ITEM 3

TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 68044, 68051, 68074, 68075, 68075.5, 68076, 68077, 68078, 68082, 68083, 68084, 68121, 68130.5, 76140

Statutes 1975, Chapter 78 (SB 82); Statutes 1976, Chapter 990 (AB 4289); Statutes 1977, Chapters 36 and 242 (AB 447 and AB 645); Statutes 1979, Chapter 797 (AB 1549); Statutes 1980, Chapters 580 and 789 (AB 2567 and AB 2825); Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070 (AB 2627); Statutes 1983, Chapter 317 (SB 646); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1992, Chapters 170 and 1236 (AB 3058 and SB 2000); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapters 389 and 758 (AB 723 and AB 446); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)

California Code of Regulations, Title 5, Sections 54002, 54010, 54012, 54020, 54022, 54024, 54030, 54032, 54041, 54042, 54045, 54045.5, 54046, 54050, 54060, 54070

Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 92, No. 12 (Mar. 27, 1992); Register 92, No. 18 (Feb. 18, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)

Revised Guidelines and Information, "Exemption from Nonresident Tuition" Chancellor of the California Community Colleges, May 2002

Tuition Fee Waivers
02-TC-21

Contra Costa Community College District, Claimant

Table of Contents

SixTen and Associates
Mandate Reimbursement Services

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San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

Exhibit A

May 20, 2003

RECEIVED
MAY 23 2003
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Contra Costa Community College District
Statutes of 2002 / Chapter 450
Tuition Fee Waivers

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Contra Costa Community College District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

John E. Hendrickson
Vice Chancellor, Finance and Administration
Contra Costa Community College District
500 Court Street
Martinez, California 94553

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: John E. Hendrickson, Vice Chancellor, Finance and Administration
Contra Costa Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

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MAY 2 3 2003

COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-21

Local Agency or School District Submitting Claim

CONTRA COSTA COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Contra Costa Community College District
500 Court Street
Martinez, California 94553

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Tuition Fee Waivers

See: List of Statutes Cited Attached
See: List of Code Sections Cited Attached
See: List of Title 5, California Code of Regulations Attached
See: Description of Revised Guidelines Attached

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
John E. Hendrickson Vice Chancellor, Finance and Administration	(925) 229-1000, Ext. 1214

Signature of Authorized Representative	Date
X	May 1, 2003

Attachment to COSM Form CSM 2 (1/91)
Test Claim: Tuition Fee Waivers
Contra Costa Community College District

Statutes Cited

Chapter 450, Statutes of 2002
Chapter 814, Statutes of 2001
Chapter 949, Statutes of 2000
Chapter 571, Statutes of 2000
Chapter 952, Statutes of 1998
Chapter 438, Statutes of 1997
Chapter 758, Statutes of 1995
Chapter 389, Statutes of 1995
Chapter 8, Statutes of 1993
Chapter 1236, Statutes of 1992
Chapter 170, Statutes of 1992
Chapter 455, Statutes of 1991
Chapter 1372, Statutes of 1990
Chapter 985, Statutes of 1989
Chapter 900, Statutes of 1989
Chapter 424, Statutes of 1989
Chapter 753, Statutes of 1988
Chapter 317, Statutes of 1983
Chapter 1070, Statutes of 1982
Chapter 102, Statutes of 1981
Chapter 789, Statutes of 1980
Chapter 580, Statutes of 1980
Chapter 797, Statutes of 1979
Chapter 242, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 990, Statutes of 1976
Chapter 78, Statutes of 1975

Executive Orders

Revised Guidelines and Information
"Exemption From Nonresident Tuition"
Chancellor of the California
Community Colleges (May 2002)

Education Code Sections Cited

Section 68044
Section 68051
Section 68074
Section 68075
Section 68075.5
Section 68076
Section 68077
Section 68078
Section 68082
Section 68083
Section 68084
Section 68121
Section 68130.5
Section 76140

Title 5, Code of Regulations Cited

Section 54002
Section 54010
Section 54012
Section 54020
Section 54022
Section 54024
Section 54030
Section 54032
Section 54041
Section 54042
Section 54045
Section 54045.5
Section 54046
Section 54050
Section 54060
Section 54070

Claim Prepared By:
Keith B. Petersen
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5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	
	)	No. CSM _____
Contra Costa	)	
Community College District	)	Chapter 450, Statutes of 2002
	)	Chapter 814, Statutes of 2001
	)	Chapter 949, Statutes of 2000
	)	Chapter 571, Statutes of 2000
	)	Chapter 952, Statutes of 1998
	)	Chapter 438, Statutes of 1997
	)	Chapter 758, Statutes of 1995
	)	Chapter 389, Statutes of 1995
	)	Chapter 8, Statutes of 1993
	)	Chapter 1236, Statutes of 1992
Test Claimant	)	Chapter 170, Statutes of 1992
	)	Chapter 455, Statutes of 1991
	)	Chapter 1372, Statutes of 1990
	)	Chapter 985, Statutes of 1989
	)	Chapter 900, Statutes of 1989
	)	Chapter 424, Statutes of 1989
	)	Chapter 753, Statutes of 1988
	)	Chapter 317, Statutes of 1983
	)	Chapter 1070, Statutes of 1982
	)	Chapter 102, Statutes of 1981
	)	(Continued on next page)
	)	
	)	Tuition Fee Waivers
	)	
	)	TEST CLAIM FILING

)	Chapter 789, Statutes of 1980
)	Chapter 580, Statutes of 1980
)	Chapter 797, Statutes of 1979
)	Chapter 242, Statutes of 1977
)	Chapter 36, Statutes of 1977
)	Chapter 990, Statutes of 1976
)	Chapter 78, Statutes of 1975
)	
)	Education Code Sections 68044,
)	68051, 68074, 68075, 68075.5,
)	68076, 68077, 68078, 68082, 68083
)	68084, 68121, 68130.5, 76140
)	
)	Title 5, California Code of Regulations
)	Sections 54002, 54010, 54012, 54020,
)	54022, 54024, 54030, 54032, 54041,
)	54042, 54045, 54045.5, 54046, 54050,
)	54060 and 54070
)	
)	Revised Guidelines and Information
)	"Exemption From Nonresident Tuition"
)	Chancellor of the California Community
)	Colleges (May 2002)
)	

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Contra Costa Community College District is a "school district"

as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for community college districts to develop and implement policies and procedures to classify students as residents or non-residents, to notify nonresident students of impending increases in nonresident tuition, and for the waiver of, and the cost of waiving, nonresident tuition for qualifying students.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Education Code Section 22812[2] defined a "resident" as a student who has residence in the state for more than one year immediately preceding the residence determination date. Education Code Section 22813[3] defined a "nonresident" as a

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

[2] Education Code Section 22812, added by Chapter 1100, Statutes of 1972, Section 2:

"A "resident" is a student who has residence, pursuant to Article 5 (commencing with Section 68060) of this chapter in the state for more than one year immediately preceding the residence determination date."

[3] Education Code Section 22813, added by Chapter 1100, Statutes of 1972, Section 2:

"A "nonresident" is a student who does not have residence in the state for more than one year immediately preceding the residence determination date."

student who does not have residence in the state for more than one year immediately preceding the residence determination. Education Code Section 22816[4] defined "district" as a community college district maintaining one or more community colleges.

Education Code Section 22835[5] required, as to a California community college, that each student be classified as a district resident, a nondistrict resident or a nonresident. Education Code Section 22836[6] required each student enrolled or

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[4] Education Code Section 22816, added by Chapter 1100, Statutes of 1972, Section 2:

"District" means a community college district maintaining one or more community colleges."

[5] Education Code Section 22835, added by Chapter 1100, Statutes of 1972, Section 2:

"Each student enrolled or applying for admission to an institution shall provide such information and evidence of residence as deemed necessary by the governing board to determine his classification. An oath or affirmation may be required in connection with taking testimony necessary to ascertain a student's classification. The determination of a student's classification shall be made in accordance with the provisions of this chapter and the residence determination date for the semester, quarter, or term for which the student proposes to attend an institution."

[6] Education Code Section 22836, added by Chapter 1100, Statutes of 1972, Section 2:

"Each student enrolled or applying for admission to an institution shall provide such information and evidence of residence as deemed necessary by the governing board to determine his classification. An oath or affirmation may be required in connection with taking testimony necessary to ascertain a student's classification. The determination of a student's classification shall be made in accordance with the provisions of this chapter and the residence determination date for the semester, quarter, or term for which the student proposes to attend an institution."

applying for admission to provide such information and evidence of residence as deemed necessary by the governing board. Education Code Section 22839[7] required that the governing boards adopt rules and regulations for determining a student's classification and establish procedures for review and appeal of that classification. Education Code Section 22840[8] required that a student classified as a nonresident be required, except as otherwise provided, to pay, in addition to other fees required by the institution, nonresident tuition. Education Code Section 22841[9] required the governing board to adopt rules and regulations relating to the method of calculation of the amount

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[7] Education Code Section 22839, added by Chapter 1100, Statutes of 1972, Section 2:

"The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. Such rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence. A district governing board may adopt rules and regulations which are not inconsistent with those adopted by the Board of Governors of the California Community Colleges."

[8] Education Code Section 22840, amended by Chapter 206, Statutes of 1973:

"A student classified as a nonresident shall be required, except as otherwise provided in this chapter, to pay, in addition to other fees required by the institution, nonresident tuition."

[9] Education Code Section 22841, added by Chapter 1100, Statutes of 1972, Section 2:

"Unless otherwise provided by law, the governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund."

of the nonresident tuition, the method of payment, and the method and amount of refund.

Education Code Section 22853[10] required residence classification for a student who is a dependent child, stepchild, or spouse of a member of the armed forces of the United States stationed in this state on active duty until that student has resided in the state the minimum time necessary to become a resident. If the member of the military, on whom the student is a dependent, is thereafter transferred outside the continental United States, continues to serve in the armed forces of the United States, the student dependent shall not lose his resident classification until he or she has resided in the state the minimum time necessary to become a resident.

Education Code Section 22854[11] required residency classification for a student

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[10] Education Code Section 22853, amended by Chapter 388, Statutes of 1974, Section 2:

"A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification until he has resided in the state the minimum time necessary to become a resident.

Should that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, be thereafter transferred on military orders to a place outside the continental United States where the member continues to serve in the armed forces of the United States, the student dependent shall not lose his resident classification until he has resided in the state the minimum time necessary to become a resident."

[11] Education Code Section 22854, added by Chapter 1100, Statutes of 1972, Section 2:

"A student who is a member of the armed forces of the United States stationed in this

who is a member of the armed forces of the United States stationed in California on active duty, other than for attendance at an educational institution, until the student has resided in the state for the minimum time necessary to become a resident.

Education Code Section 22857[12] required residence classification for students who were employed full-time by a California school district provided the student held certain credentials and was enrolled in courses necessary to fulfill further credential requirements.

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state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, shall be entitled to resident classification until he has resided in the state the minimum time necessary to become a resident."

[12] Education Code Section 22857, amended by Chapter 206, Statutes of 1973, Section 9, effective July 11, 1973:

"A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution shall be entitled to resident classification if such student meets any of the following requirements:

(a)Holding of a provisional credential and enrollment at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

(b) Holding a credential issued pursuant to Section 13125 and enrollment at an institution in courses necessary to fulfill credential requirements.

(c) Enrollment at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 13130."

Education Code Section 22860[13] allowed, but did not require, the governing boards and district governing boards to waive nonresident tuition in whole or in part upon a showing of (1) severe financial hardship to encourage the exchange of students[14], (2) financial need of students with exceptional scholastic ability and achievement[15], (3) reciprocity agreements with other California universities and colleges[16], (4) a student taking 6 units or less, or (5) those who are both citizens and residents of a foreign country if made to all nonresidents and not on an individual basis[17].

Education Code Section 23754[18] required the rate of nonresident tuition to be not

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[13] Education Code Section 22860, amended by Chapter 1108, Statutes of 1973, Section 1:

"The governing boards and district governing boards may waive nonresident tuition in whole or in part pursuant to Sections 89705, 89707, 68126 and 76140."

[14] Education Code Section 23754

[15] Education Code Section 23754.3

[16] Education Code Section 68126 (sic - 68123)

[17] Education Code Section 22505.8

[18] Education Code Section 23754, amended by Chapter 1100, Statutes of 1972:

"(a) Except as otherwise specially provided, an admission fee and rate of tuition fixed by the trustees shall be required of each nonresident student. The rate of tuition to be paid by each nonresident student, as defined in Section 22813, shall not be less than three hundred sixty dollars ($360) per year. The rate of tuition paid by each nonresident student who is a citizen and resident of a foreign country and not a citizen of the United States, except as otherwise specifically provided, shall be fixed by the trustees and shall not be less than three hundred sixty dollars ($360) per year. The

less than $360 per year.

Education Code Section 25505.8[19] permitted a community college district to

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tuition fee for a nonresident student who is a citizen and resident of a foreign country and who was in attendance at a state university or college during the fall term of 1969, may be waived by the trustees if they determine that the increased tuition fee will cause a severe financial hardship on the student. Such waivers may be granted through the spring term of 1973 or until the student receives a baccalaureate degree, whichever occurs first.

(b) The trustees may waive entirely, or reduce below the rate, or minimum rate, fixed by this section, the tuition fee of a nonresident student who is a citizen and resident of a foreign country and not a citizen of the United States and who attends a state university or college under an agreement entered into by a governmental agency or a nonprofit corporation or organization with a similar agency, or corporation or association, domiciled in and organized under the laws of a foreign country, where a principal purpose of the agreement is to encourage the exchange of students with the view of enhancing international good will and understanding. The trustees shall, in each instance, determine whether the conditions for such exemption from fees exist and may prescribe appropriate procedures to be complied with in obtaining the exemption."

[19] Education Code Section 25505.8, added by Chapter 209, Statutes of 1973, Section 23, amended by Chapter 209, Statutes of 1973, Section 23:

"A district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee nonresidents who (a) enroll for six units or less or (b) are both citizens and residents of a foreign country. Any exemptions shall be made with regard to all nonresidents described in (a) or (b), and shall not be made on an individual basis.

A district may, with the approval of the Board of Governors of the California Community Colleges contract with a state, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

The nonresident tuition fee shall be paid in two equal installments at the beginning of each semester, or three equal installments at the beginning of each quarter and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of education as defined by the California Accounting Manual for students enrolled in grades 13 and 14.

admit, and required them to charge a tuition fee to, nonresident students.

Prior to January 1, 1975, there was no requirement that community college districts use specific classification and qualification procedures to determine residence for tuition purposes; to give advance notice of impending nonresident tuition changes; or to develop and implement policies and procedures for the waiver of, and to waive, nonresident tuition.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 78, Statutes of 1975, Section 1 and Chapter 1254, Statutes of 1975,

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Each governing board shall compute the amount per student enrolled in the district.

The amount per student enrolled shall be derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in grades 13 and 14. The same fee shall be charged irrespective of the type of class in which the student is enrolled.

The governing board of each community college district shall also adopt a per-unit tuition fee for nonresidents on less than a full-time basis by dividing the fee for full-time nonresidents by 30 (units). The same per-unit rate shall be charged all nonresident students attending any summer sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the summer session ends.

A district shall report annually to the Board of Governors of the California Community Colleges the number of nonresidents enrolled for six units or less, the number of nonresidents enrolled for more than six units, and the total amount of fees collected from each category.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district in which during the school year 1962-63 more than 15 percent of the students enrolled were residents of another state; except that the provisions of this section shall apply to such districts beginning with the school year 1975-1976 and except that the provisions of this section which require annual reports to be filed with the Board of Governors of the California Community Colleges on the number of such students enrolled shall apply to such districts in the same manner as to any other district."

Section 2 made non-substantive technical changes to Education Code Section 25505.8.

Chapter 990, Statutes of 1976, Section 1, amended Education Code Section 25505.8[20], subparagraph (a), to preclude community college districts from making exemption decisions for nonresidents enrolled in six units or less on an individual basis. The first paragraph of subdivision (b) was amended to require students exempted from fees to demonstrate a financial need for the exemption and that such exemptions cannot apply to more than ten percent of nonresident foreign students. Exemptions under subdivision (b) could now be made on an individual basis.

Chapter 1010, Statutes of 1976, Section 2 (operative April 30, 1977) recodified and renumbered the Education Code. Relevant code sections before and after the

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[20] Education Code Section 25505.8, added by Chapter 209, Statutes of 1973, Section 23, amended by Chapter 990, Statutes of 1976, Section 1:

"A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee ~~nonresidents who~~:

(a) All nonresidents who enroll for six units or less. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is ~~are~~ both a citizens and residents of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. ~~Any e~~Exemptions ~~shall be~~ made ~~with regard to all nonresidents described in (a) or (b) and~~ pursuant to this subdivision ~~shall not~~ may be made on an individual basis. In the same manner as other nonresident students, pursuant to subdivision (c) of Section 17666.2, community college districts shall be precluded from computing average daily attendance of nonresident foreign students."

recodification and renumbering are as follows:

Former Code Section	New Code Section
22812	68017
22813	68018
22816	68021
22835	68040
22836	68041
22839	68044
22840	68050
22841	68051
22853	68074
22854	68075
22857	68078
22860	68130
23754	89705
25505.8	76140

Chapter 36, Statutes of 1977, Section 293, effective April 29, 1977, amended Education Code Section 76140 to make technical changes.

Chapter 36, Statutes of 1977, Section 502, added Education Code Section

68082[21], to provide, for the first time, resident classification to native Americans who are in attendance at a community college if the student is also attending a school administered by the Bureau of Indian Affairs located within the community college district.

Chapter 242, Statutes of 1977, Section 43, and Chapter 797, Statutes of 1979, Section 78, amended Education Code Section 76140 to make technical changes.

Chapter 580, Statutes of 1980, Section 1, effective July 18, 1980, amended Education Code Section 68074[22] to require resident classification, for the first time, for

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[21] Education Code Section 68082, added by Chapter 36, Statutes of 1977, Section 502, effective April 29, 1977, operative April 30, 1977:

"A student who is a native American is entitled to resident classification for attendance at a community college if the student is also attending a school administered by the Bureau of Indian Affairs located within the community college district.

As used in this section, "native American" means an American Indian."

[22] Education Code Section 68074 (formerly 22853), recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 580, Statutes of 1980, Section 1:

"A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

Should that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) be thereafter transferred on military orders to a place outside ~~the continental United States~~ this state where the member continues to serve in the armed forces of the United States or (2) be thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a

dependents of active members of the armed forces serving outside of California. The Section previously allowed resident classification only for dependents of those active members of the armed forces serving outside of the continental United States. The amendment further requires resident classification, for the first time, for students attending a community college who are dependents of a retired member of the armed forces of the United States, until the student has resided in the state for the minimum time necessary to become a resident.

Chapter 789, Statutes of 1980, Section 1, effective July 28, 1980, amended Education Code Section 76140[23] to redefine the governing board procedure to set

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resident."

[23] Education Code Section 76140 (recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 789, Statutes of 1980, Section 1, effective July 28, 1980:

"A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six or fewer units ~~or less~~. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis. ~~In the same manner as other nonresident students, community college districts shall be precluded from computing average daily attendance of nonresident foreign students.~~

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

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in

1

which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. Such fee may be paid in ~~equal~~ installments ~~at the beginning of each term~~ as determined by the governing board of the district ~~and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of education as defined by the California Accounting Manual for students enrolled in a community college.~~

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United State Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

~~The district governing board shall establish the nonresident tuition on the basis of one of the following computations: (a) the amount per student enrolled, derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in a community college, or (b) the statewide average current expenditure per unit of average daily attendance in a community college during the preceding fiscal year. The same fee shall be charged irrespective of the type of class in which the student is enrolled. Any loss in revenue generated by the nonresident tuition fee shall not be offset by additional state funding due to the loss of revenues derived therefrom.~~

The governing board of each community college district shall also adopt a ~~per-unit~~ tuition fee per unit of credit for nonresidents students enrolled in more or less than

nonresident student tuition fees and made other technical changes.

Chapter 102, Statutes of 1981, Section 38, effective June 28, 1981, amended Education Code Section 68044[24] to require, for the first time, that the district rules and

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15 units of credit per term ~~on less than a full-time basis~~ by dividing the fee in the preceding paragraph ~~for full-time nonresidents~~ by 30 ~~(units)~~ for colleges operating on the semester system, and 45 ~~(units)~~ for colleges operating on the quarter system and rounding to the nearest whole dollar. The same ~~per-unit~~ rate shall be uniformly charged ~~all~~ nonresident students attending any terms or sessions maintained by the community college ~~outside of the instructional year~~. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance."

[24] Education Code Section 68044 (formerly 22839), recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, effective April 30, 1976, as amended by Chapter 102, Statutes of 1981, Section 38:

"The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. The adopted rules and regulations shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency.

A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

regulations pertaining to reclassification include provisions requiring that the financial independence of a student be considered among other factors in determination of residence classification. The amendment also establishes requirements for a student to be considered financially independent.

Chapter 1070, Statutes of 1982, Section 1, amended Education Code Section 68044[25] to exempt, for the first time, graduate student teaching assistants, research

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Other factors which may be considered in determining California residency shall be defined by the governing boards. In addition, the adopted ~~Such~~ rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence. A district governing board may adopt rules and regulations which are not inconsistent with those adopted by the Board of Governors of the California Community Colleges."

[25] Education Code Section 68044 (formerly 22839), recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, effective April 30, 1976, as amended by Chapter 1070, Statutes of 1982, Section 1:

"The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. The adopted rules and regulations shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency.

The adopted rules and regulations shall, beginning the 1983-84 school year, exempt nonresident students who have been appointed to serve as graduate student teaching assistants, graduate student research assistants, or graduate student teaching associates on any campus of the University of California or the California State University, and who have been employed on a 0.49 or more time basis, from the requirement of demonstrating his or her financial independence under this section for purposes of reclassification as a resident.

A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the

assistants, and teaching associates from the requirements to prove financial independence for residence classification.

Chapter 317, Statutes of 1983, Section 1, effective July 19, 1983, amended Education Code Section 76140 to make technical changes.

Chapter 753, Statutes of 1988, Section 1, added Education Code Section 68076[26] to require resident classification, for the first time, to a student who has not

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calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Other factors which may be considered in determining California residency shall be defined by the governing boards. In addition, the adopted rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence. A district governing board may adopt rules and regulations which are not inconsistent with those adopted by the Board of Governors of the California Community Colleges."

[26] Education Code Section 68076, added by Chapter 753, Statutes of 1988, Section 1:

"(a) Notwithstanding Section 68062, a student who (1) has not been an adult resident of California for more than one year and (2) is the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

(b) No provision of this section shall apply to the University of California unless the Regents of the University of California adopt a resolution to that effect."

been an adult resident for more than one year but who is the dependent child of a California resident who has had residence for more than one year prior to the residence determination date. The exception continues until the student resides in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained.

Chapter 424, Statutes of 1989, Section 1, added Education Code Section 68077[27] to require resident classification, for the first time, to students who have graduated from any school located in California that is operated by the United States Bureau of Indian Affairs.

Chapter 900, Statutes of 1989, Section 1, amended Education Code Section 68074 to make technical changes.

Chapter 900, Statutes of 1989, Section 3, amended Education Code Section 68075 to make technical changes.

Chapter 985, Statutes of 1989, Section 1, amended Education Code Section

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[27] Education Code Section 68077, added by Chapter 424, Statutes of 1989, Section 1:

"(a) Notwithstanding Section 68062, a student who is a graduate of any school located in California that is operated by the United States Bureau of Indian Affairs, including, but not limited to, the Sherman Indian High School, shall be entitled to resident classification. This exception shall continue so long as continuous attendance is maintained by the student at an institution.

(b) No provision of this section shall apply to the University of California unless the Regents of the University of California adopt a resolution to that effect."

76140[28] to require the governing board of each community college district to provide

[28] Education Code Section 76140 (recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 985, Statutes of 1989, Section 1:

"A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

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

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

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

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

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

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United State Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during

nonresident students with notice of nonresident tuition fee changes during the spring term before the fall term in which the change will take effect. Therefore, for the first time, community college districts were required to give advance notice of impending nonresident tuition fee changes to nonresident students.

Chapter 1372, Statutes of 1990, Section 238, amended Education Code Section

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the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district, or (d) an amount not to exceed the amount which was expended by the district for the current expense of education but in no case less than the statewide average as set forth in subdivision (b) of this chapter. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

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

In adopting a tuition fee for nonresidents students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district that ~~which~~ borders on another state and has fewer than 500 average daily attendance."

68051[29] to require district governing boards, for the first time, to adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund. This section previously required only the Board of Governors of the California Community Colleges to make such determinations.

Chapter 455, Statutes of 1991, Section 1, amended Education Code Section 68076[30] to require resident classification, for the first time, to students who have a parent who contributes court-ordered support for the student on a continuous basis and who has been a resident of California for more than one year preceding the residence

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[29] Education Code Section 68051 (recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 1372, Statutes of 1990, Section 238:

"Unless otherwise provided by law, the governing board or district governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund."

[30] Education Code Section 68076, added by Chapter 753, Statutes of 1988, Section 1, as amended by Chapter 455, Statutes of 1991, Section 1:

"(a) Notwithstanding Section 68062, a student who (1) has not been an adult resident of California for more than one year and (2) is the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

(b) No provision of this section shall apply to the University of California unless the Regents of the University of California adopt a resolution to that effect."

determination date.

Chapter 170, Statutes of 1992, Section 1, amended Education Code Section 76140[31] to subdivide the paragraphs, lettering them (a) thru (i), and to make

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[31] Education Code Section 76140 (recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 170, Statutes of 1992, Section 1:

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

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

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

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

(c) ~~Attendance of n~~Nonresident students shall not be reported as ~~resident average daily attendance~~ full-time equivalent students (FTES) for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

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

(e) The fee established by the governing board pursuant to ~~the preceding paragraph~~ subdivision (d) shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (1) the amount which was expended by the district for the ~~current~~ expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal

technical changes.

Chapter 1236, Statutes of 1992, Section 1, amended Education Code Section

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year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the ~~average daily attendance of all students~~ FTES (including nonresident students) attending in the district in the preceding fiscal year, ~~or~~ (2) the ~~current~~ expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United State Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the ~~average daily attendance of all students~~ FTES (including nonresident students) attending all districts during the preceding fiscal year, ~~or~~ (3) an amount not to exceed the fee established by the governing board of any contiguous district, or (4) an amount not to exceed the amount ~~which~~ that was expended by the district for the ~~current~~ expense of education but in no case less than the statewide average as set forth in ~~subdivision (b) of this chapter~~ paragraph (2). However, ~~should~~ if the district's preceding fiscal year ~~average daily attendance~~ FTES of all students attending in the district in noncredit courses ~~be~~ is equal to or greater than 10 percent of the district's total ~~average daily attendance of all students~~ FTES attending in the district, the district in calculating ~~(a) above~~ the amount in paragraph (1) may substitute instead the data for ~~current~~ expense of education in grades 13 and 14 and ~~average daily attendance~~ FTES in grades 13 and 14 ~~of all students~~ attending in the district.

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

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

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

(i) The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district that borders on another state and has fewer than 500 ~~average daily attendance~~ FTES."

76140[32] to delete former subdivision (i) and add new subdivisions (i), (j) and (k), which governs enrollment fee waivers for districts within 10 miles of reciprocal states.

Chapter 8, Statutes of 1993, Section 15, effective April 15, 1993, amended Education Code Section 68076 to make technical changes.

Chapter 8, Statutes of 1993, Section 16, amended Education Code Section 68077 to make technical changes.

Chapter 389, Statutes of 1995, Section 1, added Education Code Section

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[32] Education Code Section 76140 (formerly Section 22505.8, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 1236, Statutes of 1992, Section 1:

~~"(i) The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district that borders on another state and has fewer than 500 FTES.~~

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

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

(k) The attendance of nonresident students who are exempted pursuant to subdivision (i) or (j) from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes pursuant to subdivision (i) or (j) shall pay a fee of forty-two dollars ($42) per course unit. That fee is to be included in the FTES adjustments described in Section 72252 for purposes of computing apportionments.

68075.5[33] to require resident classification, for the first time, to a student who was a member of the armed forces in this state on active duty for one year immediately prior to being discharged from the armed forces up until that student has resided in California for the minimum time necessary to become a resident.

Chapter 758, Statutes of 1995, Section 89, amended Education Code Section 76140 to make technical changes.

Chapter 438, Statutes of 1997, Section 1, added Education Code Section 68083[34] to require resident classification, for the first time, to amateur student athletes training at the United States Olympic Training Center in Chula Vista until he or she has resided in the state the minimum time required to become a resident.

Chapter 952, Statutes of 1998, Section 3, effective September 29, 1998, added

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[33] Education Code Section 68075.5, added by Chapter 389, Statutes of 1995, Section 1:

"A student who was a member of the armed forces of the United States stationed in this state on active duty for more than one year immediately prior to being discharged from the armed forces is entitled to resident classification for the length of time he or she lives in this state after being discharged up to the minimum time necessary to become a resident."

[34] Education Code Section 68083, added by Chapter 438, Statutes of 1997, Section 1:

"(a) Any amateur student athlete in training at the United States Olympic Training Center in Chula Vista is entitled to resident classification for tuition purposes until he or she has resided in the state the minimum time necessary to become a resident.

(b) "Amateur student athlete," for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes."

Education Code Section 68084[35] to require resident classification, for the first time, to a parent who is a federal civil service employee and to his or her dependent children if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student has resided in California for the minimum time necessary to become a resident.

Chapter 571, Statutes of 2000, Section 1, amended Education Code Section 68074[36] to limit armed forces dependents seeking resident classification to receive

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[35] Education Code Section 68084, added by Chapter 952, Statutes of 1998, Section 3, effective September 29, 1998:

"A parent who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification at the California State University, the University of California, or a California community college if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education. The Trade and Commerce Agency shall certify qualifying military mission realignment actions under this section and provide this information to the California Community Colleges, the California State University, and the University of California."

[36] Education Code Section 68074 (formerly 22853), recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 571, Statutes of 2000, Section 1:

"~~Except as otherwise provided in Section 68074.1, a~~ (a)(1) An undergraduate student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification ~~until he or she has resided in the state the minimum time necessary to become a resident~~ only for the purpose of determining the amount of tuition and fees.

resident classification for the purpose of tuition and fees only. The amendment further limits resident classification for graduate students who are dependents of active military members to one year and thereafter subjects him or her to residence classification pursuant to Article 5 (commencing with Section 68060).

Chapter 571, Statutes of 2000, Section 3, amended Education Code Section 68075 to limit a member of the armed forces seeking resident classification to receive resident classification for the purpose of tuition and fees only. The amendment further limits resident classification to one year and thereafter subjects him or her to residence classification pursuant to Article 5 (commencing with Section 68060).

Chapter 949, Statutes of 2000, Section 1, amended Education Code Section 68078[37] to add subdivision (b), which requires resident classification, for the first time, to

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(2) A student seeking a graduate degree who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one academic year, and shall thereafter be subject to Article 5 (commencing with Section 68060).

(b) If that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the armed forces of the United States, or (2) is thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident."

[37] Education Code Section 68078 (formerly 22858), recodified and renumbered by Statutes of 1976, Section 2, as amended by Chapter 949, Statutes of 2000, Section 1, effective September 30, 2000:

a student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications, for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements.

Chapter 814, Statutes of 2001, Section 2, added Education Code Section 68130.5[38] to require, for the first time, in subdivision (a), that community college districts

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"(a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution ~~shall be~~ is entitled to resident classification if ~~such~~ that student meets any of the following requirements:

~~(a) Holding of~~ (1) He or she holds a provisional credential and ~~enrollment~~ is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

~~(b) Holding~~ (2) He or she holds a credential issued pursuant to Section ~~1312544250~~ and ~~enrollment~~ is enrolled at an institution in courses necessary to fulfill credential requirements.

~~(c) Enrollment~~ (3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section ~~1313044259~~.

(b) Notwithstanding any other provision of law, a student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year. Thereafter, the student shall be subject to Article 5 (commencing with Section 68060).

(c) This section shall not be construed to affect the admissions policies of any teacher preparation program."

[38] Education Code Section 68130.5, added by Chapter 814, Statutes of 2001, Section 2:

"Notwithstanding any other provision of law:

exempt nonresidents from nonresident tuition when (1) they have attended a California high school for three or more years, (2) they have graduated from a California high school or attained the equivalent thereof, (3) they are registered as an entering student at, or currently enrolled at, a California community college not earlier than the fall semester or quarter of the 2001-02 academic year and, (4) in the case of a person without lawful immigration status, when he or she has filed an application to legalize his or her immigration status, or will file as soon as he or she is eligible to do so. Subdivision (c) requires the Board of Governors of the California Community Colleges to prescribe rules and regulations for the implementation of this section. Subdivision (d)

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student 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."

requires all student information obtained in the implementation of this section be kept confidential. Therefore, for the first time, community college districts are required to make a determination at enrollment, or at any time a nonresident student makes application for exemption, whether that student qualifies for an exemption from nonresident tuition, and if so exempt, to waive nonresident tuition for that student.

