
22 by this part pursuant to the Fee Collection Procedures Law (Part
23 30 (commencing with Section 55001) of Division 2). For purposes
24 of this part, the references in the Fee Collection Procedures Law
25 to "fee" shall include the tax imposed by this part and to "feepayer"
26 shall include a person required to pay the oil and gas severance
27 tax.

28 42146. The board shall, upon appropriation, be reimbursed for
29 expenses incurred in the administration and collection of the tax
30 imposed by this part.

31 42147. The California Higher Education Fund is created in the
32 General Fund. Moneys in the fund are continuously appropriated
33 to the California Higher Education Endowment Corporation.

34 42168. With the exception of payments of refunds and
35 reimbursement to the board for expenses incurred in the
36 administration and collection of the tax imposed by this part, all
37 taxes, interest, penalties, and other amounts collected pursuant to
38 this part shall be deposited into the California Higher Education
39 Fund.

1 SEC. 5. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.
10 SEC. 6. This act provides for a tax levy within the meaning of
11 Article IV of the Constitution and shall go into immediate effect.