Chapter 450, Statutes of 2002, Section 2, added Education Code Section 68121[39] which, in subdivision (a), prohibits the Regents of the University of California or

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[39] Education Code Section 68121, added by Chapter 450, Statutes of 2002, Section 2:

"(a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required or collected by the Regents of the University of California or the Trustees of the California State University, from a student who is in an undergraduate program and who is the surviving dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The surviving dependent was resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(b) (1) The California Victim Compensation and Government Claims Board shall identify all persons who are eligible for tuition and fee waivers pursuant to this section or subdivision (j) of Section 76300. That board shall notify these persons or, in the case of minors, the parents or guardians of these persons, of their eligibility for tuition and fee waivers under these provisions. This notification shall be in writing, and shall be received by all of the appropriate persons no later than July 1, 2003.

(2) The Trustees of the California State University, the Regents of the University of California and the governing board of each community college district in the state shall waive tuition and fees, as specified in this section and in subdivision (j) of Section 76300, for any person who can demonstrate eligibility.

the Trustees of the California State University from requiring or collecting any fees or tuition of any kind from an undergraduate student who is the surviving dependent of any individual killed in the September 11, 2001, terrorist attacks if he or she meets the financial need requirements for the Cal Grant A Program and he or she was a resident of California on September 11, 2001, or the individual killed in the attacks was a resident of California on September 11, 2001. Subdivision (b)(1) requires the California Victim Compensation and Government Claim Board to identify all persons who are eligible for tuition and fee waivers pursuant to this section.

If requested by the California State University, the University of California, Hastings College of Law, or a California Community College, the California Victim Compensation and Government Claims Board, on a case-by-case basis, shall confirm the eligibility of persons requesting the waiver of tuition and fees, as provided for in this section.

(c) A determination of whether a person is a resident of California on September 11, 2001, shall be based on the criteria set forth in this Chapter for determining nonresident and resident tuition.

(d)(1) "Dependent," for purposes of this section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the fee waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under this section until that person obtains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided by this section until January 1, 2013.

Subdivision (b)(2) of new Section 68121 requires the governing board of each community college district in the state to waive tuition and fees as specified in the Section for any person who can demonstrate eligibility. Therefore, for the first time, community college districts are required to determine if a student is a surviving dependent of any individual killed in the September 11, 2001, terrorist attacks and, if so, if that person also meets the financial need requirements of the Cal Grant A Program. Also, for the first time, community colleges, when necessary, are required to request verification of eligibility from the California Victim Compensation and Government Claims Board on a case-by-case basis. Subdivision (d)(2) limits the waiver provisions to surviving spouses until January 1, 2013. Subdivision (d)(3) limits the waiver provisions to surviving dependent children until that child obtains the age of 30 years.

SECTION 3. CALIFORNIA CODE OF REGULATIONS - NONRESIDENT TUITION WAIVERS

The Regulations for the residency classification of students and the waiver of nonresident tuition are found in Title 5, California Code of Regulations, Sections 54000 through 54072 (not inclusive).

Section 54002[40] defines "Residence determination date" as that day immediately

[40] Title 5, California Code of Regulations, Section 54002, as amended and operative April 5, 1991:

""Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college."

preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

Section 54010[41], at subdivision (a), requires residence classification procedures to be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. Students previously classified as nonresidents may be reclassified as of any residence determination date. Classification procedures require that:

(1) Students present evidence of physical presence in California, intent to

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[41] Title 5, California Code of Regulations, Section 54010, as amended and operative April 5, 1991:

"(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

(f) Pursuant to Section 54300, the district may authorize any information required by this section to be submitted electronically using encrypted digital signatures as specified in Section 54300."

make California the home for other than a temporary purpose, and, if the student was classified as a nonresident in the preceding term, financial independence [subdivision (b)];

(2) Community College districts require applicants to supply information as specified in this chapter and may require additional information as deemed necessary [subdivision (c)];

(3) Districts weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date [subdivision (d)];

(4) Applicants certify their answers on residence questionnaires under oath or penalty of perjury [subdivision (e)]; and

(5) The district may authorize any information required by this section to be submitted electronically using encrypted signatures as specified in 54300 [subdivision (f)].

Therefore, for the first time, Community College District schools are required, at time of first admission and whenever a student has not been in attendance for more than one semester or quarter, to receive and weigh specific information bearing upon a student's classification as a resident or nonresident.

Section 54012[42] requires Community College Districts to use a residence questionnaire in making residence classifications. The residence questionnaire shall ask each student questions regarding his or her time of residence, parent's time of or continued residence, described activities and intent to reside in California. Therefore, for the first time, Community College District schools are required to obtain residence questionnaires from students which ask specific questions, the answers to which will assist in determining residence classification.

Section 54020[43] requires students who wish to establish residence, to

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[42] Title 5, California Code of Regulations, Section 54012, as amended and operative April 5, 1991:

"(a) Each community college district shall use a residence questionnaire in making residence classifications.
(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.
(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.
(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.
(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement."

[43] Title 5, California Code of Regulations, Section 54020, as amended and operative April 5, 1991:

"In order to establish a residence, it is necessary that there be a union of act and intent.

demonstrate a union of act and intent. Therefore, for the first time, California Community District schools are required to obtain objective evidence that physical presence is with the intent to make California the home for other than a temporary purpose.

Section 54022[44] requires Community College District schools to verify that a person establishing residence in California has been physically present in California for one year prior to the residence determination date to be classified as a resident student. Physical presence within the state solely for educational purposes does not constitute establishing residence regardless of the length of that presence. Therefore, for the first time, Community College Districts are required to verify that all students have been physically present in California for one year prior to the residence determination date to be classified as a resident student.

To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose."

[44] Title 5, California Code of Regulations, Section 54022, as amended and operative April 5, 1991:

"(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence."

Section 54024[45] requires Community College Districts, for the first time, to obtain

[45] Title 5, California Code of Regulations, Section 54024, as amended and operative April 5, 1991:

"(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

evidence of intent to make California home for other than a temporary purpose. When a student or a student and his parent are unable to create a presumption of intent by maintaining a home in California for the prior two years, subdivision (e) sets forth factors indicating an intent to establish California residence. Subdivision (f) sets forth factors indicating a lack of intent to establish California residence. Therefore, for the first time, Community College Districts are required to balance and weigh factors in subdivision (e) against those in subdivision (f) when making residence determinations.

Section 54030[46] requires one full year of physical presence coupled with one full year of demonstrated intent to reestablish residence for tuition purposes after a student or parents relinquish California residence. Therefore, for the first time, when a student attempts to reestablish residence for tuition purposes, a Community College District is required to obtain proof of one full year of physical presence and one full year of demonstrated intent before classifying the student as a resident for tuition purposes.

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(2) Being the petitioner for a divorce in another state.
(3) Attending an out-of-state institution as a resident of that other state.
(4) Declaring nonresidence for state income tax purposes.

[46] Title 5, California Code of Regulations, Section 54030, as amended and operative April 5, 1991:

"If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070."

Section 54032[47] requires that a student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code Section 68044. A student who has established financial independence may be reclassified as a resident if the student meets the requirements of section 54020 for one year prior to the residence determination date. Financial independence shall weigh in favor of finding California residence and financial dependence shall weigh against finding California residence. Financial dependence in the current or preceding calendar year shall be overcome only if the parent on whom the student is dependent is a California resident

[47] Title 5, California Code of Regulations, Section 54032, as amended and operative April 5, 1991:

"(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state."

or there is no evidence of the student's continuing residence in another state. Therefore, for the first time, when a nonresident student seeks reclassification as a resident, Community College Districts are required to determine if that student is financially dependent or independent and, when the student is found to be financially dependent in the current or preceding year, Community College Districts are required to determine his or her parents place of residence or a showing that there is no evidence of the student's continuing residence in another state.

Section 54041[48] requires a dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 68074 of the Education code to provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date. A statement is also required from such an officer if the military person is outside California

[48] Title 5, California Code of Regulations, Section 54041, as amended and operative April 5, 1991:

"A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided."

on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or if the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided. Therefore, for the first time, Community College Districts are required to obtain from a student claiming residency as a spouse, child or stepchild of a member of the armed forces a statement from the military spouse, parent or step-parent's commanding officer that the military person's duty station is in California as of the residence determination date; or that the military person is outside of California on active duty after having been directly transferred from a California duty station after the residence determination date; or that the military person, after the residence determination date, has retired as an active member of the armed forces of the United States. Community College Districts are also required to obtain a statement that the student is a dependent for an exemption on federal taxes.

Section 54042[49] requires that a student claiming residency under Section 68075 of the Education Code as a member of the armed forces stationed in California on

[49] Title 5, California Code of Regulations, Section 54042, as amended and operative April 5, 1991:

"A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California."

active duty provide a statement from his or her commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student shall also produce evidence of the date of assignment to California. Therefore, for the first time, Community College Districts are required to obtain a statement from active duty military members requesting resident student status a statement from his or her commanding officer or personnel officer that the assignment to active duty in California is not for educational purposes.

Section 54045[50] provides that an alien not precluded from establishing domicile

[50] Title 5, California Code of Regulations, Section 54045, filed January 16, 1992, and operative on February 18, 1992:

"(a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) An alien is precluded from establishing domicile in the United States if the alien:

(1) entered the United States illegally (undocumented aliens);

(2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, an alien who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student

in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter. An alien is precluded from establishing domicile in the United States if the alien entered the United States illegally, entered the United States under a visa that requires that the alien have a residence outside the United States, or entered the United States under a visa that permits entry solely for some temporary purpose. Any such precluded alien shall not be classified as a resident unless or until he or she has taken the appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose. Therefore, for the first time, Community College Districts are required to determine if an enrolling student is precluded from establishing domicile in the United States and shall not classify him or her as a resident for tuition purposes until he or she has taken the appropriate steps to obtain a change of status from the Immigration and Naturalization Service and has met the requirements of Sections 54020 through 54024.

Section 54045.5[51] regulates nonresident tuition exemptions. Subdivision (a) of

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has not been in attendance at any college in the district for more than one semester or quarter."

[51] Title 5, California Code of Regulations, Section 54045.5, filed May 3, 2002, operative June 2, 2002:

Section 54045.5 provides that a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15) shall be exempt from paying nonresident tuition at any community college district if he or she (1) attended high school in California for three or more years, (2) graduated from a California High School, or attained the equivalent of such graduation, and (3) registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

Subdivision (b) of Section 54045.5 requires the student seeking the exemption to

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"(a) In accordance with Education Code section 68130.5, any student, other than a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15), shall be exempt from paying nonresident tuition at any community college district if he or she:

(1) Attended high school in California for three or more years;

(2) Graduated from a California high school or attained the equivalent of such graduation; and

(3) Registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

(b) Any student seeking an exemption under subdivision (a) shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic student information so provided shall be confidential and shall not be disclosed unless required by law.

(c) Any student without lawful immigration status who is seeking an exemption under subdivision (a), shall, in the questionnaire described in (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

(d) A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.

(e) Nothing herein modifies eligibility standards for any form of student financial aid, including but not limited to, those contained in Subchapter 7 of Chapter 9 of this Division.

(f) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2002.

complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment verifying eligibility for the nonresident tuition exemption. He or she may also be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic information is required to be kept confidential and not disclosed unless required by law. Therefore, for the first time, community college districts are required to obtain from students seeking an exemption from nonresident tuition a completed questionnaire, on a form prescribed by the Chancellor, verifying eligibility for an exemption. For the first time, Community College District, when necessary, are required to obtain and review additional documentation to verify eligibility. And, for the first time, Community College District Schools are required to establish and maintain procedures to preserve the confidentiality of the questionnaires and additional documentation.

Subdivision (c) of Section 54045.5 provides that any student without lawful immigration status who is seeking an exemption under subdivision (a) shall, in the questionnaire described in subdivision (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so. Therefore, for the first time, community college districts are required to verify that students without lawful immigration status who are applying for an exemption from nonresident tuition have affirmed that they have filed an application to legalize his or her immigration status or will file such an application as soon as he or she is eligible to do so.

Section 54046[52] requires that Community College Districts obtain a statement from any student claiming residence status pursuant to Education Code Section 68078 from the employer showing employment by a public school in a full time position requiring certification qualifications for the college year in which the student enrolls. The Community College District is also required to verify that the student holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools; or verify that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements. Therefore, for the first time, Community College Districts are required to obtain a statement from students claiming residence status pursuant to Education Code Section 68078 verifying full time employment by a public school requiring certification qualifications; to verify an existing credential and that the student will enroll in courses necessary to obtain another type of credential; or verify that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

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[52] Title 5, California Code of Regulations, Section 54046, as amended and operative April 5, 1991:

"A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements."

Section 54050[53] requires Community College Districts to obtain from students seeking exception from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) or 68075 (military members) proof that they are still in their first year of current physical presence in California.

Section 54060[54] requires that each community college notify each student of his or her resident classification not later than 14 calendar days after the beginning of the session for which the student has applied, or 14 calendar days after the student's application for admission, whichever is later. Therefore, for the first time, Community College Districts are required to notify students of their residence status within 14 calendar days after the beginning of the session for which the student has applied or

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[53] Title 5, California Code of Regulations, Section 54050, as amended and operative on April 5, 1991:

"Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California."

[54] Title 5, California Code of Regulations, Section 54060, as amended and operative April 5, 1991:

"(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors."

the date of application, whichever is later.

Section 54070[55] requires, for the first time, that the governing board of each Community College District adopt and implement rules providing for a refund for fees collected in error, fees refundable as a result of a reduction of the education program, and fees refundable as a result of the student's reduction in units if the reduction or withdrawal is for reasons deemed sufficient.

SECTION 4—CHANCELLOR'S REVISED GUIDELINES AND INFORMATION

The Chancellor of the California Community Colleges has also promulgated Revised Guidelines and Information dated May 2002, entitled "Exemption From Nonresident Tuition", a copy of which is attached hereto as Exhibit 5 and is incorporated herein by reference. The questionnaire required by subdivision (b) of Title 5, California Code of Regulations, Section 54045.5, is attached to the Chancellor's revised guidelines as Attachment Four.

Paragraph 3 of the Chancellor's Revised Guidelines and Information dated May,

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[55] Title 5, California Code of Regulations, Section 54070, as amended and operative April 5, 1991:

"The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:
(a) Those collected in error.
(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.
(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board."

2002, provides that the new nonresident tuition exemption is available to all U.S. citizens, permanent residents of the U.S., and aliens who are not nonimmigrants who meet all other eligibility requirements.

Paragraph 8 of the Chancellor's Revised Guidelines and Information dated May, 2002, requires the refund of nonresident tuition if a student is determined to be eligible for the exemption subsequent to his or her payment of nonresident tuition.

Paragraph 12 of the Chancellor's Revised Guidelines and Information dated May, 2002, provides that an intersegmental form has been developed to meet the requirements of the California Code of Regulations Section 54012 (residence questionnaires).

Paragraph 13 of the Chancellor's Revised Guidelines and Information dated May, 2002, requires that districts use the prescribed form immediately wherever possible and to ensure that the prescribed form is contained in any publications printed after June 1, 2002. This form shall be used for all exemptions granted for terms subsequent to Fall 2002.

Paragraph 14 of the Chancellor's Revised Guidelines and Information dated May, 2002, requires that individually printed questionnaires be discarded and replaced with new ones but allows use of forms included as enclosures in printed materials for Summer 2002 and/or Fall 2002, provided that the forms include all elements required by law and provided that the forms are part of a major preprinted document such as a Schedule of Classes.

Paragraph 17 of the Chancellor's Revised Guidelines and Information dated May, 2002, requires community college districts to pursue additional verification to resolve discrepancies prior to granting the exemption when the district is in possession of conflicting information regarding any aspect of the student's eligibility for the exemption.

Paragraph 20 of the Chancellor's Revised Guidelines and Information dated May 2002, requires community college districts to consider the original certified student affidavit and other materials used by the district in meeting the certification requirements as Class 1, Permanent Records, and retain them indefinitely, unless copied or reproduced as specified.

Paragraph 38 of the Chancellor's Revised Guidelines and Information dated May 2002, requires community college districts to seek reimbursement from students for nonresident fees that have been waived when the original certification is subsequently determined to be false.

Paragraph 40 of the Chancellor's Revised Guidelines and Information dated May, 2002, requires community college districts to participate in surveys conducted by the Chancellor's office concerning students receiving exemptions from nonresident tuition, when requested.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Guidelines and Information of the Chancellor of the California Community

Colleges are "Executive Orders" as defined in Government Code Section 17516[56] and together with the Education Code Sections and the Title 5 Regulations referenced in this test claim result in community college districts incurring costs mandated by the state, as defined in Government Code section 17514[57], by creating new state-mandated duties related to the uniquely governmental function of providing public education and

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[56] Government Code Section 17516, added by Chapter 1459, Statutes of 1984, Section 1:

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.

(b) Any officer or official serving at the pleasure of the Governor.

(c) Any agency, department, board, or commission of state government.

"Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. "Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

[57] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

services to students and these statutes, regulations and guidelines apply to community college districts and do not apply generally to all residents and entities in the state.[58]

The new duties mandated by the state upon community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff training and travel to implement the following activities:

A) Establishing and implementing policies and procedures, and to periodically revising and updating those policies and procedures, to provide for the classification of students as residents or nonresidents, pursuant to Education Code Section 68044.

(1) Residence classification, or reclassification, for each student at the time applications for admissions are accepted and whenever a student has not been in attendance for more than one semester or quarter, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (a).

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[58] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

(2) Receiving and reviewing evidence supplied by students showing physical presence in California and intent to make California their home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, evidence of financial independence, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (b).

(3) Weighing the information received from each student and making a determination whether the student has clearly established that he or she has been a resident for one year prior to the residency determination date, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (d).

(4) Verifying that residence questionnaires that have been submitted by the student under oath or penalty of perjury, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (e).

(5) Verifying that the student has been physically present in California for one year prior to the residence determination date, pursuant to Title 5, California Code of Regulations, Section 54022.

(6) For those students who are unable to establish a presumption of residency pursuant to either subdivision (b) or (c), requiring them to provide evidence of residency, such as: ownership of residential property or continuous occupancy of rented or leased property in

California; registering to vote and voting in California; professional licensing in California; active membership in service or social clubs; presence of spouse, children or other close relatives in the state; showing a California address on a federal tax return; paying California income tax as a resident; possessing a California motor vehicle license plates; possessing a California driver's license; maintaining a permanent military address; establishing and maintaining active California bank accounts; and/or being the petitioner for a divorce in California, pursuant to Title 5, California Code of Regulations, Section 54024, subdivision (d).

(7) If a student, or the parents of a minor student, relinquishes California residence, requiring evidence of one full year of physical presence coupled with one full year of demonstrated intent, pursuant to Title 5, California Code of Regulations, Section 54030.

(8) If a student previously classified as a nonresident seeks reclassification as a residence, requiring and verifying the student's financial independence, pursuant to Title 5, California Code of Regulations, Section 54032.

(9) Notifying each student of his or her resident classification not later than 14 calendar days after the beginning of the session for which the student has applied, or 14 calendar days after the student's

application for admission, whichever is later, pursuant to Title 5, California Code of Regulations, Section 54060, subdivision (a).

B) Using residence questionnaires in making residence classifications, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (a). The questionnaire shall ask each student:

(1) Where the student has maintained his or her home for the past two years and whether the student has maintained voter registration or voted in another state, has been a petitioner for a divorce in another state, attended an out-of-state institution as a resident of that other state and whether he or she has declared nonresidence for state income tax purposes, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (b).

(2) If the student is under age 19, where his or her parent has lived for the past two years and whether the parent has maintained voter registration or voted in another state, has been a petitioner for a divorce in another state, attended an out-of-state institution as a resident of that other state and whether he or she has declared nonresidence for state income tax purposes, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (c).

(3) When the student is under age 19, if the student or the parent has either maintained a home outside of California at any time

during the past two years or maintained voter registration or voted in another state, or has been a petitioner for a divorce in another state, or attended an out-of-state institution as a resident of that other state, or whether he or she has declared nonresidence for state income tax purposes, the student shall be asked to supply additional evidence of intent to reside in California, such as ownership of residential property or continuous occupancy of rented or leased property in California; registering to vote and voting in California; professional licensing in California; active membership in service or social clubs; presence of spouse, children or other close relatives in the state; showing a California address on a federal tax return; paying California income tax as a resident; possession of California motor vehicle license plates; possession of a California driver's license; maintaining a permanent military address; establishing and maintaining active California bank accounts; and/or being the petitioner for a divorce in California, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (d).

C) Granting or limiting residency classification for tuition purposes:

(1) For no more than one academic year for undergraduate students who are dependent children or spouses of a member of the armed

forces of the United States stationed in California on active duty when thereafter transferred on military orders to a place outside of California, or thereafter retires from the armed forces, pursuant to Education Code Section 68074, and

(a) Requiring from those seeking an exemption as provided in paragraph (1), to obtain a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California, pursuant to Title 5, California Code of Regulations, Section 54041.

(b) Obtaining from those seeking an exemption, as provided in paragraph (1), proof that they are still in their first year of current physical presence in California, pursuant to Title 5, California Code of Regulations, Section 54050.

(2) Limiting residency classification for tuition purposes for members of the armed forces of the United States stationed in this state on active duty for other than educational purposes to only undergraduates and for no more than one academic year, pursuant to Education Code Section 68075.

(a) Requiring from those seeking an exemption pursuant to paragraph (2), to obtain a statement from the student's commanding officer or personnel officer that the assignment

to California is nor for educational purposes and evidence of the date of assignment to California, pursuant to Title 5, California Code of Regulations, Section 54042.

(b) Obtaining from those seeking an exemption, as provided in paragraph (2), proof that they are still in their first year of current physical presence in California, pursuant to Title 5, California Code of Regulations, Section 54050.

(3) Students who were members of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged, pursuant to Education Code Section 68075.5.

(4) For students who have not been adult residents of California for more than one year and are either a dependent child of a California resident for more than one year prior to residence determination, or a student who has a parent who is a California resident for a minimum of one year and who has contributed court-ordered support for the student on a continuous basis, pursuant to Education Code Section 68076.

(5) For students who are graduates of any school located in California and operated by the United States Bureau of Indian Affairs including, but not limited to, the Sherman Indian High School,

pursuant to Education Code Section 68077.

(6) For no more than one year to students holding valid emergency permits authorizing service in California public schools who are employed by a school district in a full-time position requiring certification qualifications to fulfill teacher credential requirements, pursuant to Education Code Section 68078, subdivision (b).

(a) For those students applying for resident status pursuant to paragraph (6), obtaining a statement from the student's employer showing full time employment in a public school, pursuant to Title 5, California Code of Regulations, Section 54046, and

(b) Obtaining evidence that the student holds a credential and will enroll in courses necessary to obtain another type of credential, pursuant to Title 5, California Code of Regulations, Section 54046, or

(c) Obtaining evidence that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements, pursuant to Title 5, California Code of Regulations, Section 54046.

(7) For students who are native Americans if also attending a school

administered by the Bureau of Indian Affairs located within the community college district, pursuant to Education Code Section 68082.

(8) For students who are amateur athletes in training at the United States Olympic Training Center in Chula Vista, pursuant to Education Code Section 68083.

(9) For students, and their dependent children, who are federal civil service employees if transferred to California as a result of a military mission realignment action that involves the relocation of at least 100 employees, pursuant to Education Code Section 68084.

(10) For alien students claiming they are not precluded from establishing domicile in the United States are required to show that they did not enter the United States illegally, that they did not enter under a visa which requires residency outside of the United States, and that they did not enter the United States under a visa which permits entry solely for some temporary purpose, pursuant to Title 5, California Code of Regulations, Section 54045, subdivision (b).

(11) For an alien precluded from establishing domicile in the United States, requiring evidence that he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service, pursuant to Title 5, California Code of

Regulations, Section 54045, subdivision (c).

C) Exempting from the payment of nonresident tuition, students, other than nonimmigrant aliens, who meet the following requirements, pursuant to Education Code Section 68130.5, subdivision (a), Title 5, California Code of Regulations, Section 54045.5, subdivision (a) and Chancellor's Revised Guidelines and Information dated May 2002, paragraph 3:

(1) High school attendance in California for three or more years,

(2) Graduation from a California high school or attainment of the equivalent thereof,

(3) Registration as an entering student at, or current enrollment at, the community college not earlier than the fall semester or quarter of the 2001-2002 academic year, and

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the community college stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as her or she is eligible to do so.

(5) Obtaining, from students applying for an exemption from the requirement to pay nonresident tuition, a completed questionnaire, on a form prescribed by the Chancellor, verifying their eligibility for the exemption, pursuant to Title 5,

California Code of Regulations, Section 54045.5, subdivision (b) and the Chancellor's Revised Guidelines and Information dated May 2002, paragraphs 12, 13 and 14 and attachment four.

(6) Obtaining, from students applying for an exemption from the requirement to pay nonresident tuition, additional documentation or evidence, as necessary or when the district is in possession of conflicting information, to verify eligibility for the exemption, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (b) and Chancellor's Revised Guidelines and Information dated May 2002, paragraph 17.

(7) Obtaining, from students without lawful immigration status applying for an exemption from the requirement to pay nonresident tuition, an affirmation by the student that he or she has filed an application to legalize his or her immigration status, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (c).

D) Exempting from the payment of all fees and tuition, undergraduate students who meet the following requirements, pursuant to Education Code Section 68121, subdivision (b)(2):

(1) They meet the financial need requirements of the Cal Grant A Program, and

(2) Until January 1, 2013, he or she is a dependent surviving spouse of an individual killed in the September 11, 2001, terrorist attacks and either he or she, or the individual killed, was a resident of California on September 11, 2001, or

(3) Until he or she obtains the age of 30 years, for a dependent child of an individual killed in the September 11, 2001, terrorist attacks and either he or she, or the individual killed, was a resident of California on September 11, 2001, and

(4) When necessary verifying an individual's eligibility from the California Victim Compensation and Government Claims Board on a case-by-case basis.

E) Establishing and implementing policies and procedures, and from time to revising and updating those policies and procedures, for the calculation of the amount of nonresident tuition, the method of payment of nonresident tuition, and the method and amount of refunds of nonresident tuition, pursuant to Education Code Section 68051. This includes:

(1) Providing advance notice of nonresident tuition changes during the spring term before the fall term in which the changes will take effect, pursuant to Education Code Section 76140, subdivision (d).

(2) Adopting and implementing rules for refunds of fees collected in error, fees refundable due to a reduction of the education program, and/or fees refundable as a result of the student's reduction in units, pursuant to Title 5, California Code of Regulations, Section 54070. However, no refund of nonresident tuition paid for any term prior to January 1, 2002 is authorized, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (f).

(3) Refunding nonresident tuition collected when the student is subsequently determined to be eligible for the exemption, pursuant to Chancellor's Revised Guidelines and Information dated May 2002, paragraph 8.

(4) Seeking reimbursement from students for nonresident fees that have been waived when the original certification is subsequently determined to be false, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002 , paragraph 38.

F) Considering the student's original certified affidavit and other materials used by the district as Class 1, Permanent Records, and retaining them indefinitely, unless copied or reproduced as specified, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 20.

G) Participating in surveys conducted by the Chancellor's office concerning

students receiving exemptions for nonresident tuition, when requested, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 40.

H) The loss of nonresident tuition fees when students are classified as residents for purposes tuition purposes, pursuant to Education Code Sections 58074, 68075.5, 68076, 68077, 68078(b), 68082, 68083, 68084, and California Code of Regulations, Section 54045, subdivisions (b) and (c).

I) The loss of nonresident tuition fees when nonresident students are exempted from the payment of nonresident tuition pursuant to Education Code Section 68130.5 and California Code Regulations 54045.5.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[59] statutory exceptions to a finding

[59] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been

of costs mandated by the state apply to this test claim. To the extent that school districts may have previously performed functions similar to those mandated by the referenced code sections, regulations and executive orders, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[60]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from

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declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[60] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Jeanette Moore
Director of Admissions and Records
Contra Costa Community College District

Exhibit 2: Copies of Statutes Cited

Chapter 450, Statutes of 2002
Chapter 814, Statutes of 2001
Chapter 949, Statutes of 2000
Chapter 571, Statutes of 2000
Chapter 952, Statutes of 1998
Chapter 438, Statutes of 1997
Chapter 758, Statutes of 1995
Chapter 389, Statutes of 1995
Chapter 8, Statutes of 1993
Chapter 1236, Statutes of 1992
Chapter 170, Statutes of 1992
Chapter 455, Statutes of 1991
Chapter 1372, Statutes of 1990
Chapter 985, Statutes of 1989
Chapter 900, Statutes of 1989
Chapter 424, Statutes of 1989
Chapter 753, Statutes of 1988
Chapter 317, Statutes of 1983
Chapter 1070, Statutes of 1982
Chapter 102, Statutes of 1981
Chapter 789, Statutes of 1980
Chapter 580, Statutes of 1980
Chapter 797, Statutes of 1979
Chapter 242, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 990, Statutes of 1976
Chapter 78, Statutes of 1975

Exhibit 3: Copies of Code Sections Cited

Education Code Section 68044
Education Code Section 68051
Education Code Section 68074
Education Code Section 68075
Education Code Section 68075.5
Education Code Section 68076
Education Code Section 68077
Education Code Section 68078
Education Code Section 68082
Education Code Section 68083
Education Code Section 68084
Education Code Section 68121
Education Code Section 68130.5
Education Code Section 76140

Exhibit 4: Title 5, California Code of Regulations,

Section 54002
Section 54010
Section 54012
Section 54020
Section 54022
Section 54024
Section 54030
Section 54032
Section 54041
Section 54042
Section 54045
Section 54045.5
Section 54046
Section 54050
Section 54060
Section 54070

Exhibit 5: "Revised Guidelines and Information"
"Exemption From Nonresident Tuition - May 2002"
Chancellor's Office of the California Community Colleges

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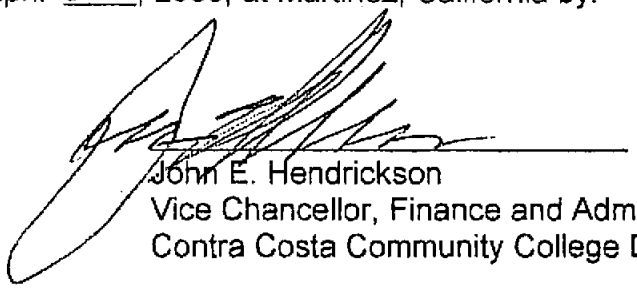
PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on April 30, 2003, at Martinez, California by:

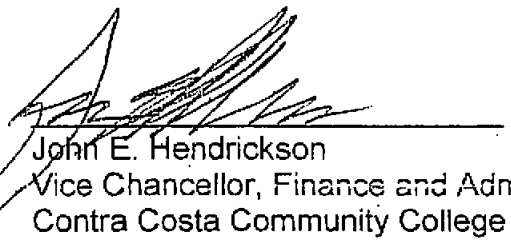


John E. Hendrickson
Vice Chancellor, Finance and Administration
Contra Costa Community College District

Voice: (925) 229-1000 Ext. 1214
Fax: (925) 370-7512

PART VI. APPOINTMENT OF REPRESENTATIVE

Contra Costa Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



4-30-03

John E. Hendrickson
Vice Chancellor, Finance and Administration
Contra Costa Community College District

Date

EXHIBIT 1
DECLARATION OF JEANETTE MOORE

DECLARATION OF JEANETTE MOORE

Contra Costa Community College District

Test Claim of Contra Costa Community College District

COSM No. _____

Chapter 540, Statutes of 2002
Chapter 814, Statutes of 2001
Chapter 949, Statutes of 2000
Chapter 571, Statutes of 2000
Chapter 952, Statutes of 1998
Chapter 438, Statutes of 1997
Chapter 758, Statutes of 1995
Chapter 389, Statutes of 1995
Chapter 8, Statutes of 1993
Chapter 1236, Statutes of 1992
Chapter 170, Statutes of 1992
Chapter 455, Statutes of 1991
Chapter 1372, Statutes of 1990
Chapter 985, Statutes of 1989
Chapter 900, Statutes of 1989
Chapter 424, Statutes of 1989
Chapter 753, Statutes of 1988
Chapter 317, Statutes of 1983
Chapter 1070, Statutes of 1982
Chapter 102, Statutes of 1981
Chapter 789, Statutes of 1980
Chapter 580, Statutes of 1980
Chapter 797, Statutes of 1979
Chapter 242, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 990, Statutes of 1976
Chapter 78, Statutes of 1975

Education Code Sections 68044, 68051, 68074, 68075, 68075.5, 68076, 68077, 68078, 68082, 68083, 68084, 68121, 68130.5 and 76140

Title 5, California Code of Regulations, Sections 54002, 54010, 54012, 54020, 54022, 54024, 54045, 54045.5, 54046, 54050, 54060 and 54070

Revised Guidelines and Information (May 2002)
"Exemption From Nonresident Tuition"
Chancellor of the California Community Colleges

Tuition Fee Waivers

I, Jeanette Moore, Director of Admissions and Records, Contra Costa Community College District, make the following declaration and statement.

In my capacity as Director of Admissions and Records, I am responsible for the enrollment of students and collection or waiver of student tuition fees. I am familiar with the provisions and requirements of the Education Code Sections, California Code of Regulations Sections and the Revised Guidelines and Information of the Chancellor set

forth above.

Those Education Code sections, regulations and executive orders require the State Center Community College District to:

A) Establishing and implementing policies and procedures, and periodically revising and updating those policies and procedures, to provide for the classification of students as residents or nonresidents, pursuant to Education Code Section 68044.

(1) Residence classification, or reclassification, for each student at the time applications for admissions are accepted and whenever a student has not been in attendance for more than one semester or quarter, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (a).

(2) Receiving and reviewing evidence supplied by students showing physical presence in California and intent to make California their home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, evidence of financial independence, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (b).

(3) Weighing the information received from each student and making a determination whether the student has clearly established that he or she has been a resident for one year prior to the residency

determination date, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (d).

(4) Verifying that residence questionnaires that have been submitted by the student under oath or penalty of perjury, pursuant to Title 5, California Code of Regulations, Section 54010, subdivision (e).

(5) Verifying that the student has been physically present in California for one year prior to the residence determination date, pursuant to Title 5, California Code of Regulations, Section 54022.

(6) For those students who are unable to establish a presumption of residency pursuant to either subdivision (b) or (c), requiring them to provide evidence of residency, such as: ownership of residential property or continuous occupancy of rented or leased property in California; registering to vote and voting in California; professional licensing in California; active membership in service or social clubs; presence of spouse, children or other close relatives in the state; showing a California address on a federal tax return; paying California income tax as a resident; possessing a California motor vehicle license plates; possessing a California driver's license; maintaining a permanent military address; establishing and maintaining active California bank accounts; and/or being the petitioner for a divorce in California, pursuant to Title 5, California

Code of Regulations, Section 54024, subdivision (d).

(7) If a student, or the parents of a minor student, relinquishes California residence, requiring evidence of one full year of physical presence coupled with one full year of demonstrated intent, pursuant to Title 5, California Code of Regulations, Section 54030.

(8) If a student previously classified as a nonresident seeks reclassification as a residence, requiring and verifying the student's financial independence, pursuant to Title 5, California Code of Regulations, Section 54032.

(9) Notifying each student of his or her resident classification not later than 14 calendar days after the beginning of the session for which the student has applied, or 14 calendar days after the student's application for admission, whichever is later, pursuant to Title 5, California Code of Regulations, Section 54060, subdivision (a).

B) Using residence questionnaires in making residence classifications, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (a). The questionnaire shall ask each student:

(1) Where the student has maintained his or her home for the past two years and whether the student has maintained voter registration or voted in another state, has been a petitioner for a divorce in another state, attended an out-of-state institution as a resident of that other

state and whether he or she has declared nonresidence for state income tax purposes, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (b).

(2) If the student is under age 19, where his or her parent has lived for the past two years and whether the parent has maintained voter registration or voted in another state, has been a petitioner for a divorce in another state, attended an out-of-state institution as a resident of that other state and whether he or she has declared nonresidence for state income tax purposes, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (c).

(3) When the student is under age 19, if the student or the parent has either maintained a home outside of California at any time during the past two years or maintained voter registration or voted in another state, or has been a petitioner for a divorce in another state, or attended an out-of-state institution as a resident of that other state, or whether he or she has declared nonresidence for state income tax purposes, the student shall be asked to supply additional evidence of intent to reside in California, such as ownership of residential property or continuous occupancy of rented or leased property in California; registering to vote and voting in California; professional licensing in California; active membership in

service or social clubs; presence of spouse, children or other close relatives in the state; showing a California address on a federal tax return; paying California income tax as a resident; possession of California motor vehicle license plates; possession of a California driver's license; maintaining a permanent military address; establishing and maintaining active California bank accounts; and/or being the petitioner for a divorce in California, pursuant to Title 5, California Code of Regulations, Section 54012, subdivision (d).

C) Granting or limiting residency classification for tuition purposes:

(1) For no more than one academic year for undergraduate students who are dependent children or spouses of a member of the armed forces of the United States stationed in California on active duty when thereafter transferred on military orders to a place outside of California, or thereafter retires from the armed forces, pursuant to Education Code Section 68074, and

(a) Requiring from those seeking an exemption as provided in paragraph (1), to obtain a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California, pursuant to Title 5, California Code of Regulations, Section 54041.

(b) Obtaining from those seeking an exemption, as provided in

paragraph (1), proof that they are still in their first year of current physical presence in California, pursuant to Title 5, California Code of Regulations, Section 54050.

(2) Limiting residency classification for tuition purposes for members of the armed forces of the United States stationed in this state on active duty for other than educational purposes to only undergraduates and for no more than one academic year, pursuant to Education Code Section 68075.

(a) Requiring from those seeking an exemption pursuant to paragraph (2), to obtain a statement from the student's commanding officer or personnel officer that the assignment to California is nor for educational purposes and evidence of the date of assignment to California, pursuant to Title 5, California Code of Regulations, Section 54042.

(b) Obtaining from those seeking an exemption, as provided in paragraph (2), proof that they are still in their first year of current physical presence in California, pursuant to Title 5, California Code of Regulations, Section 54050.

(3) Students who were members of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged, pursuant to Education Code

Section 68075.5.

(4) For students who have not been adult residents of California for more than one year and are either a dependent child of a California resident for more than one year prior to residence determination, or a student who has a parent who is a California resident for a minimum of one year and who has contributed court-ordered support for the student on a continuous basis, pursuant to Education Code Section 68076.

(5) For students who are graduates of any school located in California and operated by the United States Bureau of Indian Affairs including, but not limited to, the Sherman Indian High School, pursuant to Education Code Section 68077.

(6) For no more than one year to students holding valid emergency permits authorizing service in California public schools who are employed by a school district in a full-time position requiring certification qualifications to fulfill teacher credential requirements, pursuant to Education Code Section 68078, subdivision (b).

(a) For those students applying for resident status pursuant to paragraph (6), obtaining a statement from the student's employer showing full time employment in a public school, pursuant to Title 5, California Code

of Regulations, Section 54046, and

(b) Obtaining evidence that the student holds a credential and will enroll in courses necessary to obtain another type of credential, pursuant to Title 5, California Code of Regulations, Section 54046, or

(c) Obtaining evidence that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements, pursuant to Title 5, California Code of Regulations, Section 54046.

(7) For students who are native Americans if also attending a school administered by the Bureau of Indian Affairs located within the community college district, pursuant to Education Code Section 68082.

(8) For students who are amateur athletes in training at the United States Olympic Training Center in Chula Vista, pursuant to Education Code Section 68083.

(9) For students, and their dependent children, who are federal civil service employees if transferred to California as a result of a military mission realignment action that involves the relocation of at least 100 employees, pursuant to Education Code Section 68084.

(10) For alien students claiming they are not precluded from establishing domicile in the United States are required to show that they did not enter the United States illegally, that they did not enter under a visa which requires residency outside of the United States, and that they did not enter the United States under a visa which permits entry solely for some temporary purpose, pursuant to Title 5, California Code of Regulations, Section 54045, subdivision (b).

(11) For an alien precluded from establishing domicile in the United States, requiring evidence that he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service, pursuant to Title 5, California Code of Regulations, Section 54045, subdivision (c).

C) Exempting from the payment of nonresident tuition, students, other than nonimmigrant aliens, who meet the following requirements, pursuant to Education Code Section 68130.5, subdivision (a), Title 5, California Code of Regulations, Section 54045.5, subdivision (a) and Chancellor's Revised Guidelines and Information dated May 2002, paragraph 3:

(1) High school attendance in California for three or more years,

(2) Graduation from a California high school or attainment of the equivalent thereof,

(3) Registration as an entering student at, or current enrollment

at, the community college not earlier than the fall semester or quarter of the 2001-2002 academic year, and

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the community college stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as her or she is eligible to do so.

(5) Obtaining, from students applying for an exemption from the requirement to pay nonresident tuition, a completed questionnaire, on a form prescribed by the Chancellor, verifying their eligibility for the exemption, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (b) and the Chancellor's Revised Guidelines and Information dated May 2002, paragraphs 12, 13 and 14 and attachment four.

(6) Obtaining, from students applying for an exemption from the requirement to pay nonresident tuition, additional documentation or evidence, as necessary or when the district is in possession of conflicting information, to verify eligibility for the exemption, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (b) and

Chancellor's Revised Guidelines and Information dated May 2002, paragraph 17.

(7) Obtaining, from students without lawful immigration status applying for an exemption from the requirement to pay nonresident tuition, an affirmation by the student that he or she has filed an application to legalize his or her immigration status, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (c).

D) Exempting from the payment of all fees and tuition, undergraduate students who meet the following requirements, pursuant to Education Code Section 68121, subdivision (b)(2):

(1) They meet the financial need requirements of the Cal Grant A Program, and

(2) Until January 1, 2013, he or she is a dependent surviving spouse of an individual killed in the September 11, 2001, terrorist attacks and either he or she, or the individual killed, was a resident of California on September 11, 2001, or.

(3) Until he or she obtains the age of 30 years, for a dependent child of an individual killed in the September 11, 2001, terrorist attacks and either he or she, or the individual killed, was a resident of California on September 11, 2001, and

(4) When necessary verifying an individual's eligibility from the California Victim Compensation and Government Claims Board on a case-by-case basis.

E) Establishing and implementing policies and procedures, and from time to revising and updating those policies and procedures, for the calculation of the amount of nonresident tuition, the method of payment of nonresident tuition, and the method and amount of refunds of nonresident tuition, pursuant to Education Code Section 68051. This includes:

(1) Providing advance notice of nonresident tuition changes during the spring term before the fall term in which the changes will take effect, pursuant to Education Code Section 76140, subdivision (d).

(2) Adopting and implementing rules for refunds of fees collected in error, fees refundable due to a reduction of the education program, and/or fees refundable as a result of the student's reduction in units, pursuant to Title 5, California Code of Regulations, Section 54070. However, no refund of nonresident tuition paid for any term prior to January 1, 2002 is authorized, pursuant to Title 5, California Code of Regulations, Section 54045.5, subdivision (f).

(3) Refunding nonresident tuition collected when the student is subsequently determined to be eligible for the exemption, pursuant to Chancellor's Revised Guidelines and Information dated May

2002, paragraph 8.

(4) Seeking reimbursement from students for nonresident fees that have been waived when the original certification is subsequently determined to be false, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002 , paragraph 38.

F) Considering the student's original certified affidavit and other materials used by the district as Class 1, Permanent Records, and retaining them indefinitely, unless copied or reproduced as specified, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 20.

G) Participating in surveys conducted by the Chancellor's office concerning students receiving exemptions for nonresident tuition, when requested, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 40.

H) The loss of nonresident tuition fees when students are classified as residents for purposes tuition purposes, pursuant to Education Code Sections 58074, 68075.5, 68076, 68077, 68078(b), 68082, 68083, 68084, and California Code of Regulations, Section 54045, subdivisions (b) and (c).

I) The loss of nonresident tuition fees when nonresident students are exempted from the payment of nonresident tuition pursuant to Education

Code Section 68130.5 and California Code Regulations 54045.5.

It is estimated that Contra Costa Community College District has incurred $1000, or more, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001, through June 30, 2002, to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 7th day of May, 2003, at Martinez, California

Jeanette Moore
Director of Admissions and Records
Contra Costa Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 78

An act to amend Section 25505.8 of the Education Code, relating to community colleges.

[Approved by Governor May 16, 1975. Filed with Secretary of State May 16, 1975.]

SECTION 1. Section 25505.8 of the Education Code is amended to read:

25505.8. A district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee nonresidents who (a) enroll for six units or less or (b) are both citizens and residents of a foreign country. Any exemptions shall be made with regard to all nonresidents described in (a) or (b), and shall not be made on an individual basis.

A district may, with the approval of the Board of Governors of the California Community Colleges contract with a state, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

The nonresident tuition fee shall be paid in two equal installments at the beginning of each semester, or three equal installments at the beginning of each quarter and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of education as defined by the California Accounting Manual for students enrolled in grades 13 and 14.

Each governing board shall compute the amount per student enrolled in the district.

The amount per student enrolled shall be derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in grades 13 and 14. The same fee shall be charged irrespective of the type of class in which the student is enrolled.

The governing board of each community college district shall also adopt a per-unit tuition fee for nonresidents on less than a full-time basis by dividing the fee for full-time nonresidents by 30 (units) for colleges operating on the semester system and 45 (units) for colleges operating on the quarter system. The same per-unit rate shall be charged all nonresident students attending any summer sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the summer session ends.

A district shall report annually to the Board of Governors of the California Community Colleges the number of nonresidents enrolled for six units or less, the number of nonresidents enrolled for more than six units, and the total amount of fees collected from each category.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance, except that the provisions of this section which require annual reports to be filed with the Board of Governors of the California Community Colleges on the number of such students enrolled shall apply to such districts in the same manner as to any other district.

CHAPTER 990

An act to amend Section 25505.8 of the Education Code, relating to community colleges.

[Approved by Governor September 15, 1976. Filed with Secretary of State September 16, 1976.]

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

SECTION 1. Section 25505.8 of the Education Code is amended to read:

25505.8. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six units or less. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis. In the same manner as other nonresident students, pursuant to subdivision (c) of Section 17666.2, community college districts shall be precluded from computing average daily attendance of nonresident foreign students.

A district may, with the approval of the Board of Governors of the California Community Colleges contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

The nonresident tuition fee shall be paid in equal installments at the beginning of each term as determined by the governing board of the district and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of

education as defined by the California Accounting Manual for students enrolled in grades 13 and 14.

The district governing board shall establish the nonresident tuition on the basis of one of the following computations: (a) the amount per student enrolled, derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in grades 13 and 14, or (b) the statewide average current expenditure per unit of average daily attendance in grades 13 and 14 during the preceding fiscal year. The same fee shall be charged irrespective of the type of class in which the student is enrolled. Any loss in revenue generated by the nonresident tuition fee shall not be offset by additional state funding due to the loss of revenues derived therefrom.

The governing board of each community college district shall also adopt a per-unit tuition fee for nonresidents on less than a full-time basis by dividing the fee for full-time nonresidents by 30 (units) for colleges operating on the semester system, and 45 (units) for colleges operating on the quarter system. The same per-unit rate shall be charged all nonresident students attending any terms or sessions maintained by the community college outside of the instructional year. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

A district shall report annually to the Board of Governors of the California Community Colleges the number of nonresidents enrolled for six units or less, the number of nonresidents enrolled for more than six units, and the total amount of fees collected from each category.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance, except that the provisions of this section which require annual reports to be filed with the Board of Governors of the California Community Colleges on the number of such students enrolled shall apply to such districts in the same manner as to any other district.

CHAPTER 36

An act to amend Sections 40, 1042, 1330, 1891, 1904, 1908, 2104, 2502, 4200, 4210, 4321, 4364, 5012, 5016, 5018, 5204, 5454, 8203, 8210, 8211, 8212, 8240, 8242, 8245, 8246, 8248, 8250, 8250.1, 8251, 8252, 8254, 8321, 8326, 8327, 8329, 8330, 8360, 8361, 8362, 8363, 8364, 8365, 8366, 8367, 8368, 8369, 8383, 8395, 8500, 10101, 10103, 10104, 10106, 10601, 10602, 10603, 10604, 10606, 12516, 14002, 14003, 14020, 15104, 16035, 16040, 16044, 16057, 16058, 16063, 16192, 16250, 16310, 16343, 18383, 18535, 19422, 19423, 19424, 19510, 19511, 19512, 19515, 19521, 19522, 21107, 21108, 21110, 21111, 21112, 21180, 21183, 21189, 21192, 22112, 22114, 22122, 22127, 22142, 22401, 22716, 22802, 22809, 23006, 23100, 23108, 23401, 23506, 23702, 23703, 23704, 23800, 23803, 23804, 23811, 23900, 23903, 23909, 23910, 23918, 23919, 23920, 23921, 24100, 24200, 24203, 24600, 33332, 35041.5, 35101, 35174, 35214, 35300, 35330, 35511, 35512, 35515, 35518, 35704, 35705, 37220, 37228, 39002, 39140, 39143, 39149, 39210, 39214, 39227, 39230, 39321, 39363.5, 39440, 39602, 39651, 39674, 39830, 40000, 40013, 41015, 41020, 41201, 41301, 41372, 41601, 41700, 41718, 41761, 41762, 41840, 41856, 41857, 41859, 41863, 41886, 41888, 41915, 42238, 42244, 42245, 42603, 42631, 42633, 42635, 42636, 42639, 42643, 42831, 44008, 44009, 44228, 44263, 44274, 44335, 44346, 44853, 44909, 45023.5, 45057, 45203, 45205, 45207, 45250, 46010, 46111, 46300, 48011, 48200, 48265, 48412, 48414, 48938, 48980, 49061, 49063, 49065, 49068, 49069, 49070, 49075, 49076, 49077, 51226, 51767, 51872, 52002, 52012, 52015, 52113, 52309, 52315, 52317, 52321, 52324, 52372, 52500, 52506, 52517, 52570, 52612, 54002, 54006, 54123, 54125, 54665, 54666, 54669, 56336, 56601, 56717, 56811, 56829, 60014, 60101, 60201, 60202, 60204, 60222, 60223, 60261, 60640, 60643, 60664, 66602, 68014, 69273, 69274, 69511, 69532, 69536, 69538, 69565, 69566, 69582, 69583, 69584,

petition it shall determine whether all or only a part of the territory shall be transferred. If the board requires an election to be held it shall determine whether the election shall be held in the whole community college district from which the territory would be transferred or whether the election shall be held only in the territory proposed to be transferred. The county superintendent of schools shall call, hold, and conduct any election required by this section.

SEC. 292. Section 76066 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

76066. In schools or classes for adults, regional occupational centers or programs, or in elementary schools in which the student body is not organized, the governing board may appoint an employee or official to act as trustee for student body funds and to receive said funds in accordance with procedures established by the board. These funds shall be deposited in a bank or a savings and loan association, or both approved by the board and shall be expended subject to the approval of said appointed employee or official and also subject to such procedure as may be established by the board.

SEC. 293. Section 76140 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six units or less. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis. In the same manner as other nonresident students, community college districts shall be precluded from computing average daily attendance of nonresident foreign students.

A district may, with the approval of the Board of Governors of the California Community Colleges contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

The nonresident tuition fee shall be paid in equal installments at the beginning of each term as determined by the governing board of the district and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of education as defined by the California Accounting Manual for students enrolled in grades 13 and 14.

The district governing board shall establish the nonresident tuition

on the basis of one of the following computations: (a) the amount per student enrolled, derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in grades 13 and 14, or (b) the statewide average current expenditure per unit of average daily attendance in grades 13 and 14 during the preceding fiscal year. The same fee shall be charged irrespective of the type of class in which the student is enrolled. Any loss in revenue generated by the nonresident tuition fee shall not be offset by additional state funding due to the loss of revenues derived therefrom.

The governing board of each community college district shall also adopt a per-unit tuition fee for nonresidents on less than a full-time basis by dividing the fee for full-time nonresidents by 30 units for colleges operating on the semester system, and 45 units for colleges operating on the quarter system. The same per-unit rate shall be charged all nonresident students attending any terms or sessions maintained by the community college outside of the instructional year. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

A district shall report annually to the Board of Governors of the California Community Colleges the number of nonresidents enrolled for six units or less, the number of nonresidents enrolled for more than six units, and the total amount of fees collected from each category.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance, except that the provisions of this section which require annual reports to be filed with the Board of Governors of the California Community Colleges on the number of such students enrolled shall apply to such districts in the same manner as to any other district.

SEC. 294. Section 76143 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

76143. For purposes of the nonresident tuition fee, a community college district shall disregard the time during which a student living in the district resided outside the state, if:

(1) The change of residence to a place outside the state was due to a job transfer and was made at the request of the employer of the student or the employer of the student's spouse or, in the case of a student who resided with, and was a dependent of, the student's parents, the change of residence was made at the request of an employer of either of the student's parents.

(2) Such absence from the state was for a period of not more than four years.

(3) At the time of application for admission to a college maintained by the district, the student would qualify as a resident if the period of the student's absence from the state was disregarded.

A nonresident tuition fee shall not be charged to a student who meets each of the conditions specified in subdivisions (1) to (3),

incorporate the changes made in the Education Code, in 1976, into the Education Code as enacted by Chapter 1010 of the Statutes of 1976. It is not the intent of the Legislature to make any substantive change in the law.

SEC. 1136. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The new reorganized Education Code, enacted by Chapter 1010 of the Statutes of 1976, will become operative on April 30, 1977, which is long before the effective date of ordinary statutes enacted in 1977 in the 1977–78 Regular Session of the Legislature. Other 1976 education legislation was directed to the Education Code as enacted by Chapter 2 of the Statutes of 1959. This bill would adapt such other education legislation enacted in 1976 to the reorganized Education Code as enacted by Chapter 1010 of the Statutes of 1976. In order that statutory continuity may be maintained and that administrative confusion may be avoided, such adaptation must become operative on the operative date of the new Education Code. It is, therefore, necessary that this act take effect immediately as an urgency statute.

CHAPTER 242

An act to amend Sections 10550, 16084, 16320, 16323, 22603.3, 35146, 45259, 52302, 52343, 54483, 68130, 69642, 72122, 72332, 72340, 72425, 76001, 76002, 76004, 76403, 76425, 84500, and 87660 of the Education Code, to amend Sections 8203, 8330, 8367, 16044, 21189, 39002.5, 39602, 41201, 41856, 49063, 52327.5, 69532, 76140, 78452, 78601, 81165, 81602, 84520, 85233, 85235, 85237.5, 85243, 87009, and 89546 of the Education Code, as proposed by the 1977 Education Code Supplemental Act, to amend the heading of Article 6 (commencing with Section 76110), Chapter 1, Part 47 of, to amend and renumber the second Section 48607 of, to add Sections 39016, 39017, 39170.5, 41841.5, 52302.5, and 89758 to, to repeal Sections 72335 and 74370 of, and to repeal Chapter 21 (commencing with Section 17600) of Part 10 of, and to repeal and add Article 5 (commencing with Section 51260), Chapter 2 of Part 28 of, the Education Code, and to amend Section 41 of Chapter 1011 of Statutes of 1976, relating to education and recodification of the laws pertaining thereto, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 7, 1977. Filed with Secretary of State July 7, 1977.]

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

SECTION 1. Section 8203 of the Education Code, as proposed by the 1977 Education Code Supplemental Act, is amended to read:

8203. It is the intent of the Legislature that in providing child development programs the Superintendent of Public Instruction will give priority to children of families who qualify under applicable federal statutes or regulations as recipients of public assistance and other low-income and disadvantaged families. Federal reimbursement shall be claimed for any child receiving services under this division for whom federal funds are available.

It is further the intent of the Legislature to maximize the Department of Education's capacity to stimulate and coordinate resources, provide technical assistance, monitor program implementation, generate maximum federal reimbursement wherever possible for the federally eligible children, and to provide alternative funding from state and local agencies for those children for whom federal reimbursement may not be available.

SEC. 2. Section 8330 of the Education Code, as amended by the 1977 Education Code Supplemental Act, is amended to read:

8330. The county superintendent of schools maintaining a child development program may include in its budget the amount necessary to carry out its program pursuant to this chapter. The county board of supervisors shall levy a county tax necessary to raise such amount in only those school districts, or community college districts for which the county superintendent of schools is providing

concentrations of low-income children and with the lowest records of academic achievement. Funds not fully utilized in one designated area may be reallocated to the other designated areas. Upon the request of a school district, the Director of Compensatory Education may authorize funds to be used outside the designated areas to serve children from the designated areas.

SEC. 29. Section 68130 of the Education Code is amended to read:

68130. The governing boards and district governing boards may waive nonresident tuition in whole or in part pursuant to Sections 68123, 76140, 89705, and 89707.

SEC. 30. Section 69532 of the Education Code, as amended by the 1977 Education Code Supplemental Act, is amended to read:

69532. There shall be 23,062 new Cal Grant awards for first-time recipients for the 1977–1978 fiscal year and each year thereafter, except that new scholarships in subdivision (a) in excess of 4.25 percent of the number of high school graduates of the previous fiscal year, in subdivision (b) in excess of 5,375, and in subdivision (c) in excess of 1,062 shall not be awarded unless there are federal student financial aids funds available to the State Scholarship and Loan Commission in an amount necessary to fund such awards or unless the Legislature acts in the future to fund such awards. First priority for federal state student incentive grant funds shall be for students originally funded from state student incentive grant funds who are eligible for renewal. Such grants shall be allocated as follows:

(a) 14,900 awards for the 1977–1978 fiscal year, and each fiscal year thereafter, to be utilized for tuition and student fees pursuant to Section 69536.

(b) 6,825 awards for the 1977–1978 fiscal year and each fiscal year thereafter, to be utilized for tuition, student fees, and subsistence costs pursuant to Section 69538.

(c) 1,337 awards for the 1977–1978 fiscal year and each fiscal year thereafter, to be utilized for occupational or technical training pursuant to Sections 69539 through 69543.

SEC. 31. Section 69642 of the Education Code is amended to read:

69642. Definitions:

(a) "Board" means the Board of Governors of the California Community Colleges.

(b) "District" means any community college district in California that maintains one or more community colleges.

(c) "College" means a community college established by the governing board of a community college district authorized to provide community college instruction.

(d) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational or social development of a student and increase his potential for success in the college.

(e) "Extended opportunity services" means a program of

assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college.

SEC. 32. Section 72122 of the Education Code is amended to read:

72122. Notwithstanding the provisions of Section 72121 of this code and Section 54950 of the Government Code, the governing body of a community college district shall, unless a request by the parent has been made pursuant to this section, hold executive sessions if the board is considering the suspension of, or disciplinary action or any other action except expulsion in connection with any student of the community college district, if a public hearing upon such question would lead to the giving out of information concerning students which would be in violation of Article 5 (commencing with Section 76240) of Chapter 1.5 of Part 47 of this code.

Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the student is a minor, notify the student and his parent or guardian, or the student if the student is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the student, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters shall be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at such meeting that might be in conflict with the right to privacy of any student other than the student requesting the public meeting or on behalf of whom such meeting is requested, shall be in executive session. Whether the matter is considered at an executive session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

SEC. 33. Section 72332 of the Education Code is amended to read:

72332. The governing board of a community college district which establishes a police department may provide and maintain motor vehicles for the use of the police. Any vehicle, when operated in the performance of his duties by any member of the police department, is an authorized emergency vehicle and may be equipped and operated as such as provided by the Vehicle Code.

SEC. 34. Section 72335 of the Education Code is repealed.

SEC. 35. Section 72340 of the Education Code is amended to read:

72340. The governing board of a community college district, except a district having a city board of education, may, and upon a petition signed by a majority of the electors resident in the district

shall, call meetings of the qualified electors of the district for consultation in regard to any affairs in the district. A meeting so called shall be competent to instruct the governing board, and the board shall, in all cases, be bound by such instructions upon the following subjects:

(a) The location or change of location of the schoolhouse, if the proposal to instruct the board in regard to changing the location of the schoolhouse is passed by a vote of two-thirds of all the electors voting at the meeting upon the proposition.

(b) The use of the community college for other than school purposes, but in no case shall the community college be used for purposes which necessitate the removal of any school desks or other school furniture.

(c) The sale and purchase of school sites.

(d) The prosecution, settlement, or compromise of any litigation in which the district is engaged, or is likely to become engaged.

The meeting may vote money not exceeding one hundred dollars ($100) in any one year, for any of these purposes in addition to any amount which may be raised by the sale of district school property, and the insurance of property destroyed by fire, except that the proceeds of the insurance of the library and apparatus shall be paid into the library fund. All funds raised by the sale of school property may be disposed of by direction of a district meeting.

SEC. 36. Section 72425 of the Education Code is amended to read:

72425. (a) In any community college district in which the average daily attendance exceeds 60,000, and which is not located in a city and county, or in any community college district in which the average daily attendance exceeded 60,000 in the 1963–64 school year and was less than 60,000 in the 1972–73 school year or any subsequent school year, and which is not located in a city and county, the governing board may prescribe, as compensation for the services of each member of the board, the sum of seventy-five dollars ($75) for each meeting of the board actually attended, not to exceed seven hundred fifty dollars ($750) in any month. In any community college district in which the average daily attendance for the school year 1972–1973 was less than 60,000, except a district which also comes within the terms of the preceding sentence, but more than 25,000, each member of the governing board of the district may receive as compensation for his services not to exceed forty dollars ($40) for each meeting of the board actually attended, not to exceed three hundred dollars ($300) in any month. In any community college district in which the average daily attendance for the school year 1972–1973 was 25,000 or less but more than 10,000, each member of the governing board of the district may receive as compensation for his services not to exceed thirty dollars ($30) for each meeting of the board actually attended, but not to exceed two hundred dollars ($200) in any month. In any community college district in which the average daily attendance for the school year 1972–1973 was 10,000 or

less but more than 1,000, each member of the governing board of the district may receive as compensation for his services not to exceed twenty dollars ($20) for each meeting of the board actually attended, not to exceed one hundred twenty dollars ($120) in any month. In any community college district in which the average daily attendance for the 1972–1973 school year was 1,000 or less but more than 150, each member of the governing board of the district may receive as compensation for his services not to exceed ten dollars ($10) for each meeting of the board actually attended, but not to exceed sixty dollars ($60) in any month.

(b) The compensation of members of the governing board of a community college district newly organized or reorganized after June 30, 1973, shall be governed by subdivision (a). For such purposes the total average daily attendance in all of the community colleges of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the school year 1972–73.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and spread upon its minutes finds that at the time of the meeting he is performing services outside the meeting for the community college district. The compensation shall be a charge against the funds of the district.

SEC. 38. Section 74370 of the Education Code is repealed.

SEC. 39. Section 76001 of the Education Code is amended to read:

76001. The president of any community college may admit to the community college as a special part-time student any 11th- or 12th-grade high school student whose admission is recommended by his high school principal. A principal of a high school may recommend a high school student as a special part-time student pursuant to rules and regulations which may be adopted by the governing board of the district maintaining the high school. A principal of a high school shall not recommend a number of high school students in excess of 15 percent of the total number of 11th- and 12th-grade students enrolled in the high school at the time of recommendation.

The attendance of a student at community college as a special part-time student pursuant to this section is authorized attendance and the student shall receive credit for community college courses which he completes in the same manner as if he were a regularly enrolled community college student unless, upon agreement between the two districts, the student receives high school credit for the course completed.

Each special part-time student shall attend high school classes for at least the minimum schoolday.

SEC. 40. Section 76002 of the Education Code is amended to read:

76002. The president of any community college may admit to the

summer session of the community college as a special student any high school student who has completed the 11th grade and whose admission to summer session is recommended by the principal of the high school in which the student completed the 11th grade. A principal of a high school may recommend such a student as a special student pursuant to rules and regulations which may be adopted by the governing board of the district maintaining the high school. A principal of a high school shall not recommend a number of students who have completed the 11th grade in excess of 5 percent of the total number of students in the high school who have completed the 11th grade immediately prior to the time of recommendation.

The attendance of a student at community college as a special summer session student pursuant to this section shall be credited to the district maintaining the community college for the purposes of allowances and apportionments from the State School Fund, and the student shall receive credit for community college courses which he completes, in the same manner as if he were a regularly enrolled community college student.

Sections 76001 and 48800 to 48802, inclusive, do not apply to the special students authorized to be admitted to a community college summer session pursuant to this section.

SEC. 41. Section 76004 of the Education Code is amended to read:

76004. Any person, otherwise eligible for admission to any class or community college of a community college district of this state, whose parents are or are not citizens of the United States, whose actual and legal residence is in a foreign country adjacent to this state, and who regularly returns within a 24-hour period to said foreign country may be admitted to the class or community college of the district by the governing board of the district.

SEC. 42. The heading of Article 6 (commencing with Section 76110) of Chapter 1 of Part 47 of the Education Code is amended to read:

Article 6. Meals and Lodging for Students

SEC. 43. Section 76140 of the Education Code, as amended by the 1977 Education Code Supplemental Act, is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six units or less. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this

subdivision may be made on an individual basis. In the same manner as other nonresident students, community college districts shall be precluded from computing average daily attendance of nonresident foreign students.

A district may, with the approval of the Board of Governors of the California Community Colleges contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

The nonresident tuition fee shall be paid in equal installments at the beginning of each term as determined by the governing board of the district and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of education as defined by the California Accounting Manual for students enrolled in a community college.

The district governing board shall establish the nonresident tuition on the basis of one of the following computations: (a) the amount per student enrolled, derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in a community college, or (b) the statewide average current expenditure per unit of average daily attendance in a community college during the preceding fiscal year. The same fee shall be charged irrespective of the type of class in which the student is enrolled. Any loss in revenue generated by the nonresident tuition fee shall not be offset by additional state funding due to the loss of revenues derived therefrom.

The governing board of each community college district shall also adopt a per-unit tuition fee for nonresidents on less than a full-time basis by dividing the fee for full-time nonresidents by 30 (units) for colleges operating on the semester system, and 45 (units) for colleges operating on the quarter system. The same per-unit rate shall be charged all nonresident students attending any terms or sessions maintained by the community college outside of the instructional year. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

A district shall report annually to the Board of Governors of the California Community Colleges the number of nonresidents enrolled for six units or less, the number of nonresidents enrolled for more than six units, and the total amount of fees collected from each category.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance, except that the provisions of this section which require annual reports to be filed with the Board of Governors of the California Community Colleges on the number of such students enrolled shall apply to such districts in the same manner as to any other district.

CHAPTER 797

An act to amend Sections 1243, 1244, 1245, 1604, 1710, 4312, 4320, 8007, 8100, 14042, 15701, 15704, 15705, 15706, 15711, 15712, 15713, 15719, 15721, 15723, 15724, 15727, 15737, 15746, 15749, 16002, 16003, 16007, 16009, 16014, 16022, 16023, 16029, 16034, 16036, 16042, 16044, 16051, 16051.5, 16067, 16082, 16314, 16319, 16330.5, 16331, 16335, 16336, 66804, 71001, 71026, 71027, 71041, 71091, 71092, 72233, 72409, 72640, 74015, 76140, 76160, 76320, 76321, 78005, 78010, 78011, 78409, 78442, 78920, 79010, 79013, 81005, 81363, 81400, 81820, 81831, 81833, 84327, 84330, 84384, 84385, 85241, 85260, 87200, 87214, 87228, 87408, 87412, 87422, and 87768 of, to amend and renumber Section 85264 of, to add Sections 81800.1 and 81831.5 to, to repeal Sections 8035, 10405, 16055, 71029, 71030, 71031, 71032, 71035, 71036, 71037, 71043, 71065, 71067, 71074, 71077, 72293, 72305, 76310, 76332, 76342, 76442, 76455, 78220, 78221, 78270, 81004, 81101, 81102, 81145, 84032, 84321, 84323, 84326, 84333, 84341, 84503, 84532, 85261, 85262, 85263, 87216, 87270, 87294, 87332, 87425, 87433, 87434, 87710, and 87713 of, and to repeal Chapter 3 (commencing with Section 10200) of Part 7 of, Article 10 (commencing with Section 16380) of Chapter 8 of Part 10 of, Article 8 (commencing with Section 78310) of Chapter 2 of Part 48 of, Chapter 4 (commencing with Section 78600) of Part 48 of, Chapter 5 (commencing with Section 78700) of Part 48 of, Chapter 6 (commencing with Section 78800) of Part 48 of, Article 3 (commencing with Section 79140) of Chapter 9 of Part 48 of, Article 4 (commencing with Section 79150) of Chapter 9 of Part 48 of, Article 3 (commencing with Section 81050) of Chapter 1 of Part 49 of, Chapter 6 (commencing with Section 82100) of Part 49 of, Article 4 (commencing with Section 84560) of Chapter 4 of Part 50 of, Article 6 (commencing with Section 84781) of Chapter 5 of Part 50 of, Article 9 (commencing with Section 84810) of Chapter 5 of Part 50 of, Article 10 (commencing with Section 84830) of Chapter 5 of Part 50 of, Article 12 (commencing with Section 84860) of Chapter 5 of Part 50 of, and Article 9 (commencing with Section 87860) of Chapter 3 of Part 51 of, the Education Code, relating to community colleges.

[Approved by Governor September 19, 1979. Filed with Secretary of State September 19, 1979.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to update and technically clarify provisions of law which establish powers and duties of the Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges. This act repeals numerous Education Code provisions relating to the board of governors and the chancellor's office which are outdated or redundant. It also repeals certain Education Code provisions which were mistakenly made applicable

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

SEC. 77. Section 74015 of the Education Code is amended to read:

74015. Notwithstanding the provision of Section 74011, the Board of Governors of the California Community Colleges may grant an extension of time for submitting plans and recommendations upon request of the county committee on school district organization and the executive officer of the board of governors.

The Board of Governors of the California Community Colleges may grant a further extension of time for the submitting of plans and recommendations where such submission is its responsibility.

SEC. 78. Section 76140 of the Education Code is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six units or less. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis. In the same manner as other nonresident students, community college districts shall be precluded from computing average daily attendance of nonresident foreign students.

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

The nonresident tuition fee shall be paid in equal installments at the beginning of each term as determined by the governing board of the district and shall be set by the governing board of each community college district not later than January 1st of each year. The fee shall represent the amount per student enrolled in the district, which is expended by the district for the current costs of education as defined by the California Accounting Manual for students enrolled in a community college.

The district governing board shall establish the nonresident tuition on the basis of one of the following computations: (a) the amount per student enrolled, derived by dividing the current costs expended from funds from all sources during the preceding year by the average daily attendance during the same year in a community college, or

(b) the statewide average current expenditure per unit of average daily attendance in a community college during the preceding fiscal year. The same fee shall be charged irrespective of the type of class in which the student is enrolled. Any loss in revenue generated by the nonresident tuition fee shall not be offset by additional state funding due to the loss of revenues derived therefrom.

The governing board of each community college district shall also adopt a per-unit tuition fee for nonresidents on less than a full-time basis by dividing the fee for full-time nonresidents by 30 (units) for colleges operating on the semester system, and 45 (units) for colleges operating on the quarter system. The same per-unit rate shall be charged all nonresident students attending any terms or sessions maintained by the community college outside of the instructional year. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance.

SEC. 79. Section 76160 of the Education Code is amended to read:

76160. Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service with the armed forces of the United States, who resides in this state and more than ninety (90) miles from the nearest public community college attendance center where grades 13 and 14 are maintained, measured by the usual vehicular route between his home and such attendance center, may at his request attend grades 13 and 14 at any public community college in the state, whether or not his residence is in a district maintaining a community college. The governing board of the district maintaining such community college designated by the student shall admit the student provided he otherwise qualifies for admission.

The provisions of the preceding paragraph of this section shall be inapplicable to any student residing in a district maintaining a community college if such district maintains adequate dormitories or housing facilities or provides adequate transportation for such student between his home and the community college attendance center.

If the student resides in a district maintaining a community college, the district of the student's residence shall pay to the district of the student's attendance an amount on account of such attendance computed pursuant to Section 2100. The computation shall be made and other procedures shall be undertaken in accordance with such requirements as may be prescribed by the board of governors, by or under authority of the governing board of the community college district of attendance, and shall be approved by the county superintendent of schools having jurisdiction of such district with the certification of the amount owing to be transmitted by him to the district of the student's residence. The governing board of the

teaching position who has rendered service to the district for at least six consecutive years preceding the granting of the leave, but not more than one such leave of absence shall be granted in each six-year period. The governing board granting the leave of absence may prescribe the standards of service which shall entitle the employee to the leave of absence. No absence from the service of the district under a leave of absence, other than a leave of absence granted pursuant to Section 87767, granted by the governing board of the district shall be deemed a break in the continuity of service required by this section, and the period of such absence shall not be included as service in computing the six consecutive years of service required by this section. Service under a national recognized fellowship or foundation approved by the board of governors, for a period of not more than one year, for research, teaching or lecturing shall not be deemed a break in continuity of service, and the period of such absence shall be included in computing the six consecutive years of service required by this section.

SEC. 157. Article 9 (commencing with Section 87860) of Chapter 3 of Part 51 of the Education Code is repealed.

SEC. 158. No appropriation is made by this act, nor is any obligation created thereby, pursuant to Section 2231 or 2234 of the Revenue and Taxation Code. Moreover, no claim shall be considered with respect to this act by the State Board of Control pursuant to Section 905.2 of the Government Code or Section 2250 of the Revenue and Taxation Code, and the Department of Finance shall not review or report on this act pursuant to Section 2246 of the Revenue and Taxation Code.

CHAPTER 580

An act to amend Section 68074 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 17, 1980. Filed with Secretary of State July 18, 1980.]

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

SECTION 1. Section 68074 of the Education Code is amended to read:

68074. A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

Should that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) be thereafter transferred on military orders to a place outside this state where the member continues to serve in the armed forces of the United States or (2) be thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 2. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that this act may become operative as early as possible in the 1980–81 academic year, and so facilitate the orderly administration of student residency requirements, it is necessary that this act take effect immediately.

CHAPTER 789

An act to amend Section 76140 of the Education Code, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1980. Filed with Secretary of State July 28, 1980.]

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

SECTION 1. Section 76140 of the Education Code is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

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

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

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

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. Such fee may be paid in installments, as determined by the governing board of the district.

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year. However,

should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

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

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance.

SEC. 2. For the fall and spring semester of the 1980–81 academic year and for the fall, winter, and spring quarters of the 1980–81 academic year, the fee established by the governing board of a community college district prior to January 1, 1980, shall be increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for fiscal years 1979–80 and 1980–81.

SEC. 3. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to relieve the cost to the state and local taxpayer for the education of the nonresident student at the earliest possible time, it is necessary that this act become effective immediately.

CHAPTER 102

An act to amend Sections 8020, 8021, 8022, 8023, 8221, 17764, 41902, 48412, 49531, 49552, 68044, and 90500 of, and to add Chapter 4 (commencing with Section 59300) to Part 32 of, the Education Code, to amend Sections 12016, 12412.1, 13300, 13337, 13338, and 13339 of, to amend and repeal Section 13967 (as amended by Section 3 of Chapter 530 of the Statutes of 1980) of, to amend Sections 13967 (as added by Section 3.5 of chapter 530 of the Statutes of 1980), 16113,

and 68203 of, to add Sections 6517, 11712, and 11713 to, and to repeal Sections 12016, 13339 and 13967 (as amended by Section 3.1 of Chapter 530 of the Statutes of 1980) of the Government Code, to amend and repeal Sections 1505 (as amended by Section 157 of Chapter 676 of the Statutes of 1980), and 1505 (as amended by Section 157.5 of Chapter 676 of the Statutes of 1980) of, to amend Sections 1529 and 50740 of, to add Sections 1505, 1528.1, 1528.3, 1529.1, and 50740.7 to, to add Chapter 3.6 (commencing with Section 1597.50) to Division 2 of, and to repeal Section 1528.5 of, the Health and Safety Code, to amend Sections 7314, 7316, and 7721 of, and to add Section 7722 to, the Labor Code, to amend and repeal Sections 1464 (as amended by Section 1 of Chapter 1047 of the Statutes of 1980), 1464 (as amended by Section 2 of Chapter 1047 of the Statutes of 1980), and 1464 (as added by Section 3 of Chapter 1047 of the Statutes of 1980) of the Penal Code, to add Section 700.1 to the Probate Code, to add Section 25008 to the Public Resources Code, to amend Section 97.1 of the Revenue and Taxation Code, as added by Senate Bill No. 102 of the 1981–82 Regular Session, to amend Sections 406, 409, 411, 412, 413, 4201, 4227, 4250, 4327, 4357, and 4405 of the Water Code, to amend and repeal Sections 5075 (as amended by Section 5 of Chapter 1133 of the Statutes of 1979), to amend Sections 10020, 14005.12, 14005.8, 14005.9, 14017, 14023, 14050.1, 14132, 14171, 14172, 16700, 16701, 16702, 16703, 16704, 16705, 16707, 16708, 16710, 16712, and 16715 of, to add Sections 14009.5, 14016.2, 14016.3, 14016.4, 14016.9, 14017.5, 14018.2, 14101.7, 14105.1, 14109.5, 14124.80, 14124.81, 14124.82, 14124.83, 14124.84, 14124.85, 14124.86, 14124.87, 14124.88, 14134, 14134.2, 14172.5, and 16716 to, to add Chapter 8.8 (commencing with Section 14600) to Part 3 of Division 9 of, to repeal and add Sections 12306 and 14016 of, to repeal Sections 14018.4 and 16709 of, and to repeal Article 2 (commencing with Section 12525) of Chapter 4 of Part 3 of Division 9 of, Article 4 (commencing with Section 14640), and Article 5 (commencing with Section 14660) of Chapter 8.8 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 28, 1981. Filed with Secretary of State June 28, 1981.]

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

SECTION 1. Section 8020 of the Education Code is amended to read:

8020. There shall be created within the state, regional adult and vocational education councils, which shall have boundaries as may be determined by local school districts, and approved by the Superintendent of Public Instruction and the Chancellor of the California Community Colleges. Regional boundaries shall be coterminous with the boundaries of community college districts, and

year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Other factors which may be considered in determining California residency shall be defined by the governing boards. In addition, the adopted rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence. A district governing board may adopt rules and regulations which are not inconsistent with those adopted by the Board of Governors of the California Community Colleges.

SEC. 43. Section 90500 of the Education Code is amended to read:

90500. Notwithstanding Chapter 7 (commencing with Section 14850) of Part 5.5 of Division 3 of Title 2 of the Government Code, or any other provision of law to the contrary, printing and binding required by the trustees shall be performed by the Department of General Services in the form and manner, and at the prices of other state printing, and be paid for in like manner, except that binding of library volumes required by the trustees may be performed by binders selected on the basis of competitive bidding when the trustees determine that greater efficiency, quality, or economy will result. The trustees may fix the price for the sale of any bulletin or publication of the trustees or any state university or college, and may specify the class of persons or institutions that may receive copies of any publication free of charge.

Any county, or any school district, or community college district in this state may purchase from the trustees any publications of the trustees or any state university or college.

SEC. 45. Section 6517 is added to the Government Code, to read:

6517. (a) Notwithstanding any other provision of this chapter, the Department of General Services may enter into a joint powers agreement with any other public agency for the purpose of creating an agency or entity to finance the acquisition of land and the design and construction of state office buildings and parking facilities thereon. The joint powers agency or entity shall have the power to acquire land and construct office and parking facilities and to issue revenue bonds for these purposes.

(b) The department may lease state property to, and enter into a lease-purchase agreement with, the joint powers agency or entity on behalf of the State of California for terms not exceeding 50 years. The lease may contain any other terms and conditions which the

and parochial schools and to children receiving child development services. The State Board of Education shall adopt rules and regulations for the operation of lunch and breakfast programs in school districts. A child nutrition entity which receives state funds pursuant to this article, shall provide breakfasts and lunches in accordance with state and federal guidelines.

For purposes of this article, a nutritionally adequate breakfast or lunch is a breakfast or lunch which qualifies for reimbursement under the federal child nutrition program regulations.

State reimbursement for meals provided pursuant to this article shall be limited to meals provided to pupils who are within the relevant definitions and criteria in federal statutes and regulations which prescribe eligiblity for free and reduced price meals and children eligible for aid or services under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 16. Section 49552 of the Education Code is amended to read:

49552. For the purposes of this article, the State Board of Education shall adopt regulations which define needy children, within the permissible limitations precribed by the relevant federal statutes and regulations, as children who are within the category of children eligible for aid or services under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 17. Chapter 4 (commencing with Section 59300) is added to Part 32 of the Education Code, to read:

CHAPTER 4. FINANCE

Article 1. Local Contribution

59300. Notwithstanding any provision of this part to the contrary, the district of residence of the parent or guardian of any pupil attending a state-operated school pursuant to this part, excluding day pupils, shall pay the school of attendance for each pupil an amount equal to 10 percent of the average annual cost of education of pupils attending a state-operated school pursuant to this part.

SEC. 38. Section 68044 of the Education Code is amended to read:

68044. The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. The adopted rules and regulations shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency.

A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar

CHAPTER 1070

An act to amend Section 68044 of the Education Code, relating to postsecondary education.

[Approved by Governor September 14, 1982. Filed with Secretary of State September 15, 1982.]

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

SECTION 1. Section 68044 of the Education Code is amended to read:

68044. The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. The adopted rules and regulations shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency.

The adopted rules and regulations shall, beginning the 1983–84 school year, exempt nonresident students who have been appointed to serve as graduate student teaching assistants, graduate student research assistants, or graduate student teaching associates on any campus of the University of California or the California State University, and who have been employed on a 0.49 or more time basis, from the requirement of demonstrating his or her financial independence under this section for purposes of reclassification as a resident.

A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Other factors which may be considered in determining California residency shall be defined by the governing boards. In addition, the adopted rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence. A district governing board may adopt rules and regulations which are

not inconsistent with those adopted by the Board of Governors of the California Community Colleges.

CHAPTER 317

An act to amend Section 76140 of the Education Code, relating to community college districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 1983. Filed with Secretary of State July 19, 1983.]

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

SECTION 1. Section 76140 of the Education Code is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

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

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

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

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. Such fee may be paid in installments, as determined by the governing board of the district.

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the

preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

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

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance.

SEC. 2. Notwithstanding the February 1 deadline imposed by subdivision (b) of Section 76140 of the Education Code, the governing board of a community college district may increase the nonresident tuition fee established on or before February 1, 1983, for the 1983–84 fiscal year by setting a new fee for that fiscal year on or before August 1, 1983, pursuant to the other provisions of Section 76140.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit this act to become operative as early as possible in the 1983–84 fiscal year, and, by so doing, facilitate the orderly administration of the California Community Colleges, it is necessary that this act take effect immediately.

CHAPTER 753

An act to add Section 68076 to the Education Code, relating to education.

[Approved by Governor September 7, 1988. Filed with Secretary of State September 7, 1988.]

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

SECTION 1. Section 68076 is added to the Education Code, to read:

68076. (a) Notwithstanding Section 68062, a student who (1) has not been an adult resident of California for more than one year and (2) is the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

(b) No provision of this section shall apply to the University of California unless the Regents of the University of California adopt a resolution to that effect.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2

of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 424

An act to add Section 68077 to the Education Code, relating to postsecondary education.

[Approved by Governor September 13, 1989. Filed with Secretary of State September 13, 1989.]

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

SECTION 1. Section 68077 is added to the Education Code, to read:

68077. (a) Notwithstanding Section 68062, a student who is a graduate of any school located in California that is operated by the United States Bureau of Indian Affairs, including, but not limited to, the Sherman Indian High School, shall be entitled to resident classification. This exception shall continue so long as continous attendance is maintained by the student at an institution.

(b) No provision of this section shall apply to the University of California unless the Regents of the University of Calfornia adopt a resolution to that effect.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 900

An act to amend Sections 68074 and 68075 of, and to add Sections 68074.1 and 68075.1 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 68074 of the Education Code is amended to read:

68074. Except as otherwise provided in Section 68074.1, a student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

If that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the armed forces of the United States or (2) is thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 2. Section 68074.1 is added to the Education Code, to read:

68074.1. Notwithstanding Section 68074, a student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification at a campus of the California State University.

SEC. 3. Section 68075 of the Education Code is amended to read:

68075. Except as otherwise provided in Section 68075.1, a student

who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 4. Section 68075.1 is added to the Education Code, to read:

68075.1. Notwithstanding Section 68075, a student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification at a campus of the California State University.

CHAPTER 985

An act to amend Section 76140 of the Education Code, relating to education.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 76140 of the Education Code is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

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

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college

district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis.

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

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

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

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district, or (d) an amount not to exceed the amount which was expended by the district for the current expense of education but in no case less than the statewide average as set forth in subdivision (b) of this chapter. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

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

In adopting a tuition fee for nonresident students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section that require a mandatory fee for nonresidents shall not apply to any district that borders on another state and has fewer than 500 average daily attendance.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1372

An act to amend Sections 40, 41, 52, 92, 262.3, 1043, 1240, 1245, 1246, 1250, 1252, 1253, 1260, 1262, 1271, 1294, 1297, 1298, 1330, 1340, 1400, 1500, 1510, 1602, 1606, 1700, 1721, 1831, 1946, 4002, 4003, 7000, 8006, 8008, 8070, 8080, 8081, 8084, 8092, 8207, 8225, 8285.5, 8320, 8322, 8328, 8329, 8362, 8394, 8510, 8534, 8760, 8761, 8762, 8763, 8764, 8765, 8771, 10407, 10504, 10900, 10901, 10907, 10910, 10912, 10913, 10914, 11001, 12020, 12220, 12302, 12400, 12401, 12402, 12405, 14000, 15100, 15106, 15140, 15141, 15142, 15147, 15252, 15254, 15502, 15520, 15527, 15528, 15541, 15551, 15570, 15574, 15701, 15718, 15735, 15745, 15752, 15794, 16042, 16045, 16080, 16100, 16105, 16165, 16195, 16197, 16200, 16214, 17302, 17313, 17900, 17901, 17902, 17903, 18100, 18101, 18102, 18103, 18110, 18111, 18120, 18121, 18122, 18131, 18132, 18134, 18137, 18138, 18139, 18170, 18171, 18172, 19901, 22200, 22504, 24806, 24923, 24924, 32033, 32300, 32371, 32372, 33031, 33113, 33117, 33117.5, 35501, 39214.5, 39308, 39383, 39830, 41303, 41332, 44849, 44850, 44854, 51875.7, 52152, 52154, 52302.3, 52342, 52512, 62001, 66010, 66011, 66017, 66021, 66700, 68011, 68012, 68016, 68022, 68023, 68040, 68041, 68051, 68070, 68071, 68072, 68073, 68100, 69510, 69511.5, 69537, 69640, 69641, 69641.5, 69642, 69643, 69648, 69648.5, 69649, 69653, 69655, 71004, 71020, 71040, 71046, 71050, 71090, 71092, 71093, 72000, 72023.5, 72027, 72031, 72102, 72122, 72241, 72247, 72423, 72500, 72506, 72530, 74000, 74001, 74104, 74105, 74106, 74107, 74109, 74110, 74132, 74134, 74135, 74136, 74139, 74140, 74153, 74154, 74155, 74158, 74159, 74202, 74270, 74290, 76000, 76001, 76020, 76403, 76407, 78031, 78032, 78211.5, 78213, 78216, 78217, 78230, 78249, 78300, 78401, 78900, 78907, 79020, 79021, 79154, 79155, 81033, 81130, 81130.5, 81133, 81160, 81177, 81179, 81805, 81807, 81820, 81822, 81836, 81837, 81901, 81908, 81947, 82321, 82537, 82542, 84030, 84040.6, 84207, 84320, 84328, 84362, 84381, 84382, 84383, 84384, 84660, 84890, and 85230 of, to amend and repeal Section 32033 of, to add Sections 8323, 71025, 71028, 72013, 72014, 72015, 72243, 72249, 72253.3, 72253.5, 72253.7, 78034, 84001, 84700.3, 85266.5, 87448, and 88020.5 to, to add Chapter 1.5 (commencing with Section 78100) to Part 48 of, to repeal Sections 91, 265, 1255, 7001, 7002, 8085, 8329.5, 8511, 8513, 8514, 8515, 8516, 12210, 12404, 14020, 14021, 15000, 32200, 44971, 66101, 66102, 66200, 66700.5, 66902.5, 67007, 68010, 68013, 68019, 68020, 68021, 68090, 69644, 69645, 69646, 69647, 69648.7, 69657, 71005, 71027.5, 71033, 71034, 71038, 71039, 71041, 71042, 71047, 71048, 71095, 71096, 71097, 72001, 72002, 72020, 72021, 72023.7, 72024, 72025, 72028, 72029, 72030, 72032, 72033, 72035, 72120, 72125, 72126, 72132, 72200, 72202, 72203, 72204, 72208, 72231, 72237, 72241.5, 72244, 72247.1, 72248, 72255, 72256, 72408, 72409, 72412, 72413, 72419, 72419.5, 72420, 72421, 72422, 72531, 72532, 74010, 74011, 74271, 74282, 74283, 74291, 74292, 74293, 74294, 74295, 76001.5, 76002, 76006, 76021, 76142, 76160, 76400, 76405, 76408, 76409, 76470, 78001, 78002, 78003, 78004, 78005, 78006, 78007, 78010, 78011, 78012, 78220, 78221, 78222, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78250, 78270, 78272, 78301, 78302, 78303, 78304, 78305, 78402, 78403, 78405, 78407, 78409, 78412, 78440, 78440.5, 78441,

and the Regents of the University of California.

SEC. 210. Section 66017 of the Education Code is amended to read:

66017. The respective governing boards of the California Community Colleges, the California State University, or the University of California shall adopt appropriate procedures and designate appropriate persons to take disciplinary action against any student, member of the faculty, member of the support staff, or member of the administration of the community college, state college, or state university who, after a prompt hearing by a campus body, has been found to have willfully disrupted the orderly operation of the campus. Nothing in this section shall be construed to prohibit, where an immediate suspension is required in order to protect lives or property and to ensure the maintenance of order, interim suspension pending a hearing; provided that a reasonable opportunity be afforded the suspended person for a hearing within 10 days. The disciplinary action may include, but need not be limited to, suspension, dismissal, or expulsion. Sections 89538 to 89540, inclusive, shall be applicable to any state university or college employee dismissed pursuant to this section.

SEC. 211. Section 66021 of the Education Code is amended to read:

66021. It is the intent of the Legislature that the Budget Act for each fiscal year provide sufficient funding for financial aid for students with demonstrated financial need at the University of California, the California State University, and the California Community Colleges to offset increases in student charges at those institutions. The Legislature intends that funds for increased student financial aid be provided from sources other than student fees.

SEC. 213. Section 66101 of the Education Code is repealed.

SEC. 214. Section 66102 of the Education Code is repealed.

SEC. 215. Section 66200 of the Education Code is repealed.

SEC. 219. Section 66700 of the Education Code is amended to read:

66700. The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges.

SEC. 220. Section 66700.5 of the Education Code is repealed.

SEC. 222. Section 66902.5 of the Education Code is repealed.

SEC. 224. Section 67007 of the Education Code is repealed.

SEC. 225. Section 68010 of the Education Code is repealed.

SEC. 226. Section 68011 of the Education Code is amended to read:

68011. "Institution" means the University of California, the California State University, the California Maritime Academy, or a college of the California Community Colleges.

SEC. 227. Section 68012 of the Education Code is amended to read:

68012. (a) "District" means a community college district maintaining one or more community colleges.

(b) "District governing board" means the governing board of a district maintaining one or more community colleges.

(c) "Governing board" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Maritime Academy, or the Board of Governors of the California Community Colleges.

SEC. 228. Section 68013 of the Education Code is repealed.

SEC. 229. Section 68016 of the Education Code is amended to read:

68016. "Continuous attendance," as it refers to attendance at an institution, means a student claiming continuous attendance who has been enrolled full time, as determined by the governing board or district governing board, as appropriate, for a normal academic year at the institution since the beginning of the period for which continuous attendance is claimed. Nothing in this section shall require a student to attend summer sessions or other terms beyond the normal academic year in order to render his or her attendance "continuous."

SEC. 230. Section 68019 of the Education Code is repealed.

SEC. 231. Section 68020 of the Education Code is repealed.

SEC. 232. Section 68021 of the Education Code is repealed.

SEC. 233. Section 68022 of the Education Code is amended to read:

68022. "Resident classification" means classification as a resident, pursuant to Section 68017, at the University of California, the California State University, the California Maritime Academy, or a California community college.

SEC. 234. Section 68023 of the Education Code is amended to read:

68023. "Residence determination date" is a date or day established by the governing boards or district governing boards, as appropriate, for each semester, quarter, or term to determine a student's residence.

SEC. 235. Section 68040 of the Education Code is amended to read:

68040. Each student shall be classified as a resident or nonresident at the University of California, the California State University, or the California Maritime Academy or at a California community college.

SEC. 236. Section 68041 of the Education Code is amended to read:

68041. Each student enrolled or applying for admission to an institution shall provide the information and evidence of residence as deemed necessary by the governing board or district governing board, as appropriate, to determine his or her classification. An oath

or affirmation may be required in connection with taking testimony necessary to ascertain a student's classification. The determination of a student's classification shall be made in accordance with this part and the residence determination date for the semester, quarter, or term for which the student proposes to attend an institution.

SEC. 238. Section 68051 of the Education Code is amended to read:

68051. Unless otherwise provided by law, the governing board or district governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund.

SEC. 238.2. Section 68070 of the Education Code is amended to read:

68070. A student who remains in this state after his or her parent, who was theretofore domiciled in California for at least one year immediately prior to leaving and has, during the student's minority and within one year immediately prior to the residency determination date, established residence elsewhere, shall be entitled to resident classification until he or she has attained the age of majority and has resided in the state the minimum time necessary to become a resident, so long as, once enrolled, he or she maintains continuous attendance at an institution.

SEC. 238.4. Section 68071 of the Education Code is amended to read:

68071. A student who has been entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date, with the intention of acquiring a residence therein, shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 238.6. Section 68072 of the Education Code is amended to read:

68072. A student who has not been an adult for more than one year immediately preceding the residence determination date for the semester, quarter, or term for which he or she proposes to attend an institution shall have his or her immediate premajority derived California residence, if any, added to his or her postmajority residence to obtain the one year of California residence required by Section 68017.

SEC. 238.8. Section 68073 of the Education Code is amended to read:

68073. A student shall be entitled to resident classification if, immediately prior to enrolling at an institution, he or she has lived with and been under the continuous direct care and control of any adult or adults, other than a parent, for a period of not less than two years, provided that the adult or adults having control have been domiciled in California during the year immediately prior to the residence determination date. This exception shall continue until the student has attained the age of majority and has resided in the state

the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

SEC. 240. Section 68090 of the Education Code is repealed.

SEC. 240.3. Section 68100 of the Education Code is amended to read:

68100. (a) A district may classify a student as a district resident if he or she lives with a parent who earns a livelihood primarily by performing agricultural labor for hire in California and other states and the parent has performed this labor in this state for at least two months per year in each of the two preceding years, the parent lives within the district which maintains the community college attended by the student, and the parent claims the student as a dependent on his or her state or federal personal income tax returns if he or she has sufficient income to have a personal income tax liability.

(b) A district may also classify a student as a district resident if he or she earns a livelihood primarily by performing agricultural labor for hire in California and other states and he or she has performed this labor in this state for at least two months per year in each of the two preceding years.

(c) The Board of Governors of the California Community Colleges shall prescribe rules and regulations for the implementation of this section.

SEC. 243. Section 69510 of the Education Code is amended to read:

69510. The Student Aid Commission shall be composed of the following 15 members:

(a) One representative from public, proprietary, or nonprofit postsecondary schools located in California.

(b) One representative from a California independent college or university.

(c) One representative each from the University of California, the California State University, and the California Community Colleges.

(d) Two members each of whom shall be a student enrolled in a California postsecondary educational institution at the time of appointment, and shall be enrolled in a California postsecondary educational institution for the duration of the term.

(e) Three public members.

(f) One representative from a California secondary school.

(g) Two representatives appointed by the Senate Rules Committee.

(h) Two representatives appointed by the Speaker of the Assembly.

SEC. 244. Section 69511.5 of the Education Code is amended to read:

69511.5. (a) Notwithstanding Section 69511, the Governor shall appoint each student member of the Student Aid Commission pursuant to subdivision (d) of Section 69510 from the persons nominated in accordance with the provisions of subdivision (b).

(b) For each student member of the commission, the appropriate

Accordingly, the Board of Governors of the California Community Colleges shall continue its review of the Education Code related to the administration and operation of the California Community Colleges and shall recommend to the Legislature the amendment or repeal of those provisions affected by Chapter 973 of the Statutes of 1988 which have not been accomplished in this act.

SEC. 714.. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 455

An act to amend Section 68076 of the Education Code, relating to postsecondary education.

[Approved by Governor September 26, 1991. Filed with Secretary of State September 27, 1991.]

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

SECTION 1. Section 68076 of the Education Code is amended to read:

68076. (a) Notwithstanding Section 68062, a student who (1) has not been an adult resident of California for more than one year and (2) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

(b) No provision of this section shall apply to the University of California unless the Regents of the University of California adopt a

resolution to that effect.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 170

An act to amend Section 76140 of, and to add Section 76142 to, the Education Code, relating to community colleges.

[Approved by Governor July 11, 1992. Filed with Secretary of State July 13, 1992.]

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

SECTION 1. Section 76140 of the Education Code is amended to read:

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

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

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

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

(c) Nonresident students shall not be reported as full-time

equivalent students (FTES) for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

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

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

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

(g) In adopting a tuition fee for nonresident students, the

governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

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

(i) The provisions of this section that require a mandatory fee for nonresidents shall not apply to any district that borders on another state and has fewer than 500 FTES.

SEC. 2. Section 76142 is added to the Education Code, to read:

76142. A community college district may charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of (1) the actual cost of processing an application and other documentation required by the federal government, or (2) one hundred dollars ($100), which may be deducted from the tuition fee at the time of enrollment. No processing fee shall be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Section 76140 or who can demonstrate economic hardship. For purposes of this section, the governing board of each community college district that chooses to impose the fee authorized by this section shall adopt a definition of economic hardship that includes the financial circumstances of a person who is a victim of persecution or discrimination in the foreign country in which the applicant is a citizen and resident, or who is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Income/State Supplementary Program, or a general assistance program.

CHAPTER 1236

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

[Approved by Governor September 29, 1992. Filed with Secretary of State September 30, 1992.]

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

SECTION 1. Section 76140 of the Education Code, as amended by Chapter 170 of the Statutes of 1992, is amended to read:

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

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

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

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

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

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

(e) The fee established by the governing board pursuant to subdivision (d) shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (1) the amount that was expended by the district for the expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price

Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending in the district in the preceding fiscal year, (2) the expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending all districts during the preceding fiscal year, (3) an amount not to exceed the fee established by the governing board of any contiguous district, or (4) an amount not to exceed the amount that was expended by the district for the expense of education but in no case less than the statewide average as set forth in paragraph (2). However, if the district's preceding fiscal year FTES of all students attending in the district in noncredit courses is equal to or greater than 10 percent of the district's total FTES attending in the district, the district in calculating the amount in paragraph (1) may substitute instead the data for expense of education in grades 13 and 14 and FTES in grades 13 and 14 attending in the district.

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

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

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

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

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

(k) The attendance of nonresident students who are exempted pursuant to subdivision (i) or (j) from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes.

Any nonresident student reported as resident FTES for state apportionment purposes pursuant to subdivision (i) or (j) shall pay a fee of forty-two dollars ($42) per course unit. That fee is to be included in the FTES adjustments described in Section 72252 for purposes of computing apportionments.

CHAPTER 8

An act to amend Sections 66602, 66606, 66901, 66904, 67143, 67380, 68052, 68076, 68077, 69513, 69612.5, 70011, 71092, 76064, 76221, 76222, 87615, 89006, 89009, 89011, 89034, 89230, 89705, 92612, 92620, 94020, 94021, 94362, 94380, and 94385 of, to amend and renumber Section 89033.1 of, to amend and renumber the heading of Chapter 15.5 (commencing with Section 67380) of Part 40 of, the heading of Chapter 9 (commencing with Section 92690) of Part 57 of, the heading of Article 6.5 (commencing with Section 69612) of Chapter 2 of Part 42 of, the heading of Article 6.6 (commencing with Section 69618) of Chapter 2 of Part 42 of, the heading of Article 6.7 (commencing with Section 69619) of Chapter 2 of Part 42 of, the heading of Article 4 (commencing with Section 71090) of Chapter 1 of Part 44 of, the heading of Article 6 (commencing with Section 72330) of Chapter 3 of Part 45 of, and the heading of Article 1.5 (commencing with Section 78210) of Chapter 2 of Part 48 of, to add Sections 72029 and 72205 to, and to add Chapter 2 (commencing with Section 76300) to Part 47 of, to repeal Sections 66907, 67381, 67382, 69506.6, 69619.3, 69702, 76300, 76330, 87356, 89010, 89033, and 92583 of, to repeal Article 2 (commencing with Section 66910) of Chapter 11 of Part 40 of, Article 2.5 (commencing with Section 66914) of Chapter 11 of Part 40 of, Article 3 (commencing with Section 66915) of Chapter 11 of Part 40 of, Article 2 (commencing with Section 72241) of Chapter 3 of Part 45 of, Article 2.5 (commencing with Section

educational program and an important instructional experience for any student enrolled in the respective program may be considered instructionally related activities.

Instructionally related activities include, but are not limited to, all of the following:

(a) Intercollegiate athletics: costs that are necessary for a basic competitive program including equipment and supplies and scheduled travel, not provided by the state. Athletic grants should not be included.

(b) Radio, television, film: costs related to the provisions of basic "hands-on" experience not provided by the state. Purchase or rental of films as instructional aids shall not be included.

(c) Music and dance performance: costs to provide experience in individual and group performance, including recitals, before audiences and in settings sufficiently varied to familiarize students with the performance facet of the field.

(d) Drama and musical productions: basic support of theatrical and operatic activities sufficient to permit experience not only in actual performance, but in production, direction, set design, and other elements considered a part of professional training in these fields.

(e) Art exhibits: support for student art shows given in connection with degree programs.

(f) Publications: the costs to support and operate basic publication programs including a periodic newspaper and other laboratory experience basic to journalism and literary training. Additional publications designed primarily to inform or entertain shall not be included.

(g) Forensics: activities designed to provide experience in debate, public speaking, and related programs, including travel required for a competitive debate program.

(h) Other activities: activities associated with other instructional areas that are consistent with purposes included in the above may be added as they are identified.

Pursuant to this section and other provisions of this code, the Chancellor of the California State University shall develop a program of fiscal support and shall consult with the California State Student Association, the Academic Senate, and the Chancellor's Council of Presidents regarding the program.

This section shall not become operative unless funds are appropriated to meet the instructionally related needs of the campuses of the California State University.

SEC. 44. Section 89705 of the Education Code is amended to read:

89705. (a) Except as otherwise specially provided, an admission fee and rate of tuition fixed by the trustees shall be required of each nonresident student. The rate of tuition to be paid by each nonresident student, as defined in Section 68018, shall not be less than three hundred sixty dollars ($360) per year. The rate of tuition paid by each nonresident student who is a citizen and resident of a

foreign country and not a citizen of the United States, except as otherwise specifically provided, shall be fixed by the trustees and shall not be less than three hundred sixty dollars ($360) per year.

(b) The trustees may waive entirely, or reduce below the rate, or the minimum rate, fixed by this section, the tuition fee of a nonresident student who is a citizen and resident of a foreign country and not a citizen of the United States and who attends a state university or college under an agreement entered into by a governmental agency or a nonprofit corporation or organization with a similar agency, or corporation or association, domiciled in and organized under laws of a foreign country, where a principal purpose of the agreement is to encourage the exchange of students with the view of enhancing international good will and understanding. The trustees shall, in each instance, determine whether the conditions for this exemption from fees exist and may prescribe appropriate procedures to be complied with in obtaining the exemption.

SEC. 45. Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of the Education Code is repealed.

SEC. 46. Section 92583 of the Education Code is repealed.

SEC. 47. Section 92612 of the Education Code is amended to read:

92612. (a) Every individual shall have the right of access to all personal information, as defined in subdivision (a) of Section 1798.3 of the Civil Code, contained in any employee record that is maintained by the University of California that pertains to the individual.

(b) If information relating to the employment, advancement, renewal of appointment, or promotion of any individual in an academic senate position is received with the promise or understanding that the identity of the source of the information would be held in confidence, the university shall provide a copy of the text of that information to the individual to whom the information pertains with only the deletion of the name and affiliation, if any, of the source. "Information," as used in this subdivision, shall be limited to letters of recommendation, and reports of faculty review committees compiled for the purpose of determining the qualifications of members of the academic senate for employment, advancement, renewal of appointment, or promotion.

(c) Subdivisions (a) and (b) shall not apply to any personal information, as defined in subdivision (a) of Section 1798.3 of the Civil Code, received prior to January 1, 1979, with the promise or understanding that the identity of the source of the personal information would be held in confidence.

(d) Subdivisions (b) and (c) shall not be applicable to the University of California unless adopted by the regents.

SEC. 48. Section 92620 of the Education Code is amended to read:

92620. It is the intent of the Legislature that the Regents of the University of California shall eliminate all policies that detrimentally and unreasonably affect the employment status of females hired by

helping the victim deal with academic difficulties that may arise because of the victimization and its impact.

(7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents.

(8) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance alternatives.

(c) For the purposes of this section, "sexual assault" includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

SEC. 56. Chapter 4 (commencing with Section 99170) of Part 65 of the Education Code is repealed.

SEC. 56.5. Section 50330 of the Government Code is amended to read:

50330. Whether governed under general laws or charter, a local agency may donate and grant to the Regents of the University of California, the Trustees of the California State University, or the governing board of a community college district real property that it owns as a site for university buildings and grounds, state university buildings and grounds, or community college buildings and grounds, as the case may be. A local agency may expend funds, incur indebtedness, and issue bonds for the acquisition of a site within or without its boundaries for the purposes of this section.

SEC. 57. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the technical changes made by this act to take effect as soon as possible, it is necessary that this act take effect immediately.

BILL NUMBER: AB 723 CHAPTERED 08/11/95

CHAPTER 389
FILED WITH SECRETARY OF STATE AUGUST 11, 1995
APPROVED BY GOVERNOR AUGUST 10, 1995
PASSED THE SENATE JULY 29, 1995
PASSED THE ASSEMBLY MAY 25, 1995
AMENDED IN ASSEMBLY APRIL 17, 1995

INTRODUCED BY Assembly Member Baldwin

FEBRUARY 21, 1995

An act to add Section 68075.5 to the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 723, Baldwin. Postsecondary education: residence determination.

(1) Existing law prescribes certain rules for determining the place of residence of students. Under existing law, among other things, there can only be one residence and a person's residence can be changed only by the union of act and intent.

Under existing law, a student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

This bill would provide that a student who was a member of the armed forces of the United States stationed in this state on active duty for more than one year immediately prior to being discharged from the armed forces is entitled to resident classification for the length of time he or she lives in this state after being discharged up to the minimum time necessary to become a resident. The imposition of this new residency requirement on community college districts would create a state-mandated local program. Under existing law, these provisions would not apply to the University of California unless the Regents of the University of California make them applicable.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 68075.5 is added to the Education Code, to read:

68075.5. A student who was a member of the armed forces of the United States stationed in this state on active duty for more than

one year immediately prior to being discharged from the armed forces is entitled to resident classification for the length of time he or she lives in this state after being discharged up to the minimum time necessary to become a resident.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 446 CHAPTERED 10/11/95

CHAPTER 758
FILED WITH SECRETARY OF STATE OCTOBER 11, 1995
APPROVED BY GOVERNOR OCTOBER 10, 1995
PASSED THE SENATE SEPTEMBER 15, 1995
PASSED THE ASSEMBLY SEPTEMBER 15, 1995
AMENDED IN SENATE SEPTEMBER 7, 1995
AMENDED IN SENATE AUGUST 21, 1995
AMENDED IN SENATE JULY 19, 1995
AMENDED IN SENATE JUNE 12, 1995
AMENDED IN ASSEMBLY MARCH 27, 1995

INTRODUCED BY Assembly Committee on Higher Education

FEBRUARY 16, 1995

An act to amend, repeal, and add Sections 28, 1247.6, 2902, 4939, 4980.40, and 18629 of the Business and Professions Code, to amend, repeal, and add Section 1812.501 of the Civil Code, to amend, repeal, and add Section 10251 of the Corporations Code, to amend Sections 1510, 8152, 12050, 12052, 12053, 12400, 66010, 66015, 66022, 66023, 66202.5, 66743, 66753.5, 66903, 66903.3, 67385, 67500, 68011, 68133, 69509, 69613, 69615.2, 69634, 69900, 69908, 71000, 71020.5, 71090.5, 72023.5, 72411.5, 72425, 72620, 74270, 76000, 76140, 76210, 76225, 76231, 76232, 76240, 76245, 76330, 76330.1, 76355, 76370, 76380, 76391, 78015, 78217, 79121, 81033, 81130.5, 81141, 81162, 81177, 81314, 81345, 81348, 81401, 81530, 81551, 81661, 81821, 84362, 84501, 84751, 84810.5, 84820, 85223, 85233, 85267, 87008, 87017, 87411, 87413, 87414, 87418, 87419, 87420, 87423, 87448, 87451, 87453, 87460, 87464, 87468, 87469, 87470, 87483, 87487, 87603, 87604, 87622, 87672, 87673, 87675, 87676, 87677, 87701, 87715, 87732, 87734, 87740, 87744, 87745, 87746, 87762, 87764, 87768.5, 87770, 87774, 87780, 87781, 87787, 87790, 87832, 88000, 88001, 88002, 88003, 88004.5, 88010, 88013, 88014, 88015, 88020, 88023, 88024, 88030, 88033, 88036, 88050, 88051, 88053, 88054, 88057, 88063.5, 88076, 88083, 88086.5, 88092, 88093, 88097, 88098, 88104, 88105, 88107, 88120, 88125, 88126, 88128, 88132, 88136, 88164, 88165, 88167, 88168, 88185, 88191, 88192, 88194, 88195, 88196, 88197, 88198, 88203, 88205, 88205.5, 88206, 88207, 88227, 88245, 88263, 89002, 89036, 89046, 89047, 89300, 89310, 89537, 92620, 99100, 99103, 99105, and 99106 of, to amend the heading of Article 1 (commencing with Section 10000) of Chapter 1 of Part 7 of, to amend the heading of Article 13 (commencing with Section 69760) of Chapter 2 of Part 42 of, to amend and renumber the heading of Part 43.5 (commencing with Section 70900) of, to amend, repeal, and add Sections 8092, 8092.5, 44227, 49073, 66170, 69509.5, 94050, and 94355 of, to add Sections 67359.9, 84756, 84757, and 84758 to, to add an article heading immediately preceding Section 92020 of, to add Article 12 (commencing with Section 44390) to Chapter 2 of Part 25 of, Article 6 (commencing with Section 66060) and Article 7 (commencing with Section 66070) to Chapter 2 of Part 40 of, and Article 6 (commencing with Section 89250) to Chapter 2 of Part 55 of, to add Chapter 11.3 (commencing with Section 66940) to Part 40 of, and Chapter 7 (commencing with Section 94700) to Part 59 of, to repeal Sections 8081, 8084, 12051, 12061, 66207, 66211, 66605.5, 66723, 66744, 66903.4, 66903.6, 67321, 67386, 67392, 69507.7, 69534, 69534.2, 69534.5, 69534.6, 69639, 69766.1, 72410, 76320, 76392, 78217, 78310, 87012, 8701B, 87461, 87772, 87773, 87778, 88032, 88035.5, 88079.1, 89003, 89004, 89009, 89032, 89033, 89040, 89070.45, 89081, 89082, 89083, 89211, 89241, 89242, 89703, 92010, 92610, and

in this section shall deprive the governing board of the acquiring district from making reasonable reassignments of duties.

SEC. 88. Section 76000 of the Education Code is amended to read:

76000. The governing board of a community college district shall admit to the community college any California resident, and may admit any nonresident, possessing a high school diploma or the equivalent thereof.

The governing board may admit to the community college any apprentice, as defined in Section 3077 of the Labor Code, who, in the judgment of the governing board, is capable of profiting from the instruction offered.

The governing board may by rule determine whether there shall be admitted to the community college any other person who is over 18 years of age and who, in the judgment of the board, is capable of profiting from the instruction offered. If the governing board determines to admit other persons, those persons shall be admitted as provisional students and thereafter shall be required to comply with the rules and regulations prescribed by the board of governors pertaining to the scholastic achievement and other standards to be met by provisional or probationary students, as a condition to being readmitted in any succeeding semester. This paragraph shall not apply to persons in attendance in special classes and programs established for adults pursuant to Section 78401 or to any persons attending on a part-time basis only.

SEC. 89. Section 76140 of the Education Code is amended to read:

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

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

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

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

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

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

(e) The fee established by the governing board pursuant to subdivision (d) shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (1) the amount that was expended by the district for the expense of education as defined by the California Community College Budget and

Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending in the district in the preceding fiscal year, (2) the expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending all districts during the preceding fiscal year, (3) an amount not to exceed the fee established by the governing board of any contiguous district, or (4) an amount not to exceed the amount that was expended by the district for the expense of education, but in no case less than the statewide average as set forth in paragraph (2). However, if for the district's preceding fiscal year FTES of all students attending in the district in noncredit courses is equal to, or greater than, 10 percent of the district's total FTES attending in the district, the district, in calculating the amount in paragraph (1), may substitute, instead, the data for expense of education in grades 13 and 14 and FTES in grades 13 and 14 attending in the district.

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

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

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

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

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

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

SEC. 90. Section 76210 of the Education Code is amended to read:

76210. As used in this chapter, the following definitions shall

adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 293.5. Section 633 is added to the Unemployment Insurance Code, to read:

633. (a) For purposes of coverage under Part 2 (commencing with Section 2601) of Division 1, "employment" does not include services performed as an intermittent or adjunct instructor at a postsecondary educational institution which meets the requirements of Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code if the intermittent or adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall become operative on January 1, 1997.

SEC. 294. Section 282 of this act shall become operative on January 1, 1997.

SEC. 295. (a) Except as provided in subdivision (b), any section of any act enacted by the Legislature during the 1995 calendar year that takes effect on or before January 1, 1996, and that amends, amends and renumbers, adds, repeals and adds, or repeals a provision amended, repealed, or added by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

(b) Subdivision (a) does not apply to any of the following:

(1) Section 2902 of the Business and Professions Code, as amended by Chapter 279 of the Statutes of 1995.

(2) Section 4980.40 of the Business and Professions Code, as amended by Chapter 327 of the Statutes of 1995.

(3) Section 72023.5 of the Education Code, as amended by Chapter 82 of the Statutes of 1995.

BILL NUMBER: AB 1317 CHAPTERED 09/22/97

CHAPTER 438
FILED WITH SECRETARY OF STATE SEPTEMBER 22, 1997
APPROVED BY GOVERNOR SEPTEMBER 21, 1997
PASSED THE ASSEMBLY AUGUST 28, 1997
PASSED THE SENATE AUGUST 7, 1997
AMENDED IN SENATE JULY 25, 1997
AMENDED IN ASSEMBLY MAY 1, 1997

INTRODUCED BY Assembly Member Ducheny
(Coauthors: Assembly Members Baldwin and Davis)
(Coauthor: Senator Alpert)

FEBRUARY 28, 1997

An act to add Section 68083 to the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1317, Ducheny. Postsecondary education: resident classification.

(1) Existing law establishes uniform student resident requirements for purposes of ascertaining the amount of fees to be paid by students at public postsecondary educational institutions. Existing law entitles certain students to resident classification notwithstanding certain rules used to determine the place of residence. These provisions do not apply to the University of California unless the Regents of the University of California, by resolution, make them applicable.

This bill would entitle any amateur student athlete, as defined, in training at the United States Olympic Training Center in Chula Vista to resident classification for tuition purposes until the student athlete has resided in the state the minimum time necessary to become a resident. Under provisions of existing law summarized above, this provision would not apply to the University of California unless the regents, by resolution, make it applicable. To the extent the bill would require community colleges to change practices or procedures with respect to determining residency, the bill would impose a state-mandated local program.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 68083 is added to the Education Code, to read:

68083. (a) Any amateur student athlete in training at the United States Olympic Training Center in Chula Vista is entitled to resident

classification for tuition purposes until he or she has resided in the state the minimum time necessary to become a resident.

(b) "Amateur student athlete," for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

MILITARY—DEFENSE RETENTION GRANT PROGRAM—ASSISTANCE

CHAPTER 952

A.B. No. 639

AN ACT to add Section 68084 to the Education Code, to amend Sections 15325 and 15346.1 of, and to add Section 15346.12 to, the Government Code, and to add and repeal Section 33334.27 of the Health and Safety Code, relating to defense conversion, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 639, Alby. Defense conversion.

(1) Existing law classifies students as residents or nonresidents for purposes of paying fees at postsecondary educational institutions.

This bill would entitle a student and his or her parent to resident classification if the student's parent is a federal civil service employee who has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees.

(2) Under existing law, the Trade and Commerce Agency consists of specified offices and the California State World Trade Commission.

This bill would provide that the work of the agency includes the Office of Military Base Retention. The bill would also state the intent of the Legislature that the state role in military base reuse, conversion, and retention be consolidated in the agency.

(3) Existing law requires the council to provide a central clearinghouse for all base reuse, community assistance and training funding, regulations, application procedures, defense conversion funding, and input and information from businesses, industry representatives, labor, local government, and communities.

The bill would require the Trade and Commerce Agency to establish a Defense Retention Grant Program to assist affected communities with grants at specified levels.

(4) Existing law, known as the Community Redevelopment Law, authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined, in areas of those communities known as project areas. The Community Redevelopment Law requires that not less than 20% of tax increment funds that are allocated to the agency be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined, to persons and families of low or moderate income, as defined, and very low income households, as defined, unless a finding is made by the legislative body of the community, as specified. Existing law generally restricts the authority of a redevelopment agency to use moneys in its Low and Moderate Income Housing Fund outside the agency's territorial jurisdiction.

This bill would express various findings and declarations of the Legislature with regard to the need for the retention of the Travis Air Force Base within the County of Solano. The bill would authorize the redevelopment agencies for the County of Solano and the Cities of Fairfield, Suisun, and Vacaville to expend their tax increment funds, including those moneys deposited in their low- and moderate-income housing funds, as specified, outside their territorial jurisdictions, subject to prescribed findings, conditions and limitations. This bill would provide that these funds may be used, as specified, to develop housing in Fairfield, Suisun, or Vacaville, and to implement the Travis Air Force Base Retention Program through the formation of a separate joint powers entity, as specified. The bill would declare that the use of tax-increment funds for the purposes specified in these provisions shall be conclusively

deemed to be a benefit to the project area in which the funds were generated. The bill would repeal those provisions on January 1, 2001, except as specified.

(5) The California Constitution provides that a local or special statute is invalid in any case if a general statute can be made applicable.

This bill would declare that, due to the unique circumstances within the County of Solano and the Cities of Fairfield, Suisun, and Vacaville relating to the issue of the retention of the Travis Air Force Base that the bill is intended to remedy, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

(6) The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. This act shall be known and may be cited as the Defense Conversion, Reuse, and Retention Omnibus Act.

SEC. 2. Since the first base realignment and closure action by the federal government in 1988, this state has suffered the closure or major realignment of 29 military facilities reflecting a loss of over 500,000 direct and indirect jobs. In addition to the immediate economic effect of closure on a community, complex and burdensome federal and state requirements severely delay timely transfer of the property and its conversion to a viable economic entity. Action is required to directly assist communities in acquiring real property from the federal government. Similar assistance is required to assist affected communities' private sector partners in those cases where a community cannot afford or chooses to not acquire the property directly. In every situation, action is required to assist communities and state agencies in meeting the myriad of regulatory requirements of property disposal in a timely and nonconfrontational manner. Thirty-six military facilities remain open in this state and affirmative action is required to ensure that this state has a strategy to retain and grow these facilities in preparation for an inevitable future round of base realignments and closures. An important and previously undefined state role exists to assist communities in both closure and retention efforts. This act addresses that role and provides a needed state focus for reuse, conversion, and retention efforts in this state.

SEC. 3. Section 68084 is added to the Education Code, to read:

68084. A parent who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification at the California State University, the University of California, or a California community college if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education. The Trade and Commerce Agency shall certify qualifying military mission realignment actions under this section and provide this information to the California Community Colleges, the California State University, and the University of California.

SEC. 4. Section 15325 of the Government Code is amended to read:

15325. The work of the agency shall be divided into at least the following:

(a) The Office of Economic Research.

(b) The Office of Local Development.

(c) The Office of Business Development.

(d) The Office of Tourism.

(e) The Office of Small Business.

(f) The Film Office.

(g) The Office of Marketing and Communications.

(h) The Office of Strategic Technology.

(i) The Office of Foreign Investment.

(l) The joint powers agency established pursuant to this section shall require, as a condition precedent to the expenditure of any tax-increment moneys to carry out the Travis Air Force Base Retention Program, that the real property on which the housing is developed pursuant to that program shall be burdened with covenants running with the land for the period and with the substance required by Section 33334.3. The joint powers agency shall also require that these covenants include a mechanism that shall ensure the continued availability of the dwelling units for very low or low-income persons and families for the period required by Section 33334.3 in the event the Travis Air Force Base relocates or, for any other reason, no longer uses these housing units, or, in the absence of this continued availability, implements a procedure that protects the joint powers agency's investment of moneys from Low and Moderate Income Housing Funds and provides for the pro rata return of the sales proceeds to the Low and Moderate Income Housing Funds of those agencies expending these funds to carry out the Travis Air Force Base Retention Program.

(m) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2001, deletes or extends that date, or unless tax-increment moneys have, prior to that date, been received by the joint powers agency, in which case the date of repeal of this section shall be extended until the time that the joint powers agency shall expend these funds in accordance with this section. This repeal shall not affect any contract or covenant which shall have been entered into prior to January 1, 2001, to implement this section, and all contracts and covenants shall continue after the repeal date in full force and effect in accordance with their terms.

SEC. 8. The Legislature finds and declares that, because of the unique circumstances applicable only to the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville relating to the issue of the retention of the Travis Air Force Base, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that areas of this state that have been negatively impacted due to defense base closures and reductions are able to benefit from the programs implemented by this act, it is necessary that this act take effect immediately.

POSTSECONDARY EDUCATION—STUDENT RESIDENCY REQUIREMENTS

CHAPTER 571

A.B. No. 1346

AN ACT to amend Sections 68074 and 68075 of, and to repeal Sections 68074.1 and 68075.1 of, the Education Code, relating to public postsecondary education.

[Filed with Secretary of State September 23, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1346, Runner. Public postsecondary education: resident classification.

(1) Existing law establishes uniform student residency requirements for purposes of ascertaining the amount of fees to be paid by students. Existing law entitles a student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty to resident classification at the California Community Colleges until he or she has resided in the state the minimum time necessary to become a resident. Existing law entitles these students to resident classification at the California State University indefinitely.

Existing law also entitles a student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to a state-supported institution of higher education, to resident classification at the California State University until he or she has resided in the state the minimum time necessary to become a resident. Existing law also entitles these students to resident classification at any California community college campus.

This bill would entitle undergraduate students in these categories to resident classification, for the purposes of determining the amount of tuition and fees, indefinitely by deleting the requirement that these exceptions continue only until the student has resided in the state the minimum time necessary to become a resident. As to students in these categories seeking graduate degrees, the bill would entitle them to resident classification, for the purposes of determining the amount of tuition and fees, for no more than one academic year, as prescribed. To the extent that the bill would require community college districts to change their practices with respect to determining residency, the bill would impose a state-mandated local program. The bill would also make related changes.

The bill would request the Regents of the University of California to establish the same residency requirements as those established by this bill for students enrolled at the University of California.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

The bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 68074 of the Education Code is amended to read:

68074. * * * (a)(1) An undergraduate student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification * * * only for the purpose of determining the amount of tuition and fees.

(2) A student seeking a graduate degree who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one academic year, and shall thereafter be subject to Article 5 (commencing with Section 68060).

(b) If that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the armed forces of the United States, or (2) is thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 2. Section 68074.1 of the Education Code is repealed.

SEC. 3. Section 68075 of the Education Code is amended to read:

68075. * * * (a) An undergraduate student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to a state-supported institution of higher education, is entitled to resident classification * * * only for the purpose of determining the amount of tuition and fees.

(b) A student seeking a graduate degree who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to a state-supported institution of higher education, shall be entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one academic year, and shall thereafter be subject to Article 5 (commencing with Section 68060).

SEC. 4. Section 68075.1 of the Education Code is repealed.

SEC. 5. The Legislature hereby requests the Regents of the University of California to establish the same residency classifications for students enrolled at the University of California as those enacted by this act.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

POSTSECONDARY EDUCATION—STUDENT RESIDENCY REQUIREMENTS—TUITION

CHAPTER 949

A.B. No. 632

AN ACT to amend Section 68078 of the Education Code, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 632, Romero. Public postsecondary education: student residency requirements.

Existing law establishes the segments of public postsecondary education in the state, including the University of California, the California State University, and the California Community Colleges. Existing law prescribes requirements for the classification of the residency of the students at public institutions of postsecondary education, and generally requires that students who are classified as nonresidents of the state pay nonresident tuition.

This bill would require that, notwithstanding any other provision of law, a student holding an emergency permit authorizing service in the public schools of the state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year, as prescribed.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 68078 of the Education Code is amended to read:

68078. (a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution * * * is entitled to resident classification if that student meets any of the following requirements:

* * * (1) He or she holds a provisional credential and * * * is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

* * * (2) He or she holds a credential issued pursuant to Section 44250 and * * * is enrolled at an institution in courses necessary to fulfill credential requirements.

* * * (3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259.

(b) Notwithstanding any other provision of law, a student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year. Thereafter, the student shall be subject to Article 5 (commencing with Section 68060).

(c) This section shall not be construed to affect the admissions policies of any teacher preparation program.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the serious shortage of credentialed teachers in this state as soon as possible, it is necessary that this act take effect immediately.

POSTSECONDARY EDUCATION—NONRESIDENTS—TUITION

CHAPTER 814

A.B. No. 540

AN ACT to add Section 68130.5 to the Education Code, relating to public postsecondary education.

[Filed with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 540, Firebaugh. Public postsecondary education: exemption from nonresident tuition.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state. Existing law authorizes community college districts to admit, and charge a tuition fee for, nonresident students in accordance with specified criteria.

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

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

This bill would require that a person, other than a nonimmigrant alien as defined, who has attended high school in California for 3 or more years, who has graduated from a California high school or attained the equivalent thereof, who has registered at or attends an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year, and who, if he or she is an alien without lawful immigration status, has filed an affidavit as specified, be exempted from paying nonresident tuition at the California Community Colleges and the California State University.

The bill would authorize a student exempt from nonresident tuition under the bill to be reported by a community college district as a full-time student for apportionment purposes. The bill would require student information obtained in the implementation of the bill to be confidential.

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001–02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

(5) This act, as enacted during the 2001–02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

(b) It is the intent of the Legislature that:

(1) A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit interpreting Section 68130.5 of the Education Code, as added by this act during the 2001–02 Regular Session, or any lawsuit interpreting similar requirements adopted by the Regents of the University of California pursuant to Section 68134 of the Education Code.

(2) This act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act.

SEC. 2. Section 68130.5 is added to the Education Code, to read:

68130.5. Notwithstanding any other provision of law:

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student 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.

COLLEGES AND UNIVERSITIES—TUITION—DEATH IN LINE OF DUTY

CHAPTER 450

A.B. No. 1746

AN ACT to amend Section 76300 of, and to add Sections 68120.5 and 68121 to, the Education Code, relating to postsecondary education.

[Filed with Secretary of State September 10, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1746, Liu. Postsecondary education: tuition and fees.

(1) Existing law requires the Regents of the University of California, the Board of Directors of the Hastings College of the Law, and the Trustees of the California State University to excuse the mandatory systemwide tuition and fees of any surviving spouse or surviving child, natural or adopted, of a deceased person who was a resident of the state, who was employed by a public agency, as defined, whose principal duties consisted of active law enforcement service or active fire suppression and prevention, and who was killed in the performance of active law enforcement or active fire suppression and prevention duties, and, until January 1, 2004, these provisions also apply to the surviving spouse or surviving child of a person who died while performing these duties, and who was employed as a contractor, or

as an employee of a contractor, performing services for a public agency, as defined. This provision is applicable to the Regents of the University of California only if the regents, by resolution, make it applicable.

This bill would require any determination of eligibility under those provisions to be consistent with any findings of the Workers' Compensation Appeals Board, using the same procedures as in worker's compensation hearings, as to whether the death of the described person was industrial.

(2) Existing law requires the Regents of the University of California, the Board of Directors of the Hastings College of the Law, the Trustees of the California State University, and the governing board of each community college district to collect fees from students attending those postsecondary education institutions. This provision is applicable to the Regents of the University of California only if the regents, by resolution, make it applicable.

This bill would prohibit the regents, the trustees, and the governing board of each community college district from collecting any fees or tuition of any kind from any student in an undergraduate program who is the surviving dependent, as defined, of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if the dependent meets the financial need requirements of the Cal Grant A Program and the dependent was a resident of California on September 11, 2001, or if the individual killed in the attacks was a resident of California on that date. The bill would require the California Victim Compensation and Government Claims Board to identify all persons who are eligible for tuition and fee waivers pursuant to the bill, to notify these persons or their parents or guardians of their eligibility, and if requested by the public segments of postsecondary education in the state, on a case-by-case basis, to confirm the eligibility of persons requesting the waiver of tuition and fees. This prohibition would apply to the University of California only if the regents, by resolution, make it applicable.

(3) Existing law also prohibits the Regents of the University of California, the Board of Directors of the Hastings College of the Law, and the Trustees of the California State University from requiring or collecting any statewide fees or tuition from any surviving spouse or child, natural or adopted, of any deceased person who was killed in the performance of active law enforcement or active fire suppression and prevention duties or who died as a result of an accident or injury incurred in the performance of those duties, if that deceased person was a resident of the state, had the principal duty of law enforcement service or fire suppression or prevention, and was employed by a public agency, as defined. This provision is applicable to the Regents of the University of California only if the regents, by resolution, make it applicable.

This bill would expand that prohibition by requiring the governing board of each community college district to waive fee requirements for any surviving dependent, as defined, of any person meeting those requirements. The bill would add similar waiver requirements for any student in an undergraduate program who is a dependent as described in (2).

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

SECTION 1. Section 68120.5 of the Education Code is added to read:

68120.5. Any determination of eligibility pursuant to Section 68120 shall be consistent with any findings of the Workers' Compensation Appeals Board, using the same procedures as in workers' compensation hearings, as to whether the death of the person described under subdivision (a) of that section was industrial.

SEC. 2. Section 68121 is added to the Education Code, to read:

68121. (a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required or collected by the Regents of the University of California or the Trustees of the California State University, from a student who is in an undergraduate program and who is the surviving dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The surviving dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(b)(1) The California Victim Compensation and Government Claims Board shall identify all persons who are eligible for tuition and fee waivers pursuant to this section or subdivision (j) of Section 76300. That board shall notify these persons or, in the case of minors, the parents or guardians of these persons, of their eligibility for tuition and fee waivers under these provisions. This notification shall be in writing, and shall be received by all of the appropriate persons no later than July 1, 2003.

(2) The Trustees of the California State University, the Regents of the University of California and the governing board of each community college district in the state shall waive tuition and fees, as specified in this section and in subdivision (j) of Section 76300, for any person who can demonstrate eligibility. If requested by the California State University, the University of California, Hastings College of the Law, or a California Community College, the California Victim Compensation and Government Claims Board, on a case-by-case basis, shall confirm the eligibility of persons requesting the waiver of tuition and fees, as provided for in this section.

(c) A determination of whether a person is a resident of California on September 11, 2001, shall be based on the criteria set forth in this chapter for determining nonresident and resident tuition.

(d)(1) "Dependent," for purposes of this section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107–42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under this section until that person obtains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

SEC. 3. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b)(1) The fee prescribed by this section shall be * * * eleven dollars ($11) per unit per semester * * *.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 for determining nonresident and resident tuition.

(l)(1) "Dependent" for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person obtains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m)(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to * * * (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the

fees waived pursuant to subdivisions (g) * * * to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) * * * to (j), inclusive, for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 68044. Rules and regulations concerning student's classification

The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. The adopted rules and regulations shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency.

The adopted rules and regulations shall, beginning the 1983–84 school year, exempt nonresident students who have been appointed to serve as graduate student teaching assistants, graduate student research assistants, or graduate student teaching associates on any campus of the University of California or the California State University, and who have been employed on a 0.49 or more time basis, from the requirement of demonstrating his or her financial independence under this section for purposes of reclassification as a resident.

A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Other factors which may be considered in determining California residency shall be defined by the governing boards. In addition, the adopted rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence. A district governing board may adopt rules and regulations which are not inconsistent with those adopted by the Board of Governors of the California Community Colleges.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1981, c. 102, p. 703, § 38, urgency, eff. June 28, 1981; Stats.1982, c. 1070, p. 3853, § 1.)

§ 68051. Rules and regulations; calculation, payment, and refund

Unless otherwise provided by law, the governing board or district governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund.

(Amended by Stats.1990, c. 1372 (S.B.1864), § 238.)

§ 68074. Dependent of member of the armed forces

* * * (a)(1) An undergraduate student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification * * * only for the purpose of determining the amount of tuition and fees.

(2) A student seeking a graduate degree who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one academic year, and shall thereafter be subject to Article 5 (commencing with Section 68060).

(b) If that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the armed forces of the United States, or (2) is thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident.

(Amended by Stats.1989, c. 900, § 1; Stats.2000, c. 571 (A.B.1846), § 1.)

§ 68075. Member of armed forces

* * * (a) An undergraduate student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to a state-supported institution of higher education, is entitled to resident classification * * * only for the purpose of determining the amount of tuition and fees.

(b) A student seeking a graduate degree who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to a state-supported institution of higher education, shall be entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one academic year, and shall thereafter be subject to Article 5 (commencing with Section 68060).

(Amended by Stats.1989, c. 900, § 3; Stats.2000, c. 571 (A.B.1346), § 3.)

§ 68075.5. Armed forces members; remaining in state following discharge

A student who was a member of the armed forces of the United States stationed in this state on active duty for more than one year immediately prior to being discharged from the armed forces is entitled to resident classification for the length of time he or she lives in this state after being discharged up to the minimum time necessary to become a resident.

(Added by Stats.1995, c. 389 (A.B.723), § 1.)

§ 68076. Dependent of California resident of more than one year; parent residing in California for one year and contributing court-ordered support for student

* * * Notwithstanding Section 68062, a student who (a) has not been an adult resident of California for more than one year and (b) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

(Amended by Stats.1991, c. 455 (A.B.1745), § 1; Stats.1993, c. 8 (A.B.46), § 15, eff. April 15, 1993.)

§ 68077. Graduate of California school operated by the United States Bureau of Indian Affairs; resident classification

* * * Notwithstanding Section 68062, a student who is a graduate of any school located in California that is operated by the United States Bureau of Indian Affairs, including, but not limited to, the Sherman Indian High School, shall be entitled to resident classification. This exception shall continue so long as continuous attendance is maintained by the student at an institution.

(Added by Stats.1989, c. 424, § 1. Amended by Stats.1993, c. 8 (A.B.46), § 16, eff. April 15, 1993.)

§ 68078. Student holding credential; other conditions

(a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution * * * is entitled to resident classification if that student meets any of the following requirements:

* * * (1) He or she holds a provisional credential and * * * is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

* * * (2) He or she holds a credential issued pursuant to Section 44250 and * * * is enrolled at an institution in courses necessary to fulfill credential requirements.

* * * (3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259.

(b) Notwithstanding any other provision of law, a student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year. Thereafter, the student shall be subject to Article 5 (commencing with Section 68060).

(c) This section shall not be construed to affect the admissions policies of any teacher preparation program.

(Amended by Stats.2000, c. 949 (A.B.632), § 1, eff. Sept. 30, 2000.)

§ 68082. Native American

A student who is native American is entitled to resident classification for attendance at a community college if the student is also attending a school administered by the Bureau of Indian Affairs located within the community college district.

As used in this section, "native American" means an American Indian.

(Added by Stats.1977, c. 36, § 502, eff. April 29, 1977, operative April 30, 1977.)

§ 68083. Resident classification for tuition; amateur student athlete in training at U.S. Olympic Training Center

(a) Any amateur student athlete in training at the United States Olympic Training Center in Chula Vista is entitled to resident classification for tuition purposes until he or she has resided in the state the minimum time necessary to become a resident.

(b) "Amateur student athlete," for purposes of this section, means any student-athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes.

(Added by Stats.1997, c. 488 (A.B.1317), § 1.)

§ 68084. Military mission realignment actions; federal civil service employees and their dependents

A parent who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification at the California State University, the University of California, or a California community college if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education. The Trade and Commerce Agency shall certify qualifying military mission realignment actions under this section and provide this information to the California Community Colleges, the California State University, and the University of California.

(Added by Stats.1998, c. 952 (A.B.639), § 3, eff. Sept. 29, 1998.)

§ 68121. Students who are surviving dependents of individual killed in September 11, 2001, terrorist attacks; tuition and fee waivers

(a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required or collected by the Regents of the University of California or the Trustees of the California State University, from a student who is in an undergraduate program and who is the surviving dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The surviving dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(b)(1) The California Victim Compensation and Government Claims Board shall identify all persons who are eligible for tuition and fee waivers pursuant to this section or subdivision (j) of Section 76300. That board shall notify these persons or, in the case of minors, the parents or guardians of these persons, of their eligibility for tuition and fee waivers under these provisions. This notification shall be in writing, and shall be received by all of the appropriate persons no later than July 1, 2003.

(2) The Trustees of the California State University, the Regents of the University of California and the governing board of each community college district in the state shall waive tuition and fees, as specified in this section and in subdivision (j) of Section 76300, for any person who can demonstrate eligibility. If requested by the California State University, the University of California, Hastings College of the Law, or a California Community College, the California Victim Compensation and Government Claims Board, on a case-by-case basis, shall confirm the eligibility of persons requesting the waiver of tuition and fees, as provided for in this section.

(c) A determination of whether a person is a resident of California on September 11, 2001, shall be based on the criteria set forth in this chapter for determining nonresident and resident tuition.

(d)(1) "Dependent," for purposes of this section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107–42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under this section until that person obtains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(Added by Stats.2002, c. 450 (A.B.1746), § 2.)

§ 68130.5. Nonresident tuition at California State University and California Community Colleges; payment exemptions; requirements

Notwithstanding any other provision of law:

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student 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.

(Added by Stats.2001, c. 814 (A.B.540), § 2.)

§ 76140. Nonresident tuition; exemptions

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

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

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

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

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

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

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

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

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

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

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

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

(k) The attendance of nonresident students who are exempted pursuant to subdivision (i) or (j) from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes pursuant to subdivision (i) or (j) shall pay a fee of forty-two dollars ($42) per course unit. That fee is to be included in the FTES adjustments described in Section 76830 for purposes of computing apportionments.

(Amended by Stats.1989, c. 986, § 1; Stats.1990, c. 170 (A.B.3058), § 1; Stats.1992, c. 1236 (S.B.2000), § 1; Stats.1995, c. 758 (A.B.446), § 89.)

EXHIBIT 4
COPY OF TITLE 5 REGULATIONS CITED

3. Editorial correction of HISTORY 1 (Register 95, No. 19).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6–25–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No.45).
3. Repealer of chapter 1 (sections 54000–54082, not consecutive) and new chapter 1 (sections 54000–54070, not consecutive) filed 11–22–82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 19).

§ 54001. Adoption of Rules and Regulations; Publication; Uniformity.

The residence determination date and a summary of the rules and regulations adopted by the Board of Governors and district governing boards pursuant to chapter 1, part 41 of division 5 of the Education Code, commencing with section 68000, shall be published in the district catalogs and/or addenda thereto. The applicable Education Code provisions and the rules and regulations adopted by the Board of Governors and the district shall be made available to the students at each district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by the Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, and 70901, Education Code. Reference: Section 68023, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

(f) Pursuant to Section 54300, the district may authorize any information required by this section to be submitted electronically using encrypted digital signatures as specified in Section 54300.

NOTE: Authority cited: Sections 66700, 68044, 70901 and 70901.1, Education Code. Reference: Sections 68044, 68062 and 70901.1, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).
3. New subsection (f) and amendment of NOTE filed 5–13–99; operative 6–14–99 (Register 99, No. 20).

§ 54012. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68023, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out–of–state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68041, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54028. One–Year Waiting Period.

The one–year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54040. Self–Supporting Exception.

Any student claiming application of the self–supporting exception pursuant to Education Code section 68071 shall provide evidence such as: documentation, including W–2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for

business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

HISTORY

1. Amendment filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54045. Alien Students.

(a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) An alien is precluded from establishing domicile in the United States if the alien:

(1) entered the United States illegally (undocumented aliens);

(2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020–54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, an alien who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student has not been in attendance at any college in the district for more than one semester or quarter.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 U.S.C. 1101(a)(15); *Toll* v. *Moreno*, 458 U.S. 1 (1982); and *Regents of the University of California* v. *Bradford*, 225 Cal.App.3rd, 972, 276 Cal. Rptr. 197 (1990).

HISTORY

1. Repealer and new section filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 8–30–91; operative 9–29–91 (Register 92, No. 4).
4. Editorial correction of printing error in second paragraph (Register 92, No. 12).
5. Repealer and new section filed 1–16–92; operative 2–18–92 (Register 92, No. 18).
6. Editorial correction of HISTORY 2 (Register 95, No. 19).

§ 54045.5. Nonresident Tuition Exemption.

(a) In accordance with Education Code section 68130.5, any student, other than a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15), shall be exempt from paying nonresident tuition at any community college district if he or she:

(1) Attended high school in California for three or more years;

(2) Graduated from a California high school or attained the equivalent of such graduation; and

(3) Registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

(b) Any student seeking an exemption under subdivision (a) shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic student information so provided shall be confidential and shall not be disclosed unless required by law.

(c) Any student without lawful immigration status who is seeking an exemption under subdivision (a), shall, in the questionnaire described in (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

(d) A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.

(e) Nothing herein modifies eligibility standards for any form of student financial aid, including but not limited to, those contained in Subchapter 7 of Chapter 9 of this Division.

(f) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2002.

NOTE: Authority cited: Sections 66700, 68130.5 and 70901, Education Code. Reference: Section 68130.5, Education Code.

HISTORY

1. New section filed 5–3–2002; operative 6–2–2002. Submitted to OAL for printing only (Register 2002, No. 25).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full–time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54050. Exceptions from the One–Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68040, 68044 and 78034, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Sections 68044 and 68051, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. New section filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

Subchapter 2. Parking for Students with Disabilities

§ 54100. Parking for Students with Disabilities.

(a) Each community college district which provides parking shall, consistent with the requirements of this section and Education Code Sections 66260 and 67311.5, provide parking at each of its colleges or centers to students with disabilities and those providing transportation for such students.

(b) For purposes of this section, "students with disabilities" are those who have enrolled at the college and:

(1) qualify as disabled persons or disabled veterans pursuant to Section 22511.5 of the Vehicle Code; or

(2) are entitled to special parking provided through Disabled Student Programs and Services pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Students with disabilities using parking provided under this section may be required to display a distinguishing license plate or placard issued by the Department of Motor Vehicles pursuant to Section 22511.5 of the

EXHIBIT 5
REV. GUIDELINES AND INFORMATION

CALIFORNIA COMMUNITY COLLEGE CHANCELLOR'S OFFICE

REVISED GUIDELINES AND INFORMATION ON AB540
EXEMPTION FROM NONRESIDENT TUITION

MAY 2002

THESE GUIDELINES SUPERCEDE GUIDELINES ISSUED IN NOVEMBER 2001

The Law

On October 12, 2001, Governor Davis signed into law Assembly Bill 540 (Stats. 2001, ch.814) which adds a new section 68130.5 to the California Education Code. Section 68130.5 creates a new exemption from payment of nonresident tuition for certain nonresident students who have attended high school in California and received a high school diploma or its equivalent. The law is contained in *Attachment One*.

The Regulations

This law does not affect current Title 5 regulations concerning residency. Those regulations remain in effect; changes are not anticipated. The law does not grant or amend current residency rules but rather provides for an exemption from nonresident tuition for certain nonresident students. AB 540 required the Board of Governors to adopt regulations detailing the requirements for the new exemption. The regulations are contained in *Attachment Two*. These regulations are legally effective on June 2, 2002.

Follow-up Legislation

At the request of the University of California an additional provision was added to the Education Code to limit remedies under the law. That law (AB1543) is contained in *Attachment Three*.

Mandated and Optional Forms

The newly adopted regulations require the community college districts to use a "questionnaire form prescribed by the Chancellor". The Chancellor's Office, in cooperation with UC and CSU has developed such a form. Additional information is provided in the guidelines below. *See Attachment Four*.

In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. The use of this informational piece is optional. *See Attachment Five*.

Implementation Notes and Clarification of Provisions

General Eligibility and Residency

1. The new law does not grant residency, it requires that certain nonresident students be exempted from paying nonresident tuition.

2. Students exempted from paying nonresident tuition pursuant to section 68130.5 do not become residents for eligibility purposes for any state-funded program (e.g., EOPS, BOG Fee Waiver, Cal Grant and/or the Governor's Merit Scholar Program).

3. This benefit is available to all US citizens, permanent residents of the US, and aliens who are not nonimmigrants (including those who are undocumented), who meet all other eligibility criteria.

4. Students must meet all requirements to be eligible for the exemption.

5. Students are eligible for this exemption even if they enrolled in higher education prior to the 2001-2002 academic year. References to prior academic years in the legislation prohibit retroactive application of the exemption but do not preclude previous attendance.

6. Students do not have to demonstrate intent to become a California resident to qualify for this exemption. For example, those who live in neighboring states and cross the border to attend classes are entitled to this exemption (assuming they are otherwise eligible) despite the fact that they may have no intention of returning to live in California.

Fiscal

7. The exemption from nonresident tuition is mandatory. If a district finds that a student meets all requirements in the law, nonresident tuition may not be charged.

8. If a student is determined eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student.

9. Districts may claim apportionment for credit courses for these nonresident students who are exempted from the payment of nonresident tuition pursuant to section 68130.5.

10. Students exempted from nonresident tuition under these provisions may still have to pay a capital outlay fee under certain circumstances. There is no exemption from that fee in the law.

11. Some districts conduct pre-registration for high school seniors prior to their graduation. Such students could not sign a valid exemption request (because they have not yet graduated from high school). If district policies permit, the student payment of nonresident tuition can be deferred until the district can legally consider the student for an exemption.

Forms and Verification

12. The regulations require the community college districts to use a "questionnaire form prescribed by the Chancellor". An intersegmental form has been developed to meet this purpose.

13. Districts are asked to use the prescribed form immediately wherever possible and to ensure that the prescribed form is contained in any publications printed after June 1, 2002. The common form as prescribed by the Chancellor must be used for all exemptions granted for terms subsequent to Fall 2002.

14. In recognition that districts may have included their own form (as previously allowed) as an enclosure in printed materials for Summer 2002 or Fall 2002, and in order not to unduly inconvenience students or waste materials, campuses are permitted to use that form for Summer 2002 and/or Fall 2002, *providing the form includes all elements prescribed by law and providing the form is part of a major preprinted document such as a Schedule of Classes.* Individually printed old forms must be discarded and replaced with the newly prescribed form.

15. In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. Districts are encouraged to print this one-page document on the reverse of the mandated form and to include it in a convenient manner in other media. The use of this informational piece is optional.

16. The law does not specify the manner or type of verification required except in reference to an affidavit from those without lawful immigration status. Therefore it is the view of the Chancellor's Office that a district may rely on the student's self-certification of status.

17. If the district is in possession of conflicting information regarding any aspect of student eligibility, the district should pursue additional verification (e.g. high school transcript, diploma, etc.) to resolve discrepancies prior to granting this exemption.

18. Districts are free, at their discretion, to develop and implement additional documentation requirements relating to high school graduation or high school attendance in California, as long as such requirements are uniformly applied to all applicants. However, districts may not require additional documentation related to immigration status (see #31) unless the district has conflicting information which must be resolved (see #17).

19. In the view of the Chancellor's Office the district is not required to obtain a new affidavit for terms subsequent to the original exemption, however districts are free to do so if they so desire.

20. The original certified affidavit and other materials utilized by a district in meeting the certification requirements, shall be considered Class 1 - Permanent Records, under the provisions of Title 5 Section 59023. The Class 1 records shall be retained indefinitely, unless copied or reproduced by photograph, microphotograph or reproduced on film or electronically. It is suggested, for audit purposes, that the original documents should be maintained for at least five years.

Eligibility Issues Related to High School Attendance and Graduation

21. The student must have attended a California high school for three or more years. There are no provisions for partial attendance (e.g. two years and 7 months).

22. Attendance in the 9th grade in a California school is acceptable for one of the three years, even if that school was designated as a "middle" school.

23. The law does not require consecutive attendance nor require that the student attended the *last* three years in California (in the case of four-year high schools).

24. Attendance could be at multiple California high schools.

25. Attendance at continuation high schools, charter high schools, independent study at the 9th-12th grade level while enrolled in a California public school, including a charter school, and private tutoring provided by a person holding a valid California teaching credential (and meeting other state requirements) are recognized under state law as acceptable manners in which to attend high school.

26. Home schooling --- instruction by a tutor or other person (including the student's parent) who did not have a valid California teaching credential --- is not acceptable. (See #25 for acceptable alternatives.)

27. Adult schools (regardless of curriculum or administrative control) are not equivalent to high schools in the Education Code. Therefore, attendance at adult school is not acceptable for eligibility purposes.

28. The law does not distinguish between public and private high schools.

29. There is no time limit on how far in the past the student might have attended a California high school.

30. The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED or a high school proficiency exam). The GED or high school proficiency exam must be from California. There is no time limit on how far in the past the student might have attained this status.

Eligibility Issues Related to Immigration

31. All districts must use the affidavit contained on the form prescribed by the Chancellor that affirms that those students without lawful immigration status have applied for legalization or will do so as soon as they are eligible to do so. A student who files the affidavit shall not be asked to provide additional evidence of immigration status unless the district is in possession of evidence that casts doubt on the validity of the affidavit. The law does not require the district to monitor future changes in such eligibility.

32. If the student has filed an application with the INS to change his or her status to a classification which permits establishing residency, the student may already be eligible for resident fee status if the student has resided in California for more than one year since the time of the INS application. (See Title 5 Section 54045.)

33. Students who are nonimmigrant aliens (the most common being the F series student visas and B series visitor visas), are not eligible for this exemption. (A full description of nonimmigrant alien classifications may be found in paragraph 15 of subsection (a) of Section 1101 of Title 8 of the U.S. Code.)

34. People who previously held valid nonimmigrant visas but who are out of status at the time of execution of the affidavit are eligible for the exemption.

Financial Aid, Outreach and Transfer

35. The laws and regulations regarding federal and state financial aid are not affected by this new exemption from nonresident tuition. Nonresidents are ineligible for EOPS, BOG Fee Waiver and Cal Grant. Nonresidents who are US Citizens or permanent residents are eligible for federal student aid. Nonresidents who are undocumented aliens are ineligible for all federal and state financial aid. The Chancellor's Office encourages efforts to obtain private scholarship funds to help undocumented students reach their educational goals.

36. Some students may be reluctant to come forward in order to obtain this exemption. Districts may wish to research enrollment and fee records to ascertain which students graduated from California high schools but have paid nonresident tuition. Discreet inquiries would be appropriate to inform students who are potentially eligible about the availability of this exemption.

37. Both UC and CSU are implementing this exemption from nonresident tuition. Students should be advised to complete the common intersegmental form and submit it to all UC or CSU campuses under consideration. Transfer students will be required to execute a new form with the UC or CSU campus (even if a current form is on file with the community college) and will be required to submit proof of high school attendance and high school graduation.

Student Liability

38. If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student shall be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may be subject to disciplinary proceedings per district policy. The student self-certification contains a student acknowledgement of this potential liability.

Confidentiality

39. The law requires that all information obtained in the implementation of this program be held confidential. Districts should be vigilant in protecting this confidentiality. Districts must ensure that all information relating to this tuition exemption remains strictly confidential and is shared only on an absolute "need to know" basis unless disclosure is required by law. Districts are urged to be cautious in outreach, exemption notifications, business transactions, scholarship announcements and other activities to ensure confidentiality and to prevent inadvertent revelation of a student's immigration status.

Research

40. There will be no MIS data element specifically developed to identify students receiving an exemption from nonresident tuition under these rules. There will be surveys regarding these policies from time to time and districts are asked to participate in such research when requested.

Questions regarding these guidelines should be directed to the following staff at the California Community College Chancellor's Office:

Student Services: *Mary Gill, Dean of Enrollment Management*
mgill@cccco.edu 916.323.5951

Fiscal: *Elias Regalado, Program Assistant II*
eregalad@cccco.edu 916.445.1165

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ATTACHMENT ONE
AB540

CHAPTER 814
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INTRODUCED BY Assembly Members Firebaugh and Maldonado
(Principal coauthor: Assembly Member Alquist)
(Coauthors: Assembly Members Aroner, Calderon, Cedillo, Chan, Chavez, Chu, Diaz, Frommer, Keeley, Koretz, Oropeza, Reyes, Steinberg, Strom-Martin, Vargas, and Wiggins)
(Coauthors: Senators Chesbro, Escutia, Kuehl, McPherson, Perata, Romero Vasconcellos, and Vincent)

FEBRUARY 21, 2001

An act to add Section 68130.5 to the Education Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 540, Firebaugh. Public postsecondary education: exemption from nonresident tuition.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state. Existing law authorizes community college districts to admit, and charge a tuition fee for, nonresident students in accordance with specified criteria.

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

Existing law prescribes residency requirements for students at public institutions of postsecondary education, including, among others, the campuses of the California Community Colleges and the California State University. With respect to alien students, existing law specifies that an alien, including an unmarried minor

alien, may establish his or her residence unless precluded by the federal Immigration and Nationality Act from establishing domicile in the United States. These provisions are applicable to the University of California only if the Regents of the University of California act to make them applicable.

This bill would require that a person, other than a nonimmigrant alien as defined, who has attended high school in California for 3 or more years, who has graduated from a California high school or attained the equivalent thereof, who has registered at or attends an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year, and who, if he or she is an alien without lawful immigration status, has filed an affidavit as specified, be exempted from paying nonresident tuition at the California Community Colleges and the California State University.

The bill would authorize a student exempt from nonresident tuition under the bill to be reported by a community college district as a full-time student for apportionment purposes. The bill would require student information obtained in the implementation of the bill to be confidential.

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

(5) This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

(b) It is the intent of the Legislature that:

(1) A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit interpreting Section 68130.5 of the Education Code, as added by this act during the 2001-02 Regular Session, or any lawsuit interpreting similar requirements adopted by the Regents of the University of California pursuant to Section 68134 of the Education Code.

(2) This act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on

students who are not within the scope of this act.

SEC. 2. Section 68130.5 is added to the Education Code, to read:

68130.5. Notwithstanding any other provision of law:

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student 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.

ATTACHMENT TWO

Regulations Implementing Assembly Bill 540, As Amended

1. Section 54045.5 of Subchapter 1 of Chapter 5 of Division 6 of the California Code of Regulations is added to read:

54045.5. Nonresident Tuition Exemption

(a) In accordance with Education Code section 68130.5, any student, other than a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15), shall be exempt from paying nonresident tuition at any community college district if he or she:

(1) Attended high school in California for three or more years;

(2) Graduated from a California high school or attained the equivalent of such graduation; and

(3) Registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

(b) Any student seeking an exemption under subdivision (a) shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic student information so provided shall be confidential and shall not be disclosed unless required by law.

(c) Any student without lawful immigration status who is seeking an exemption under subdivision (a), shall, in the questionnaire described in (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

(d) A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.

(e) Nothing herein modifies eligibility standards for any form of student financial aid, including but not limited to, those contained in Subchapter 7 of Chapter 9 of this Division.

(f) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2002.

NOTE: Authority cited: Section 66700, 70901 and 68130.5, Education Code. Reference: Section 68130.5, Education Code.

2. Section 58003.6 of Article 2 of Subchapter 1 of Chapter 9 of Division 6 of Title 5 of the California Code of Regulations is added to read:

58003.6. Apportionment for Certain Nonresidents Attending High School in California

In accordance with section 68130.5 of the Education Code, students who are exempt from nonresident tuition pursuant to section 54045.5 may be included in calculating credit full-time equivalent student (FTES) for apportionment purposes.

NOTE: Authority cited: Section 66700, 70901 and 68130.5, Education Code. Reference: Section 68130.5, Education Code.

ATTACHMENT THREE
AB 1543

CHAPTER 19
FILED WITH SECRETARY OF STATE APRIL 8, 2002
APPROVED BY GOVERNOR APRIL 6, 2002
PASSED THE ASSEMBLY MARCH 21, 2002
PASSED THE SENATE JANUARY 30, 2002
AMENDED IN SENATE JANUARY 24, 2002
AMENDED IN SENATE JANUARY 16, 2002
AMENDED IN ASSEMBLY MAY 1, 2001

INTRODUCED BY Assembly Member Firebaugh

FEBRUARY 23, 2001

An act to add Section 68130.7 to the Education Code, and to amend Section 1 of Chapter 814 of the Statutes of 2001, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1543, Firebaugh. Public postsecondary education: exemption from nonresident tuition.

Existing law requires that a person, other than a nonimmigrant alien as defined, who has attended high school in California for 3 or more years, who has graduated from a California high school or attained the equivalent thereof, who has registered at or attends an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year, and who, if he or she is an alien without lawful immigration status, has filed an affidavit with respect to legalizing his or her immigration status, be exempted from paying nonresident tuition at the California Community Colleges and the California State University.

This bill would authorize a state court, if it finds that the above provision, or any similar provision adopted by the Regents of the University of California, is unlawful, to order that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or action, as equitable relief, and would prohibit the award of money damages, tuition refund or waiver, or other retroactive relief. The bill would provide that the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief in a lawsuit.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 1 of Chapter 814 of the Statutes of 2001 is amended to read:

Sec. 1. (a) The Legislature hereby finds and declares all of the following:

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

(5) This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

(b) It is the intent of the Legislature that this act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act.

SEC. 2. Section 68130.7 is added to the Education Code, to read:

68130.7. If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to take effect in time for the commencement of the 2002-03 academic year, it is necessary for it to take effect immediately.

ATTACHMENT FOUR
Questionnaire Form as Prescribed by the Chancellor

Please see the prescribed questionnaire sent in a separate electronic file (to maintain formatting) or the hard copy immediately attached.

ATTACHMENT FIVE
Optional Informational Flyer

Please see the informational flyer sent in a separate electronic file (to maintain formatting) or the hard copy immediately attached.

California Nonresident Tuition Exemption Request

For Eligible California High School Graduates

Complete and sign this form to request an exemption from Nonresident Tuition. You must submit any documentation required by the College or University (for example, proof of high school attendance in California). Contact the California Community College, University of California or California State University campus where you intend to enroll (or are enrolled) for instructions on documentation, additional procedures and applicable deadlines.

ELIGIBILITY:

I, the undersigned, am applying for a California Nonresident Tuition Exemption for eligible California high school graduates at (specify the college or university)_____ and I declare the following:

Check YES or NO boxes:

☐ Yes ☐ No I have graduated from a California high school or have attained the equivalent thereof, such as a High School Equivalency Certificate, issued by the California State GED Office or a Certificate of Proficiency, resulting from the California High School Proficiency Examination.

☐ Yes ☐ No I have attended high school in California for three or more years.

Provide information on all school(s) you attended in grades 9 - 12:

School	City	State	Dates: From – Month/Year	To – Month/Year

Documentation of high school attendance and graduation (or its equivalent) is required by the University of California, The California State University and some California Community Colleges. Follow campus instructions.

Check the box that applies to you -- check only one box:

☐ I am a nonimmigrant alien as defined by federal law, [including, but not limited to, a foreign student (F visa) or exchange visitor (J visa)].

OR

☐ I am NOT a nonimmigrant alien (including, but not limited to, a U.S. citizen, permanent resident, or an alien without lawful immigration status).

AFFIDAVIT:

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the information I have provided on this form is true and accurate. I understand that this information will be used to determine my eligibility for the nonresident tuition exemption for eligible California high school graduates. I hereby declare that, if I am an alien without lawful immigration status, I have filed an application to legalize my immigration status or will file an application as soon as I am eligible to do so. I further understand that if any of the above information is untrue, I will be liable for payment of all nonresident charges from which I was exempted and may be subject to disciplinary action by the College or University.

Print Full Name (as it appears on your campus student records)	Campus/Student Identification Number
Print Full Mailing Address (Number, Street, City, State, Zip Code)	Email Address (Optional) Phone Number (Optional)
Signature	Date

California Nonresident Tuition Exemption

For Eligible California High School Graduates
(The law passed by the Legislature in 2001 as "AB 540")

GENERAL INFORMATION

Any student, other than a nonimmigrant alien, who meets all of the following requirements, shall be exempt from paying nonresident tuition at the California Community Colleges, the California State University and the University of California (all public colleges and universities in California).

- Requirements:
  - The student must have attended a high school (public or private) in California for three or more years.
  - The student must have graduated from a California high school or attained the equivalent prior to the start of the term (for example, passing the GED or California High School Proficiency exam).
  - An alien student who is without lawful immigration status must file an affidavit with the college or university stating that he or she has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.
- Students who are nonimmigrants [for example, those who hold F (student) visas, B (visitor) visas, etc.] are not eligible for this exemption.
- The student must file an exemption request including a signed affidavit with the college that indicates the student has met all applicable conditions described above. Student information obtained in this process is strictly confidential unless disclosure is required under law.
- Students eligible for this exemption who are transferring to another California public college or university must submit a new request (and documentation if required) to each college under consideration.
- Nonresident students meeting the criteria will be exempted from the payment of nonresident tuition; but they will *not* be classified as California residents. They continue to be "nonresidents".
- AB540 does not provide student financial aid eligibility for undocumented alien students. These students remain ineligible for state and federal financial aid.

PROCEDURES FOR REQUESTING THIS EXEMPTION FROM NONRESIDENT TUITION

California Community Colleges: Complete the form on the reverse. Submit it to the Admissions Office at the community college where you are enrolled or intend to enroll. You may be required to submit additional documentation. Call the college Admissions Office if you have questions.

University of California: Complete the form on the reverse and submit it to the Office of the Registrar at the UC campus where you are enrolled or intend to enroll. Your campus has established deadlines for submission of exemption requests; however, requests are not to be submitted until you have been admitted to a UC campus. Some students, such as transfer, graduate, and professional students, also must submit their official high school transcripts; check with your campus for specific instructions. Once you are determined to be eligible for the exemption, you will continue to receive it as long as you fulfill the eligibility requirements or until the University no longer offers this exemption. The exemption covers the Nonresident Tuition Fee and the Educational Fee differential charged to nonresident students. Applying for the exemption does not alter your responsibility to pay by the campus deadline any nonresident tuition and associated fees that may be due before your eligibility is determined. For general information, visit the following website: www.ucop.edu/sas/sfs/ppolicies/ab540faqs.htm. For campus-specific instructions regarding documentation and deadline dates, contact the campus Office of the Registrar.

California State University: Complete the form on the reverse. Contact the Office of Admission and Records at the CSU campus where you are enrolled or intend to enroll for instructions on submission, deadline information, and additional requirements. You will be required to submit final high school transcripts and appropriate records of high school graduation or the equivalent, if you have not done so already. Call the Office of Admissions and Records at the campus if you have questions.

SixTen and Associates
Mandate Reimbursement Services

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November 20, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: No. CSM. 02-TC -21
Tuition Fee Waivers

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,

Keith B. Petersen

Keith B. Petersen
SixTen and Associates
3841 North Freeway Blvd, Suite 170
Sacramento, CA 95834
Voice: (916) 565-6104
Fax: (916) 564-6103
kbpsixten@aol.com

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	)	No. CSM. 02-TC -21
	)	
Test Claim Filed May 23, 2003	)	Tuition Fee Waivers
	)	
	)	History Index for
	)	Title 5, California Code of Regulations
by Contra Costa Community College District	)	
	)	
	)	Section 54002
	)	Section 54010
	)	Section 54012
	)	Section 54020
	)	Section 54022
	)	Section 54024
	)	Section 54030
	)	Section 54032
	)	Section 54041
	)	Section 54042
	)	Section 54045
	)	Section 54045.5
	)	Section 54046
	)	Section 54050
	)	Section 54060
	)	Section 54070
	)	

REQUEST FOR SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 5, CCR, sections included in the test claim. The Registers cited are attached

as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 73-26 § 54000-54002: Added new sections.

§ 54005.1-54005.12: Added new sections.

§ 54010: Added new section.

§ 54020: Added new section.

§ 54031-54040: Added new sections.

§ 54060: Added new section.

§ 54070: Added new section.

§ 54075-540082: Added new sections.

Register 77-45 § 54002: Amendment of section.

§ 54005.1: Amendment of section.

§ 54005.5: Amendment of section.

§ 54005.6: Amendment of section.

§ 54005.10: Amendment of section.

§ 54005.11: Amendment of section.

§ 54031: Amendment of section.

§ 54032: Amendment of section.

§ 54033: Amendment of section.

§ 54033.5: Repealer of section.

§ 54036: Amendment of section.

§ 54037: Amendment of section.

§ 54038: New section added by Register 73-44 (not available). It is assumed that the amendment by this register is limited to change in Education Code reference.

§ 54039: New section added by Register 74-10 (not available). It is assumed that the amendment by this register is limited to change in Education Code reference.

§ 54040: Amendment of section.

§ 54060: Amendment of section.

§ 54070: Amendment of section.

Register 82-48 § 54000-54082 Repealed and § 54000-54070 added.

Register 83-24 § 54041: Amendment of section.

§ 54000: New section added.

Register 86-10 § 54045: Repealed, added a new section.

Register 91-23 § 54000-54072: Amendment filed by Board of Governors of California Community College with the Secretary of State, submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 92-04 § 54045: Amendment to section.

Register 92-12 § 54045: Editorial correction of printing error.

Register 92-18 § 54045: Repealed, added a new section.

Note: Register not available in attachment.

Register 95-19 § 54000: Editorial Correction of HISTORY 4

§ 54001: Editorial Correction of HISTORY 1.

§ 54002: Editorial Correction of HISTORY 1.

§ 54010: Editorial Correction of HISTORY 1.

§ 54012: Editorial Correction of HISTORY 1.

§ 54020: Editorial Correction of HISTORY 1.

§ 54022: Editorial Correction of HISTORY 1.

§ 54024: Editorial Correction of HISTORY 1.

§ 54026: Editorial Correction of HISTORY 1.

§ 54028: Editorial Correction of HISTORY 1.

§ 54030: Editorial Correction of HISTORY 1.

§ 54032: Editorial Correction of HISTORY 1.

§ 54040: Editorial Correction of HISTORY 1.

§ 54041: Editorial Correction of HISTORY 2.

§ 54042: Editorial Correction of HISTORY 1.

§ 54045: Editorial Correction of HISTORY 2.

§ 54046: Editorial Correction of HISTORY 1.

§ 54048: Editorial Correction of HISTORY 1.

§ 54050: Editorial Correction of HISTORY 1.

§ 54060: Editorial Correction of HISTORY 1.

§ 54070: Editorial Correction of HISTORY 1.

§ 54072: Editorial Correction of HISTORY 1.

Register 99-20 § 54010: New subsection (f) and amendment of NOTE.

Register 02-25 § 54045.5: New section added.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this _____ day of November 2007, at Sacramento, California

FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

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/

/

Register 73-26

§ 54002
§ 54010
§ 54020
§ 54032
§ 54040
§ 54060
§ 54070

SUBCHAPTER 1. GENERAL PROVISIONS

Article 1. Student Classification

54000. Classification. Each student shall be classified by the college of enrollment as a district resident, nondistrict resident, or a nonresident.

NOTE: Authority cited: Sections 22830, 22841 and 22805, Education Code. Reference: Chapter 7 (commencing with Section 22800) of Division 16.5, Education Code.

History: 1. Repealer of Chapter 1 (§§ 54000, 54001, 54100, 54101) and new Chapter 1 (§§ 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.

54001. Tuition. A student classified as a nonresident shall be required, except as otherwise provided herein, to pay nonresident tuition. The amount of tuition shall be determined by the district governing board pursuant to the provisions of Education Code Section 25505.8.

54002. Residency Requirement. In order to be classified as a resident for tuition purposes, a student must have been a legal resident of California for more than one year immediately preceding the residence determination date for the term during which he proposes to attend a California Community College.

Article 2. Definitions

54005.1. Parent. "Parent" means a minor's father; or if he has no father, his mother; or, if both parents are deceased, his legal guardian.

54005.2. Student. "Student" means a person enrolled in or applying for admission to an institution.

54005.3. Continuous Attendance. "Continuous attendance," as it refers to attendance at a Community College, means full-time enrollment for a normal academic year at such institution since the beginning of the period for which continuous attendance is claimed. Nothing in this section shall require a student to attend summer session or other

terms beyond the normal academic year in order to render his attendance "continuous."

54005.4. Nonresident. A "nonresident" is a student who does not have residence in the state for more than one year immediately preceding the residence determination date.

54005.5. District Resident. A "district resident" is a resident who has residence within a district in the state, pursuant to Article 5 (commencing with Section 22845) of Chapter 7 of Division 16.5 of the Education Code.

54005.6. Nondistrict Resident. A "nondistrict resident" is a resident who does not have residence within a district in the state, or a student who, within a 39-month period immediately preceding the residence determination date, was graduated from a high school situated in territory not within a district.

54005.7. District. "District" means a Community College district maintaining one or more Community Colleges.

54005.8. Resident Classification. "Resident classification" means classification as a district resident, pursuant to Section 54005.5, or a nondistrict resident, pursuant to Section 54005.6.

54005.9. Resident Determination Date. "Resident determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or term as set by the district governing board, during which the student proposes to attend a college.

54005.10. Full-Time. "Full-time" for purposes of this Chapter means a student enrolled for 12 or more semester or quarter units of credit as of the census day.

54005.11. Institution. "Institution" means a public California Community College, the University of California, or the California State University and Colleges.

54005.12. Foreign Students. For purposes of Education Code Section 25505.8 and this chapter, "citizens of a foreign country," "residents of a foreign country," and "foreign students" mean persons who are both citizens and residents of a foreign country. For purposes of reporting to the Chancellor, all persons listed in the previous sentence shall be referred to as "foreign students."

SUBCHAPTER 2. PROCEDURE

Article 1. Residence Classification Procedure

54010. Residence Classification Procedure. Residence classification of all students shall be made for each term at each college starting at the time processing is commenced on applications for admission, readmission, or registration. Classifications shall be based on evidence presented in, and supporting, the applicant's answers to residence question-

naires and supplemental residence questionnaires authorized by the district governing board, such further evidence of residence deemed necessary by the institution, and such further evidence of residence as the applicant wishes to submit. Applicants answering their residence questionnaires and supplemental residence questionnaires shall be required to certify them under penalty of perjury or certify them under oath before an employee of the institution authorized by the district governing board at each institution to administer such oaths, or to certify them under oath before a person authorized to administer oaths under the laws of the political entity where the oath is to be administered.

Article 2. Evidence of Residence

54020. Requirements. In order to establish a residence, it is necessary that there be a union of act and intent. The act necessary to establish legal residence is physical presence in California. Relevant indications of intent to make California one's residence include, but are not limited to: voting in elections in California and not in any other state; satisfying California personal income tax obligations; establishing an abode in the state where one's belongings are kept; licensing from the state for professional practice; maintaining active resident memberships in California professional organizations; maintaining California vehicle license plates and/or operator's license; maintaining active savings and checking accounts in California banks; maintaining permanent military address or home of record in California in the armed forces; engagement in litigation for which residence is required; showing California as home address on federal income tax forms; and absence of any of these indications in other states during any period for which residence in California is asserted. Documentary evidence, including but not limted to the foregong, may be required. No single factor is controlling or decisive.

Article 3. Evidence Required for Application of Statutory Exceptions to Nonresident Tuition Classification

54031. Self-Supporting Exception. Any minor student claiming application of the self-supporting exception pursuant to Education Code Section 22851 shall provide evidence to the admissions officer such as: documentation showing earnings for the year immediately preceding the residence determination date for the quarter, semester or term of attendance, a statement that the student has actually been present in California for said year (short durational stays away from the state will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

54032. Military Dependent. A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 22853 of the Education Code should provide the college admissions officer with a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the opening of the semester, quarter or term, or is outside

the continental United States on active duty after having been transferred immediately and directly from a California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes should also be provided.

54033. **Member of Military.** A student claiming application of Section 22854 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

54034. **Adult Aliens.** An adult alien lawfully admitted to the United States for permanent residence and having residence in this state for more than one year and claiming residence immediately prior to the residence determination date and claiming residence for tuition purposes shall show his or her immigrant visa to the admissions officer at the time of classification.

54035. **Minor Aliens.** A minor alien claiming residence for tuition purposes shall be required at the time of classification to show his or her immigrant visa, his or her parents' immigrant visa and evidence that the parent has had permanent residence in the state for more than one year after admission to permanent residence prior to the residence determination date.

54036. **Community College District Employee Holding Valid Credential.** A student claiming residence status pursuant to Section 22857 of the Education Code should provide the admissions officer with a statement from the employer showing employment by a California Community College district in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a provisional credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 13125 of the Education Code and is enrolled in courses necessary to fulfill credential requirements, or is enrolled in courses necessary to fulfill credential requirements of the fifth year of education prescribed by subdivision (b) of Section 13130 of the Education Code.

54037. **Apprentices.** A student claiming resident status pursuant to Section 22858.5 of the Education Code shall provide evidence such as a card or certification from the Joint Apprenticeship Committee or the student's employer, evidencing such apprenticeship status.

54040. **Exceptions from the One-Year Waiting Period.** Those exceptions from payment of nonresident tuition provided by Education Code Sections 22850 (certain minors), 22853 (military dependents), and 22854 (military members) apply only so long as the student has not been in California long enough to have one year of California residence.

SUBCHAPTER 3. APPEAL

54060. Appeal Procedure. Any student, following a final decision on residence classification by the college, may make written appeal to the superintendent of the district or his designee within 30 calendar days of notification of final decision by the campus regarding classification. The superintendent, on the basis of the Statement of Legal Residence, pertinent information contained in the registrar's file, and information contained in the student's appeal, will make his determination and notify the student by United States mail, postage prepaid.

SUBCHAPTER 4. REFUNDS

54070. Refunds. The governing board of each Community College district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the Community College for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or his withdrawal from an education program at the Community College for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

SUBCHAPTER 5. MISCELLANEOUS

54075. Students in Attendance. A person enrolling for full-time attendance at a Community College who had resident classification on March 7, 1973, shall not lose such classification as a result of this chapter until the attainment of the degree for which he is currently enrolled. Nothing in this section shall be construed to require "full-time enrollment" on March 7, 1973, the effective date of this chapter.

54080. Litigation. If an action is brought against a district governing board as a result of the application of this chapter, that district governing board shall inform the Chancellor of the California Community Colleges of the pending litigation.

54081. Local Regulations. The governing board of a Community College district may adopt rules and regulations not inconsistent with regulations in this Chapter in order to insure orderly implementation of Chapter 1100 of the Statutes of 1972.

54082. Exceptions. The district may provide, by regulation, an exception to non-resident classification to a student who is a full-time employee of an institution or a student who is a child or spouse of a full-time employee of an institution until the student has resided in the state the minimum time necessary to become a resident. The exception provided hereunder shall not be made on an individual basis.

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SUBCHAPTER 1. GENERAL PROVISIONS

Article 1. Student Classification

54000. Classification. Each student shall be classified by the college of enrollment as a district resident, nondistrict resident, or a nonresident.

NOTE: Authority cited: Sections 68044, 68051 and 68090, Education Code. Reference: Chapter 1 (commencing with Section 68000) of Division 5, Part 41, Education Code.

History: 1. Repealer of Chapter 1 (§§ 54000, 54001, 54100, 54101) and new Chapter 1 (§§ 54000 through 54062, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54001. Tuition. A student classified as a nonresident shall be required, except as otherwise provided herein, to pay nonresident tuition. The amount of tuition shall be determined by the district governing board pursuant to the provisions of Education Code Section 76140.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54002. Residency Requirement. In order to be classified as a resident for tuition purposes, a student must have been a legal resident of California for more than one year immediately preceding the residence determination date for the term during which the student proposes to attend a California Community College.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

Article 2. Definitions

54005.1. Parent. "Parent" means a minor's father or mother; or, if both parents are deceased, the legal guardian.

History: 1. Amendment filed 11-6-74; effective thirtieth day thereafter (Register 74, No. 45).
2. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54005.2. Student. "Student" means a person enrolled in or applying for admission to an institution.

54005.3. Continuous Attendance. "Continuous attendance," as it refers to attendance at a Community College, means full-time enrollment for a normal academic year at such institution since the beginning of the period for which continuous attendance is claimed. Nothing in this section shall require a student to attend summer session or other terms beyond the normal academic year in order to render the student's attendance "continuous."

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54005.4. Nonresident. A "nonresident" is a student who does not have residence in the state for more than one year immediately preceding the residence determination date.

54005.5. District Resident. A "district resident" is a resident who has residence within a district in the state, pursuant to Article 5 (commencing with Section 68060) of Chapter 1, Part 41 of Division 5 of the Education Code.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54005.6. Nondistrict Resident. A "nondistrict resident" is a resident who does not have residence within a district in the state, or a student who, (a) within 39 months period immediately preceding the residence determination date, was graduated from a high school which is situated in territory not within a district, and (b) whose parent resides in such territory.

History: 1. Amendment filed 11-6-74; effective thirtieth day thereafter (Register 74, No. 45).

54005.7. District. "District" means a Community College district maintaining one or more Community Colleges.

54005.8. Resident Classification. "Resident classification" means classification as a district resident, pursuant to Section 54005.5, or a nondistrict resident, pursuant to Section 54005.6.

54005.9. Resident Determination Date. "Resident determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or term as set by the district governing board, during which the student proposes to attend a college.

54005.10. Full-Time. "Full-time" for purposes of this Chapter means a student enrolled for 12 or more semester or quarter units of credit.

History: 1. Amendment filed 11-6-74; effective thirtieth day thereafter (Register 74, No. 45).

54005.11. Institution. "Institution" means a public California Community College, the University of California, the California Maritime Academy, or the California State University and Colleges.

History: 1. Amendment filed 11-6-74; effective thirtieth day thereafter (Register 74, No. 45).

54005.12. Foreign Students. For purposes of Education Code Section 76140 and this chapter, "citizens of a foreign country," "residents of a foreign country," and "foreign students" mean persons who are both citizens and residents of a foreign country. For purposes of reporting to the Chancellor, all persons listed in the previous sentence shall be referred to as "foreign students."

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. PROCEDURE

Article 1. Residence Classification Procedure

54010. Residence Classification Procedure. Residence classification of all students shall be made for each term at each college starting at the time processing is commenced on applications for admission, readmission, or registration. Classifications shall be based on evidence presented in, and supporting, the applicant's answers to residence questionnaires and supplemental residence questionnaires authorized by the district governing board, such further evidence of residence deemed necessary by the institution, and such further evidence of residence as the applicant wishes to submit. Applicants answering their residence questionnaires and supplemental residence questionnaires shall be required to certify them under penalty of perjury or certify them under oath before an employee of the institution authorized by the district governing board at each institution to administer such oaths, or to certify them under oath before a person authorized to administer oaths under the laws of the political entity where the oath is to be administered.

Article 2. Evidence of Residence

54020. Requirements. In order to establish a residence, it is necessary that there be a union of act and intent. The act necessary to establish legal residence is physical presence in California. Relevant indications of intent to make California one's residence include, but are not limited to: voting in elections in California and not in any other state; satisfying California personal income tax obligations; establishing an abode in the state where one's belongings are kept; licensing from the state for professional practice; maintaining active resident memberships in California professional organizations; maintaining California vehicle license plates and/or operator's license; maintaining active savings and checking accounts in California banks; maintaining permanent military address or home of record in California in the armed forces; engagement in litigation for which residence is required; showing California as home address on federal income tax forms; and absence of any of these indications in other states during any period for which residence in California is asserted. Documentary evidence, including but not limited to the foregoing, may be required. No single factor is controlling or decisive.

Article 3. Evidence Required for Application of Statutory Exceptions to Nonresident Tuition Classification

54031. Self-Supporting Exception. Any student claiming application of the self-supporting exception pursuant to Education Code Section 68071 shall provide evidence to the admissions officer such as: documentation showing earnings for the year immediately preceding the residence determination date for the quarter, semester or term of attendance, a statement that the student has actually been present in California for said year (short durational stays away from the state will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

History: 1. Amendment filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).
2. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54032. Military Dependent. A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 68074 of the Education Code should provide the college admissions officer with a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the opening of the semester, quarter or term, or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes should also be provided.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54033. Member of Military. A student claiming application of Section 68075 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54033.5. Students in Advanced Degree Programs.

History: 1. New section filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).
2. Repealer filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54034. Adult Aliens. An adult alien lawfully admitted to the United States for permanent residence and having residence in this state for more than one year and claiming residence immediately prior to the residence determination date and claiming residence for tuition purposes shall show his or her immigrant visa to the admissions officer at the time of classification.

54035. Minor Aliens. A minor alien claiming residence for tuition purposes shall be required at the time of classification to show his or her immigrant visa, his or her parents' immigrant visa and evidence that the parent has had permanent residence in the state for more than one year after admission to permanent residence prior to the residence determination date.

54036. Public School Employee Holding Valid Credential. A student claiming residence status pursuant to Section 68078 of the Education Code should provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 87274 of the Education Code and is enrolled in courses necessary to fulfill credential requirements.

History: 1. Amendment filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).
2. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54037. Apprentices. A student claiming resident status pursuant to Section 68081 of the Education Code shall provide evidence such as a card or certification from the Joint Apprenticeship Committee or the student's employer, evidencing such apprenticeship status.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54038. Student Under Custody of Resident Adult. A student claiming residence under provisions of 68073 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

History: 1. New section filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).
2. Amendment of section and repealer of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54039. Agricultural Employment. A student claiming residence pursuant to Section 68100 of the Education Code shall provide the admissions officer with either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section (54039), agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Section 68100, Education Code

History: 1. New section filed 3-5-74 as an emergency; effective upon filing. Certificate of Compliance included (Register 74, No. 10).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

54040. Exceptions from the One-Year Waiting Period. Those exceptions from payment of nonresident tuition provided by Education Code Sections 68070 (certain minors), 68074 (military dependents), and 68075 (military members) apply only so long as the student has not been in California long enough to have one year of California residence.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

Amend Ed Section References only

SUBCHAPTER 3. APPEAL

54060. Appeal Procedure. Any student, following a final decision on residence classification by the college, may make written appeal to the superintendent of the district or the superintendent's designee within 30 calendar days of notification of final decision by the campus regarding classification. The superintendent, on the basis of the Statement of Legal Residence, pertinent information contained in the registrar's file, and information contained in the student's appeal, will make a determination and notify the student by United States mail, postage prepaid.

History: 1. Amendment filed 11-4-77 effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 4. REFUNDS

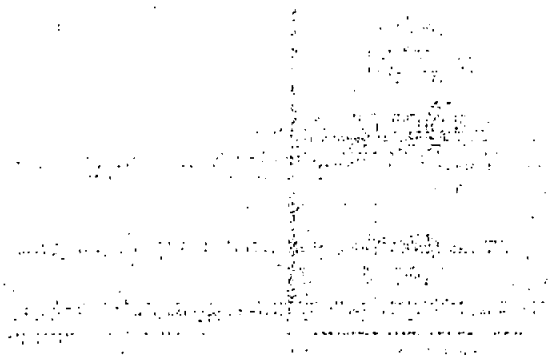
54070. Refunds. The governing board of each Community College district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the Community College for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the Community College for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).



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CHAPTER 1. STUDENT RESIDENCE CLASSIFICATION

54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in Part 41 (commencing with Section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY:

1. Repealer of Chapter 1 (§§ 54000, 54001, 54100, 54101) and new Chapter 1 (§§ 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 1 (Sections 54000–54082, not consecutive) and new Chapter 1 (Sections 54000–54070, not consecutive) filed 11-22-82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.

54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, 68090 and 71020, Education Code. Reference: Section 68023, Education Code.

54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

NOTE: Authority cited: Sections 66700, 68004, 68090 and 71020, Education Code. Reference: Sections 68044 and 68062, Education Code.

54012. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of Section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of Section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of Section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of Section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044 and 71020, Education Code. Reference: Sections 68044 and 68062, Education Code.

54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out-of-state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 68041, Education Code.

54028. One-Year Waiting Period.

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code Section 68070.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code Section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if (1) the parent on whom the student is dependent is a California resident, or (2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 68044, Education Code.

54040. Self-Supporting Exception.

Any student claiming application of the self-supporting exception pursuant to Education Code Section 68071 shall provide evidence to the admissions officer such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044, 68071 and 68090, Education Code.

54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 68074 of the Education Code shall provide the college admissions officer with a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68074, Education Code.

54042. Member of Military.

A student claiming application of Section 68075 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68075, Education Code.

54045. Refugees.

A student claiming exemption from nonresident tuition pursuant to Education Code Section 84521.6 shall provide the admissions officer with documentation from the Immigration and Naturalization Service evidencing that the student is a refugee and shall establish that he or she has been a California resident for one year in accordance with Sections 54020, 54022 and 54024.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 84521.6, Education Code.

54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to Section 68078 of the Education Code shall provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 87274 of the Education Code and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68078, Education Code.

54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of Section 68073 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68073, Education Code.

54048. Agricultural Employment.

A student claiming residence pursuant to Section 68100 of the Education Code shall provide the admissions officer with either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044 and 68100, Education Code.

54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code Sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

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(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out-of-state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 68041, Education Code.

54028. One-Year Waiting Period.

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code Section 68070.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code Section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if (1) the parent on whom the student is dependent is a California resident, or (2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 68044, Education Code.

54040. Self-Supporting Exception.

Any student claiming application of the self-supporting exception pursuant to Education Code Section 68071 shall provide evidence to the admissions officer such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044, 68071 and 68090, Education Code.

54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 68074 of the Education Code shall provide the college admissions officer with a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68074, Education Code.

HISTORY:

1. Amendment filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).

54042. Member of Military.

A student claiming application of Section 68075 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68075, Education Code.

54045. Refugees.

A student claiming exemption from nonresident tuition pursuant to Education Code Section 84521.6 shall provide the admissions officer with documentation from the Immigration and Naturalization Service evidencing that the student is a refugee and shall establish that he or she has been a California resident for one year in accordance with Sections 54020, 54022 and 54024.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 84521.6, Education Code.

54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to Section 68078 of the Education Code shall provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 87274 of the Education Code and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68078, Education Code.

54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of Section 68073 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68073, Education Code.

54048. Agricultural Employment.

A student claiming residence pursuant to Section 68100 of the Education Code shall provide the admissions officer with either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044 and 68100, Education Code.

54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code Sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

HISTORY:

1. New section filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).

(Next page is 638.5)

54045. Alien Students.

An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be classified as a resident or nonresident pursuant to the provisions of this chapter.

An alien is precluded from establishing domicile in the United States if the alien is in the United States under an unexpired visa which requires that the alien have a residence outside the United States or that he or she enter the United States solely for some temporary purpose. An alien who is precluded for establishing domicile in the United States shall not be classified as a resident.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Section 68062(h), Education Code; 8 USC 1101(a) (15); and *Toll* v. *Moreno*, 458 U.S. 1 (1982).

HISTORY:

1. Repealer and new section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).

54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to Section 68078 of the Education Code shall provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 87274 of the Education Code and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Sections 68044 and 68078, Education Code.

54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of Section 68073 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68073, Education Code.

54048. Agricultural Employment.

A student claiming residence pursuant to Section 68100 of the Education Code shall provide the admissions officer with either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044 and 68100, Education Code.

54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code Sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68090, Education Code. Reference: Sections 68044 and 68090, Education Code.

HISTORY:

1. New section filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).

Register 91-23

§ 54002
§ 54010
§ 54012
§ 54020
§ 54022
§ 54024
§ 54026
§ 54028
§ 54030
§ 54032
§54041
§54042
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§54046
§54050
§54060
§54070

History

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53530. Use of Bond Proceeds.

Any funds derived from the sale of the bonds issued by the former district shall be used for the acquisition, construction, or improvement of college property only in the territory which comprised the former district or to discharge the bonded indebtedness of the former district, except that if the bonded indebtedness is assumed by the new district, the funds may be used in any area of the new district for the purposes for which the bonds were originally voted.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 53540. Territory of District Becoming Part of Two or More Districts; Disposition of Records.

If all the territory of any district becomes part of two or more districts, and the inclusion in the two or more districts of the several portions of territory comprising the whole of the original district is effective for all purposes on the same date, the records of the original district shall be disposed of as follows:

(a) All records of the original district which are required by law to be kept on file shall be deposited with the governing board of the district which, after the reorganization has become effective for all purposes, has located within its boundaries the former office of the superintendent of the original district.

(b) Records of employees shall be transferred to the district thereafter employing the personnel or thereafter maintaining the last place of employment.

(c) Records of students shall be transferred to the district which, after the date on which the reorganization becomes effective for all purposes, maintains the college in which a student was last enrolled.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

History

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No.45).
3. Repealer of chapter 1 (sections 54000-54082, not consecutive) and new chapter 1 (sections 54000-54070, not consecutive) filed 11-22-82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54001. Adoption of Rules and Regulations; Publication; Uniformity.

The residence determination date and a summary of the rules and regulations adopted by the Board of Governors and district governing boards pursuant to chapter 1 part 41 of division 5 of the Education Code, commencing with section 68000 shall be published in the district catalogs. The statute law and the rules and regulations adopted by the Board of Governors and the district shall be made available to the students at each district.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

Note: Authority cited: Sections 66700, 68023, 68044, and 70901, Education Code. Reference: Section 68023, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54012. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68023, 68060, 68061 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out-of-state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68041, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54028. One-Year Waiting Period.

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68044, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54040. Self-Supporting Exception.

Any student claiming application of the self-supporting exception pursuant to Education Code section 68071 shall provide evidence such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

History

1. Amendment filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54045. Alien Students.

An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be classified as a resident or nonresident pursuant to the provisions of this chapter.

An alien is precluded from establishing domicile in the United States if the alien is in the United States under an unexpired visa which requires that the alien have a residence outside the United States or that he or she enter the United States solely for some temporary purpose. An alien who is precluded for establishing domicile in the United States shall not be classified as a resident.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 USC 1101(a)(15); and *Toll v. Moreno*, U.S. 1 (1982).

History

1. Repealer and new section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

Note: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

Note: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

Note: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68040, 68044 and 78034, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Sections 68044 and 68051, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. New section filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 2. Reports

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of Chapter 2 (Section 54150) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31).

Subchapter 2.5. Medical Insurance for Hazardous Activities

NOTE: Authority cited: Sections 71020, 72246.5, Education Code. Reference: Section 72246.5, Education Code.

HISTORY

1. New Chapter 2.5 (Articles 1-3, Sections 54161-54184, not consecutive) filed 12-13-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 50).
2. Repealer of Chapter 2.5 (Sections 54160-54184) filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).

Subchapter 3. Attendance

NOTE: Authority cited: Sections 66700, 71020, 76300, 78405, 84500.1, and 84530, Education Code. Reference: Sections 8512, 76300, 78203, 78412, 84500, 84500.1, 84500.5, and 84530, Education Code.

HISTORY

1. Repealer of Chapter 3 (Subchapters 1 and 2, Sections 54200-54222, not consecutive) and new Chapter 3 (Articles 1 and 2, Sections 54180-54228, not consecutive) filed 8-12-80; effective thirtieth day thereafter (Register 80, No. 33). For prior history, see Registers 79, No. 46; 77, No. 45; and 74, No. 10.
2. Repealer of Chapter 3 (Articles 1 and 2, Sections 54180-54228, not consecutive) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31). For prior history, see Register 81, No. 3.

§ 54200. Certain Students' Residences More than 60 Miles from Nearest Attendance Center.

Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service within the armed forces of the United States, who resides in this state and more than 60 miles from the nearest community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

The provisions of this section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and community college attendance center.

If the student resides within territory not included within any community college district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the students home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars ($4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled full time in credit classes in a community college under this section. Community college districts shall receive reimbursement from the Chancellor's Office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided by law.

No later than 60 days after the close of each fiscal year the Chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by community colleges exceed total funds raised by nondistrict territories for that purpose prior to July 1, 1978, the Chancellor shall prorate the allowances made under this section. No later than 90 days after the close of each fiscal year the community college districts shall pay eligible students at the rate prescribed by the Chancellor and verification of the claims by the appropriate county superintendent of schools.

The Chancellor shall prescribe procedures for the submission of claims by community college districts.

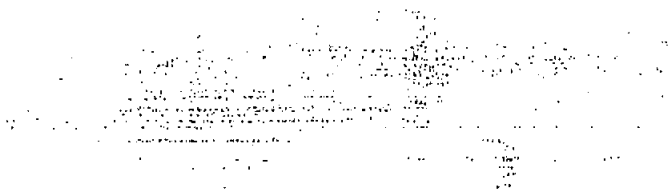
For the purpose of this section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorable discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the "Universal Military Training and Service Act," and

(1) satisfactorily completes his or her period of training and service under that act and is issued a certificate to that effect pursuant to that act, or

(2) having served honorably on active duty was transferred to a reserve component of the armed forces of the United States pursuant to that act, or

(3) was otherwise released pursuant to that act under honorable conditions.

For the purposes of this section, the term "armed forces of the United States" shall include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense,



NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68023, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out-of-state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68041, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54028. One-Year Waiting Period.

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68044, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54040. Self-Supporting Exception.

Any student claiming application of the self-supporting exception pursuant to Education Code section 68071 shall provide evidence such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

History

1. Amendment filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54045. Alien Students.

An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be classified as a resident or nonresident pursuant to the provisions of this chapter.

An alien is precluded from establishing domicile in the United States if the alien entered the United States illegally or under a visa which requires that the alien have a residence outside the United States or that he or she enter the United States solely for some temporary purpose. An alien who is precluded for establishing domicile in the United States shall not be classified as a resident unless and until he or she has been granted a change of status by the Immigration and Naturalization Service to a classification which permits establishing domicile and has, thereafter, met the requirements of Sections 54020-24 related to physical presence and intent to make California home for other than a temporary purpose. Undocumented aliens who are classified as California residents by any college in a district for the fall 1991 term shall not be subject to reclassification so long as they remain continuously enrolled, as defined in Education Code 68016, in the district, regardless of which college within the district is attended.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 USC 1101(a) (15); *Toll* v. *Moreno*, 458 U.S. 1 (1982); and *Regents of the University of California* v. *Bradford*, 225 Cal. App. 3rd, 972, 276 Cal. Rptr. 197 (1990).

History

1. Repealer and new section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 8-30-91; operative 9-29-91 (Register 92, No. 4).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

Note: Authority cited: Sections 66700, and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

History

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

Note: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

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(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54012. Residence Questionnaire.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68023, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out-of-state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68041, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54028. One-Year Waiting Period.

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence,

coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54040. Self-Supporting Exception.

Any student claiming application of the self-supporting exception pursuant to Education Code section 68071 shall provide evidence such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

HISTORY

1. Amendment filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54045. Alien Students.

An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be classified as a resident or nonresident pursuant to the provisions of this chapter.

An alien is precluded from establishing domicile in the United States if the alien entered the United States illegally or under a visa which requires that the alien have a residence outside the United States or that he or she enter the United States solely for some temporary purpose. An alien who is precluded for establishing domicile in the United States shall not be classified as a resident unless and until he or she has been granted a change of status by the Immigration and Naturalization Service to a classification which permits establishing domicile and has met the requirements of Sections 54020-24 related to physical presence and intent to make California home for other than a temporary purpose. Undocumented aliens who are classified as California residents by any college in a district for the fall 1991 term shall not be subject to reclassification so long as they remain continuously enrolled, as defined in Education Code 68016, in the district, regardless of which college within the district is attended.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 USC 1101(a) (15); *Toll* v. *Moreno*, 458U.S.1 (1982); and *Regents of the University of California* v. *Bradford*, 225 Cal.App.3rd 972, 276 Cal.Rptr. 197 (1990).

HISTORY

1. Repealer and new section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 8-30-91; operative 9-29-91 (Register 92, No. 4).
4. Editorial correction of printing error in second paragraph (Register 92, No. 12).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54047. Student Under Custody of Nonkdont Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

History
1. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

Note: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

Note: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

Note: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68040, 68044 and 78034, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

Note: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Sections 68044 and 68051, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

Note: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Section 68044, Education Code.

History
1. New section filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 2. Parking for Students with Disabilities

§ 54100. Parking for Students with Disabilities.

(a) Each community college district which provides parking shall, consistent with the requirements of this section and Education Code Sections 66260 and 67311.5, provide parking at each of its colleges or centers to students with disabilities and those providing transportation for such students.

(b) For purposes of this section, "students with disabilities" are those who have enrolled at the college and:

(1) qualify as disabled persons or disabled veterans pursuant to Section 22511.5 of the Vehicle Code; or

(2) are entitled to special parking provided through Disabled Student Programs and Services pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Students with disabilities using parking provided under this section may be required to display a distinguishing license plate or placard issued by the Department of Motor Vehicles pursuant to Section 22511.5 of the Vehicle Code or a special sticker issued by the college authorizing parking in spaces designated for persons with disabilities.

(d) Students with disabilities may be required to pay parking permit fees imposed pursuant to Education Code Section 72247. Students with disabilities shall not be required to pay any other charge, or be subjected to any time limitation or other restriction not specified herein, when parking in any of the following areas:

(1) any restricted zone described in subdivision (e) of Section 21458 of the Vehicle Code;

(2) any street upon which preferential parking privileges and height limits have been given pursuant to Section 22507 of the Vehicle Code;

(3) any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance;

(4) any metered zone; or

(5) any space in any lot or area otherwise designated for use by faculty, staff, administrators, or visitors.

(e) Parking specifically designated for persons with disabilities pursuant to Section 7102 of Title 24 of the California Code of Regulations shall be available to students with disabilities, and those providing transportation to such persons, in those parking areas which are most accessible to facilities which the district finds are most used by students.

(f) Each community college district shall post in conspicuous places notice that parking is available to students with disabilities and those providing transportation for such students.

(g) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for students with disabilities who are unable to operate the gate controls. Accommodations may be provided by

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§ 54002
§ 54010
§ 54012
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§54060
§54070

3. Editorial correction of HISTORY 1 (Register 95, No. 19).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6–25–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No.45).
3. Repealer of chapter 1 (sections 54000–54082, not consecutive) and new chapter 1 (sections 54000–54070, not consecutive) filed 11–22–82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 19).

§ 54001. Adoption of Rules and Regulations; Publication; Uniformity.

The residence determination date and a summary of the rules and regulations adopted by the Board of Governors and district governing boards pursuant to chapter 1, part 41 of division 5 of the Education Code, commencing with section 68000, shall be published in the district catalogs and/or addenda thereto. The applicable Education Code provisions and the rules and regulations adopted by the Board of Governors and the district shall be made available to the students at each district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by the Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, and 70901, Education Code. Reference: Section 68023, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54012. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68023, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out–of–state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68041, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54028. One–Year Waiting Period.

The one–year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54040. Self–Supporting Exception.

Any student claiming application of the self–supporting exception pursuant to Education Code section 68071 shall provide evidence such as: documentation, including W–2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 19).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

History

1. Amendment filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of History 2 (Register 95, No. 19).

§ 54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 19).

§ 54045. Alien Students.

(a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) An alien is precluded from establishing domicile in the United States if the alien:

(1) entered the United States illegally (undocumented aliens);

(2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020–54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, an alien who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student has not been in attendance at any college in the district for more than one semester or quarter.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 U.S.C. 1101(a)(15); *Toll* v. *Moreno*, 458 U.S. 1 (1982); and *Regents of the University of California* v. *Bradford*, 225 Cal.App.3rd, 972, 276 Cal. Rptr. 197 (1990).

History

1. Repealer and new section filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 8–30–91; operative 9–29–91 (Register 92, No. 4).
4. Editorial correction of printing error in second paragraph (Register 92, No. 12).
5. Repealer and new section filed 1–16–92; operative 2–18–92 (Register 92, No. 18).
6. Editorial correction of History 2 (Register 95, No. 19).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full–time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

Note: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 19).

§ 54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

Note: Authority cited: Sections 66700, and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of History 1 (Register 95, No. 19).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54050. Exceptions from the One–Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68040, 68044 and 78034, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Sections 68044 and 68051, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. New section filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

Subchapter 2. Parking for Students with Disabilities

§ 54100. Parking for Students with Disabilities.

(a) Each community college district which provides parking shall, consistent with the requirements of this section and Education Code Sections 66260 and 67311.5, provide parking at each of its colleges or centers to students with disabilities and those providing transportation for such students.

(b) For purposes of this section, "students with disabilities" are those who have enrolled at the college and:

(1) qualify as disabled persons or disabled veterans pursuant to Section 22511.5 of the Vehicle Code; or

(2) are entitled to special parking provided through Disabled Student Programs and Services pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Students with disabilities using parking provided under this section may be required to display a distinguishing license plate or placard issued by the Department of Motor Vehicles pursuant to Section 22511.5 of the Vehicle Code or a special sticker issued by the college authorizing parking in spaces designated for persons with disabilities.

(d) Students with disabilities may be required to pay parking permit fees imposed pursuant to Education Code Section 72247. Students with disabilities shall not be required to pay any other charge, or be subjected to any time limitation or other restriction not specified herein, when parking in any of the following areas:

(1) any restricted zone described in subdivision (e) of Section 21458 of the Vehicle Code;

(2) any street upon which preferential parking privileges and height limits have been given pursuant to Section 22507 of the Vehicle Code;

(3) any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance;

(4) any metered zone; or

(5) any space in any lot or area otherwise designated for use by faculty, staff, administrators, or visitors.

(e) Parking specifically designated for persons with disabilities pursuant to Section 7102 of Title 24 of the California Code of Regulations shall be available to students with disabilities, and those providing transportation to such persons, in those parking areas which are most accessible to facilities which the district finds are most used by students.

(f) Each community college district shall post in conspicuous places notice that parking is available to students with disabilities and those providing transportation for such students.

(g) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for students with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(h) Revenue form parking fees collected pursuant to Education Code Section 72247 may be used to offset the costs of implementing this section.

NOTE: Authority cited: Sections 66260, 67311.5, 66700 and 70901, Education Code. Reference: Sections 66260, 67311.5 and 72247, Education Code; and Sections 21458, 22507 and 22511.5, Vehicle Code.

3. Editorial correction of HISTORY 1 (Register 95, No. 19).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6–25–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No.45).
3. Repealer of chapter 1 (sections 54000–54082, not consecutive) and new chapter 1 (sections 54000–54070, not consecutive) filed 11–22–82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 19).

§ 54001. Adoption of Rules and Regulations; Publication; Uniformity.

The residence determination date and a summary of the rules and regulations adopted by the Board of Governors and district governing boards pursuant to chapter 1, part 41 of division 5 of the Education Code, commencing with section 68000, shall be published in the district catalogs and/or addenda thereto. The applicable Education Code provisions and the rules and regulations adopted by the Board of Governors and the district shall be made available to the students at each district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by the Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, and 70901, Education Code. Reference: Section 68023, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

(f) Pursuant to Section 54300, the district may authorize any information required by this section to be submitted electronically using encrypted digital signatures as specified in Section 54300.

NOTE: Authority cited: Sections 66700, 68044, 70901 and 70901.1, Education Code. Reference: Sections 68044, 68062 and 70901.1, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).
3. New subsection (f) and amendment of NOTE filed 5–13–99; operative 6–14–99 (Register 99, No. 20).

§ 54012. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68023, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54024. Intent.

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or subsection (c) of this section shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of owned or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.

(6) Showing California as home address on federal income tax form.

(7) Payment of California state income tax as a resident.

(8) Possessing California motor vehicle license plates.

(9) Possessing a California driver's license.

(10) Maintaining permanent military address or home of record in California while in armed forces.

(11) Establishing and maintaining active California bank accounts.

(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

(1) Maintaining voter registration and voting in another state.

(2) Being the petitioner for a divorce in another state.

(3) Attending an out–of–state institution as a resident of that other state.

(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54026. Burden.

The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68041, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54028. One–Year Waiting Period.

The one–year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68017, 68060, 68061 and 68062, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if

(1) the parent on whom the student is dependent is a California resident, or

(2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54040. Self–Supporting Exception.

Any student claiming application of the self–supporting exception pursuant to Education Code section 68071 shall provide evidence such as: documentation, including W–2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for

business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

HISTORY

1. Amendment filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

§ 54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54045. Alien Students.

(a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) An alien is precluded from establishing domicile in the United States if the alien:

(1) entered the United States illegally (undocumented aliens);

(2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020–54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, an alien who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student has not been in attendance at any college in the district for more than one semester or quarter.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 U.S.C. 1101(a)(15); *Toll* v. *Moreno*, 458 U.S. 1 (1982); and *Regents of the University of California* v. *Bradford*, 225 Cal.App.3rd, 972, 276 Cal. Rptr. 197 (1990).

HISTORY

1. Repealer and new section filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 8–30–91; operative 9–29–91 (Register 92, No. 4).
4. Editorial correction of printing error in second paragraph (Register 92, No. 12).
5. Repealer and new section filed 1–16–92; operative 2–18–92 (Register 92, No. 18).
6. Editorial correction of HISTORY 2 (Register 95, No. 19).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full–time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54050. Exceptions from the One–Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues of residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68040, 68044 and 78034, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Sections 68044 and 68051, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. New section filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

Subchapter 2. Parking for Students with Disabilities

§ 54100. Parking for Students with Disabilities.

(a) Each community college district which provides parking shall, consistent with the requirements of this section and Education Code Sections 66260 and 67311.5, provide parking at each of its colleges or centers to students with disabilities and those providing transportation for such students.

(b) For purposes of this section, "students with disabilities" are those who have enrolled at the college and:

(1) qualify as disabled persons or disabled veterans pursuant to Section 22511.5 of the Vehicle Code; or

(2) are entitled to special parking provided through Disabled Student Programs and Services pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Students with disabilities using parking provided under this section may be required to display a distinguishing license plate or placard issued by the Department of Motor Vehicles pursuant to Section 22511.5 of the Vehicle Code or a special sticker issued by the college authorizing parking in spaces designated for persons with disabilities.

(d) Students with disabilities may be required to pay parking permit fees imposed pursuant to Education Code Section 72247. Students with disabilities shall not be required to pay any other charge, or be subjected to any time limitation or other restriction not specified herein, when parking in any of the following areas:

(1) any restricted zone described in subdivision (e) of Section 21458 of the Vehicle Code;

(2) any street upon which preferential parking privileges and height limits have been given pursuant to Section 22507 of the Vehicle Code;

(3) any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance;

(4) any metered zone; or

(5) any space in any lot or area otherwise designated for use by faculty, staff, administrators, or visitors.

(e) Parking specifically designated for persons with disabilities pursuant to Section 7102 of Title 24 of the California Code of Regulations shall be available to students with disabilities, and those providing transportation to such persons, in those parking areas which are most accessible to facilities which the district finds are most used by students.

(f) Each community college district shall post in conspicuous places notice that parking is available to students with disabilities and those providing transportation for such students.

(g) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for students with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(h) Revenue form parking fees collected pursuant to Education Code Section 72247 may be used to offset the costs of implementing this section.

Register 02-25

§ 54045.5

business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68071, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student is a dependent of the military person for an exemption on federal taxes shall also be provided.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

HISTORY

1. Amendment filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

§ 54042. Member of Military.

A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68075, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54045. Alien Students.

(a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) An alien is precluded from establishing domicile in the United States if the alien:

(1) entered the United States illegally (undocumented aliens);

(2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, an alien who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student has not been in attendance at any college in the district for more than one semester or quarter.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Section 68062(h), Education Code; 8 U.S.C. 1101(a)(15); *Toll v. Moreno*, 458 U.S. 1 (1982); and *Regents of the University of California* v. *Bradford*, 225 Cal.App.3rd, 972, 276 Cal. Rptr. 197 (1990).

HISTORY

1. Repealer and new section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 8-30-91; operative 9-29-91 (Register 92, No. 4).
4. Editorial correction of printing error in second paragraph (Register 92, No. 12).
5. Repealer and new section filed 1-16-92; operative 2-18-92 (Register 92, No. 18).
6. Editorial correction of HISTORY 2 (Register 95, No. 19).

§ 54045.5. Nonresident Tuition Exemption.

(a) In accordance with Education Code section 68130.5, any student, other than a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15), shall be exempt from paying nonresident tuition at any community college district if he or she:

(1) Attended high school in California for three or more years;

(2) Graduated from a California high school or attained the equivalent of such graduation; and

(3) Registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

(b) Any student seeking an exemption under subdivision (a) shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic student information so provided shall be confidential and shall not be disclosed unless required by law.

(c) Any student without lawful immigration status who is seeking an exemption under subdivision (a), shall, in the questionnaire described in (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

(d) A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.

(e) Nothing herein modifies eligibility standards for any form of student financial aid, including but not limited to, those contained in Subchapter 7 of Chapter 9 of this Division.

(f) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2002.

NOTE: Authority cited: Sections 66700, 68130.5 and 70901, Education Code. Reference: Section 68130.5, Education Code.

HISTORY

1. New section filed 5-3-2002; operative 6-2-2002. Submitted to OAL for printing only (Register 2002, No. 25).

§ 54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Sections 68044 and 68078, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(h).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of section 68073 of the Education Code shall provide evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, and 68044, Education Code. Reference: Sections 68044 and 68073, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54048. Agricultural Employment.

A student claiming residence shall provide either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required;

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040 and 68100, Education Code. Reference: Sections 68044, 68100 and 78034, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68040, 68044 and 78034, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Sections 68044 and 68051, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 19).

§ 54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship. No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044 and 68051, Education Code. Reference: Section 68044, Education Code.

HISTORY

1. New section filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 19).

Subchapter 2. Parking for Students with Disabilities

§ 54100. Parking for Students with Disabilities.

(a) Each community college district which provides parking shall, consistent with the requirements of this section and Education Code Sections 66260 and 67311.5, provide parking at each of its colleges or centers to students with disabilities and those providing transportation for such students.

(b) For purposes of this section, "students with disabilities" are those who have enrolled at the college and:

(1) qualify as disabled persons or disabled veterans pursuant to Section 22511.5 of the Vehicle Code; or

(2) are entitled to special parking provided through Disabled Student Programs and Services pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Students with disabilities using parking provided under this section may be required to display a distinguishing license plate or placard issued by the Department of Motor Vehicles pursuant to Section 22511.5 of the

SixTen and Associates
Mandate Reimbursement Services

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May 14, 2008

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: No. CSM. 02-TC-21
Tuition Fee Waivers

Dear Ms. Higashi:

On November 20, 2007, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the history of the Title 5, CCR, sections included in the test claim, at the request of the Commission staff.

Your letter dated May 2, 2008, requests an updated test claim form CSM 2 to include the California Code of Regulations registers which contain the history of the changes to the CCR sections listed in the original test claim filing.

This letter transmits, on behalf of the test claimants, the list of registers and relevant section numbers in the form of an amended attachment page to the CSM 2 form.

Sincerely,

Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor
Finance and Administration
State Center Community College District
1525 East Weldon
Fresno, CA 93704-6398

May 14, 2008
02-TC-21 Tuition Fee Waivers
Amended Attachment to COSM Form CSM 2 (1/91)

Statutes Cited

Chapter 450, Statutes of 2002	Chapter 814, Statutes of 2001	Chapter 949, Statutes of 2000
Chapter 571, Statutes of 2000	Chapter 952, Statutes of 1998	Chapter 438, Statutes of 1997
Chapter 758, Statutes of 1995	Chapter 389, Statutes of 1995	Chapter 8, Statutes of 1993
Chapter 1236, Statutes of 1992	Chapter 170, Statutes of 1992	Chapter 455, Statutes of 1991
Chapter 1372, Statutes of 1990	Chapter 985, Statutes of 1989	Chapter 900, Statutes of 1989
Chapter 424, Statutes of 1989	Chapter 753, Statutes of 1988	Chapter 317, Statutes of 1983
Chapter 1070, Statutes of 1982	Chapter 102, Statutes of 1981	Chapter 789, Statutes of 1980
Chapter 580, Statutes of 1980	Chapter 797, Statutes of 1979	Chapter 242, Statutes of 1977
Chapter 36, Statutes of 1977	Chapter 990, Statutes of 1976	Chapter 78, Statutes of 1975

Education Code Sections Cited

Section 68044	Section 68051	Section 68074	Section 68075	Section 68075.5
Section 68076	Section 68077	Section 68078	Section 68082	Section 68083
Section 68084	Section 68121	Section 68130.5	Section 76140	

California Code of Regulations Registers:

Register 77-45

Title 5, Sections: 54002 54005.1 54005.5 54005.6 54005.10 54005.11 54031 54032 54033 54033.5
54036 54037 54038 54039 54040 54060 54070

Register 82-48

Title 5, Sections: 54000 54002 54010 54012 54020 54022 54024 54026 54028 54030 54032 54040
54041 54042 54045 54046 54047 54048 54050 54060 54070

Register 83-24

Title 5, Sections: 54000 54041

Register 86-10

Title 5, Sections: 54045

Register 91-23

Title 5, Sections: 54000 54001 54002 54010 54012 54020 54022 54024 54026 54028 54030 54032
54040 54041 54042 54045 54046 54047 54048 54050 54060 54070 54072

Register 92-04

Title 5, Sections: 54045

Register 92-12

Title 5, Sections: 54045

Register 92-18

Title 5, Sections: 54045

Register 95-19

Title 5, Sections: 54000 54001 54002 54010 54012 54020 54022 54024 54026 54028 54030 54032
54040 54041 54042 54045 54046 54048 54050 54060 54070 54072

Register 99-20

Title 5, Sections: 54010

Register 02-25

Title 5, Sections: 54045.5

Title 5, Code of Regulations Originally Cited

Section 54002	Section 54010	Section 54012	Section 54020	Section 54022
Section 54024	Section 54030	Section 54032	Section 54041	Section 54042
Section 54045	Section 54045.5	Section 54046	Section 54050	Section 54060
Section 54070				

Executive Orders

Revised Guidelines and Information
"Exemption From Nonresident Tuition"
Chancellor of the California
Community Colleges (May 2002)

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

Exhibit B

December 4, 2008

Mr. Keith Petersen
SixTen and Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Affected State Agencies and Interested Parties (see enclosed mailing list)

Re: **Draft Staff Analysis, Comment Period and Hearing Date**
Tuition Fee Waivers; 02-TC-21
Contra Costa Community College District, Claimant
Statutes 1975, Chapter 78 (SB 82); Statutes 1976, Chapter 990 (AB 4289);
Statutes 1977, Chapters 36 and 242 (AB 447 and AB 645);
Statutes 1979, Chapter797 (AB 1549);
Statutes 1980, Chapters 580 and 789 (AB 2567 and AB 2825);
Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070 (AB 2627);
Statutes 1983, Chapter 317 (SB 646); Statutes 1988, Chapter 753 (AB 3958);
Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716);
Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745);
Statutes 1992, Chapters 170 and 1236 (AB 3058 and SB 2000);
Statutes 1993, Chapter 8 (AB 46);
Statutes 1995, Chapters 389 and 758 (AB 723 and AB 446);
Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639);
Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632);
Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)
Education Code Section 68044, et al.
California Code of Regulations, Title 5, Section 54002, et al.
Revised Guidelines and Information, "Exemption from Nonresident Tuition," Chancellor of the California Community Colleges (May 2002)

Dear Mr. Petersen:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Friday, **January 2, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) Please note changes to the mailing list. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on Friday, January 30, 2009, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, CA. The final staff analysis will be issued on or about January 16, 2009. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Eric Feller at (916) 323-8221 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

J:mandates/2002/02tc21/corres/dsatrans

Hearing Date: January 30, 2009
J:\MANDATES\2002\tc\02-tc-21\tc\dsa.doc

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 68044, 68051, 68074, 68075, 68075.5, 68076, 68077, 68078, 68082, 68083, 68084, 68121, 68130.5, 76140

Statutes 1975, Chapter 78 (SB 82); Statutes 1976, Chapter 990 (AB 4289); Statutes 1977, Chapters 36 and 242 (AB 447 and AB 645); Statutes 1979, Chapter 797 (AB 1549); Statutes 1980, Chapters 580 and 789 (AB 2567 and AB 2825); Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070 (AB 2627); Statutes 1983, Chapter 317 (SB 646); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1992, Chapters 170 and 1236 (AB 3058 and SB 2000); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapters 389 and 758 (AB 723 and AB 446); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)

California Code of Regulations, Title 5, Sections 54002, 54010, 54012, 54020, 54022, 54024, 54030, 54032, 54041, 54042, 54045, 54045.5, 54046, 54050, 54060, 54070

Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 92, No. 12 (Mar. 27, 1992); Register 92, No. 18 (Feb. 18, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)

Revised Guidelines and Information, "Exemption from Nonresident Tuition" Chancellor of the California Community Colleges, May 2002

Tuition Fee Waivers
02-TC-21

Contra Costa Community College District, Claimant

EXECUTIVE SUMMARY

Background

The test claim consists of statutes, regulations and an executive order that allege community college district ("district") activities in determining student residence status and nonresident student tuition fee charges or waivers at community colleges.

Education Code section 68040[1] requires students to be classified as either residents or nonresidents at community colleges and other segments of California public higher education. A

[1] This section was not pled by claimant, so staff makes no finding on it.

resident is defined as a student who has residence in the state for more than one year immediately preceding the residence determination date (§ 68017).[2] The community college classifies a student as either a resident or nonresident after the student fills out a residence questionnaire (Cal.Code Regs., tit. 5, § 54012)..

Although residence determination is normally governed by the student's physical presence and intent requirements, the Legislature has granted residence status to certain categories of students who do not meet these requirements, such as members of the armed forces (§ 68075), members of the armed forces after discharge (§ 68075.5), military dependents (§ 68074), dependents of California residents who have been in California for more than one year (§ 68076), aliens (Cal.Code Regs., tit. 5, § 54045), graduates of Bureau of Indian Affairs schools (§ 68077), public school employees holding a valid credential (§ 68078), Native Americans (§ 68082), amateur student athletes at the Olympic Training Center (§ 68083), federal civil service employees and dependents in California due to military mission realignments (§ 68084), or nonresident California high school graduates (§ 68130.5). Students claiming to fall within one of these categories must provide proof of eligibility (Cal.Code Regs., tit. 5, §§ 54010 and 54026).

Nonresident students are required to pay nonresident tuition that resident students do not pay (§ 68050).

Community college students who are dependents of victims of the September 11, 2001 terrorist attacks and who meet certain qualifications are exempt from all fees and tuition (§ 68121).

Community colleges are also required to notify students of their residence classification (Cal.Code Regs., tit. 5, §§ 54060) and of the amount of nonresident tuition (§ 76140), and are required to refund any fees collected in error or as a result of the student's reduction in units (Cal.Code Regs., tit. 5, § 54070). Students may appeal their residence classification in accordance with district appeal procedures (Cal.Code Regs., tit. 5, § 54060).

Conclusion

For the reasons discussed below, staff finds that the test claim statutes, regulations, and executive order impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for community college districts to be reimbursed for the following:

District Governing Board Rules and Regulations on Nonresident Tuition

- Adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund (Ed. Code, § 68051, Stats. 1990, ch. 1372). This is a one-time activity.

[2] All references are to the Education Code unless otherwise specified.

Determining Residence Classification

- Require applicant to supply, and district to weigh, the residence determination factors: Require applicants to supply, and for the district to weigh, the following information to determine the student's residence classification (Cal. Code Regs., tit. 5, § 54024, subd. (e)).[3]
  - Ownership of residential property
  - Registering to vote in California
  - Active membership in service or social clubs.
  - Being the petitioner for a divorce in California.

  Require a student to supply, and for the district to weigh, information regarding whether the student or the parents of a minor student who relinquished California residence after moving from the state has reestablished residence by one full year of physical presence coupled with demonstrated intent to be a California resident. (Cal.Code Regs., tit. 5, § 54030, Register 82, No. 48 (Nov. 27, 1982) p. 637.)

- Residence classification questionnaires: To revise the residence questionnaire based on a sample residence questionnaire provided by the Chancellor's Office (a one-time activity).

  To require the student to supply, and for the district to weigh, the following information in a residence questionnaire to determine the student's residence classification:
  - Where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subdivision (f) of section 54024 of the title 5 regulations, i.e., has maintained voter registration in another state and voted in another state; was a petitioner for a divorce in another state, as attended an out-of-state institution as a resident of that other state; has declared nonresidence for state income tax purposes.
  - For each student under 19 years of age, consideration of where the parent has lived for the last two years and where the parent has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations.
  - If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.[4] (Cal.Code Regs., tit. 5, § 54012, subds. (b), (c) & (d).)[5]

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[3] Register 82, No. 48 (Nov. 27, 1982), Register 91, No. 23 (April 5, 1991) p. 334, Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

[4] Section 54024, subdivision (e), of the title 5 regulations states: "Objective manifestations of intent to establish California residence include but are not limited to: (1) Ownership of residential property or continuous occupancy of rented or leased property in California. (2) Registering to vote and voting in California. (3) Licensing from California for professional practice. (4) Active membership in service or social clubs. (5) Presence of spouse, children or other close relatives in the state. (6) Showing California as home address on federal income tax

- Financial independence: Determine whether the student is financially independent or dependent, in accordance with Education Code section 68044, when a student is seeking reclassification as a resident who was classified as a nonresident in the preceding term. (Cal. Code Regs., tit. 5, § 54032, subd (a).)[6]

  Determine whether the student seeking reclassification as a resident who was classified as a nonresident in the preceding term is financially dependent or independent, by requiring the student to supply, and the district to weigh, information on whether the student (1) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (2) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (3) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application. (Ed. Code, § 68044, subds. (a), (b) & (c); Stats. 1981, ch. 102, Stats. 1982, ch. 1070.)

Nonresident Tuition Fee

- Provide nonresident students with notice of nonresident tuition fee charges during the spring term before the fall term in which the change will take effect, and to consider nonresident tuition fees of public community colleges in other states in determining nonresident tuition fees, and to make nonresident tuition fee increases gradual, moderate, and predictable. (Ed. Code, § 76140, subd. (d), Stats. 1989, ch. 985.)

Exceptions to Determination of Nonresidence

The following are entitled to resident tuition or are exempted from paying nonresident tuition:

- Dependent of member of armed forces: Classify as residents for the purpose of determining the amount of tuition and fees those dependents (defined as a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces) of military personnel who retire from active duty after the residence determination date until the student

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form. (7) Payment of California state income tax as a resident. (8) Possessing California motor vehicle license plates. (9) Possessing a California driver's license. (10) Maintaining permanent military address or home of record in California while in armed forces. (11) Establishing and maintaining active California bank accounts. (12) Being the petitioner for a divorce in California."

[5] Register 82, No. 48 (Nov. 27, 1982) pp. 635-636; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333.

[6] Register 82, No. 48 (Nov. 27, 1982) p. 637; Register 91, No. 23 (April 5, 1991) p. 335; Register 95, No. 19 (May 19, 1995) p. 334.

dependent has resided in the state the minimum time necessary to become a resident. (Ed. Code, § 68074, Stats. 1980, ch. 580, Stats. 1989, ch. 900, Stats. 2000, ch. 571.)

Require applicants claiming residence status pursuant to section 68074 of the Education Code (dependent member of the armed forces) to supply, and for the district to weigh, the following documentation in determining the applicant's residence:

- A statement from the military person's commanding officer or personnel officer that: (1) the military person's duty station is in California on active duty as of the residence determination date; or (2) that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or (3) that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States.
- A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes (Cal.Code. Regs., tit. 5, § 54041).[7]

- Member of armed forces after discharge: Classify as a resident a student who was a member of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged from the armed forces, for the length of time he or she lives in California after being discharged up to the minimum time necessary to become a resident (Ed. Code, § 68075.5, Stats. 1995, ch. 389).
- Dependent of California resident for more than one year: Classify as a resident a student who (a) has not been an adult resident of California for more than one year and (b) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at a community college (Ed. Code, § 68076, Stats. 1988, ch. 753, Stats. 1991, ch. 455, Stats. 1993, ch. 8).
- Graduate of Bureau of Indian Affairs school: Classify a student as a resident if he or she has graduated from any school located in California that is operated by the United States Bureau of Indian Affairs, so long as continuous attendance is maintained by the student at a community college (Ed. Code, § 68077, Stats. 1989, ch. 424, Stats. 1993, ch. 8).
- Student holding emergency permit or public school credential: Classify as a resident a student who holds a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements. This classification is only for the purposes of determining the amount of tuition and fees for no more than one year. (Ed. Code, § 68078, subd. (b), Stats. 2000, ch. 949).

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[7] Register 82, No. 48 (Nov. 27, 1982) p. 638; Register 83, No. 24 (Jun. 11, 1983) p. 638. Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 335.

For students claiming residency status pursuant to section 68078 of the Education Code, require the student to supply, and for the district to weigh, the following:

- A statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. (Cal. Code Regs., tit. 5, § 54046; Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.) This section is state-mandated new program or higher level of service for students claiming residence under subdivision (a) of section 68078,[8] as well as subdivision (b) (student holding a valid emergency permit, as specified).
- Any teaching credential (except a provisional credential). Require the student to show he or she will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements. (Former Cal. Code Regs., tit. 5, § 54036; Register 77, No. 45 (Nov. 5, 1977) p. 638.2. Cal. Code Regs., tit. 5, § 54046.)[9]

- Native American student: Classify as a resident a Native American student who attends a school administered by the Bureau of Indian Affairs located within the community college district (Ed. Code, §68082, Stats. 1977, ch. 36).
- Amateur student athlete in training at U.S. Olympic Training Center: Classify as a resident for tuition purposes any amateur student athlete (as defined in Ed. Code, § 68083, subd.

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[8] Subdivision (a) of section 68078 provides:

(a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution is entitled to resident classification if that student meets any of the following requirements:

(1) He or she holds a provisional credential and is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

(2) He or she holds a credential issued pursuant to Section 44250 and is enrolled at an institution in courses necessary to fulfill credential requirements [§ 44250 states that the commission (on teacher credentialing) issues only the following two types of credentials: "(a) A teaching credential. (b) A services credential. The commission may issue an internship teaching or services credential.]

(3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259. [§ 44259, subd. (b), specifies the minimum requirements for the preliminary multiple or single subject teaching credential.]

[9] Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.

(b))[10] in training at the United States Olympic Training Center in Chula Vista, until he or she has resided in the state the minimum time necessary to become a resident (Ed. Code, § 68083, Stats. 1997, ch. 438).

- Federal civil service employee in state due to military mission realignment: Classify as a state resident a federal civil service employee and his or her natural or adopted dependent children if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees, until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education (Ed. Code, § 68084, Stats. 1998, ch. 952).
- Nonresident California high school graduates: Exempt a student (other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code) from paying nonresident tuition if he or she meets the following criteria: (1) high school attendance in California for three or more years; (2) graduation from a California high school or attainment of the equivalent thereof; (3) registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002; (4) in the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so; and (5) completion of a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment verifying eligibility for this nonresident tuition exemption. (Ed. Code, § 68130.5, Stats. 2001, ch. 814, & Cal.Code Regs., tit. 5, § 54045.5, subd. (b); Register 02, No. 25 (Jun. 21, 2002) p. 335.)[11] For these students:
  - Retain indefinitely, as Class 1 permanent records, the original certified affidavit and other materials utilized by a district in meeting the certification requirements; or, copying or reproducing by photograph, microphotograph or reproduced on film or electronically the original certified affidavit and other materials utilized by a district in meeting the certification requirements (Chancellor of the California Community Colleges, "Revised Guidelines and Information on AB 540 Exemption From Nonresident Tuition" May 2002, p. 4, par. 20).

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[10] "'Amateur student athlete,' for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes." (§ 68083, subd. (b).)

[11] On September 15, 2008, California's Third District Court of Appeal issued an opinion on section 68130.5 (Stats. 2001, ch. 814). The opinion reverses a lower court's decision to grant a demurrer, and holds that plaintiffs stated a viable claim that section 68130.5 conflicts with and is preempted by federal title 8 U.S.C. sections 1623 and 1621. (*Martinez v. Regents of the University of California* (2008) 166 Cal.App.4th 1121.) The case was remanded back to the trial court. If the court ultimately finds that section 68130.5 is invalid, the statute would become void. At that point (if the Commission finds that § 68130.5 is a reimbursable state-mandated program) reimbursement for activities under section 68130.5 would end on the date the court's decision becomes final.

- Refund the student's nonresident tuition if the student is determined eligible for the exemption after he or she has paid nonresident tuition (*Id.*, p. 2, par. 8).
- Discard and replace old questionnaire forms with the newly prescribed Chancellor's form in printed materials for Summer or Fall 2002, unless the district's form is part of a major preprinted document such as a Schedule of Classes. This is a one-time activity (*Id.* at p. 3, par. 14).

- Alien students: Require a student alien to supply, and for the district to weigh, information on whether the student is precluded from establishing domicile. An alien is precluded from establishing domicile in the United States if the alien: (1) entered the United States illegally; (2) entered the United States under a visa requiring that the alien have a residence outside the United States; or (3) entered the United States under a visa that permits entry solely for some temporary purpose. And for the community college district to determine, for an alien who is precluded from establishing domicile in the United States pursuant to subdivision (b) of section 54045 of the title 5 regulations, whether that alien has (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service[12] to a classification which does not preclude establishing domicile, and (2) met the residence requirements of sections 54020-54024[13] of the title 5 regulations related to physical presence and the intent to

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[12] The current name of this government agency is U.S. Citizenship and Immigration Services. See < http://www.uscis.gov> as of May 8, 2008.

[13] Section 54020 of the title 5 regulations requires "to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose."

Section 54022 of the title 5 regulations states:

> (a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.
>
> (b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.
>
> (c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence."

Section 54024 of the title 5 regulations states:

> (a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.
>
> (b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent

make California home for other than a temporary purpose. (Cal. Code Regs., tit. 5, § 54045, subds. (b) & (c).)[14]

Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks

- Surviving dependents of victims of 9/11 terrorist attacks: Waive mandatory systemwide fees or tuition of any kind for a student in an undergraduate program who is the surviving dependent (as defined)[15] of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if the student is determined eligible by the California Victim Compensation and Government Claims Board. The waiver lasts until January 1, 2013, unless the dependent is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, in which case the tuition and fees are waived until the person obtains the age of 30 years (Ed. Code, § 68121, Stats. 2002, ch. 450).

Notifying Students of Classification Decision and Appeal Procedure

- Notification and appeal of classification decision: Notify a student of his or her residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later. (Cal. Code Regs., tit. 5, § 54060, subd. (a); Register 82, No. 48 (Nov. 27, 1982) p. 638.2.)

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to make California the home for other than a temporary purpose unless the student has engaged in any of the activities listed in subdivision (f).

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his or her parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f).

(d) A student who does not meet the requirements of subdivision (b) or subdivision (c) shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subdivision (e).

[Subdivision (e) lists 12 objective manifestations of intent to establish California residence. Subdivision (f) lists 4 acts of conduct inconsistent with a claim of California residence.]

[14] Register 86, No. 10 (Mar. 8, 1986) p. 638.1, Register 91, No. 23 (April 5, 1991) p. 336; Register 92, No. 4 (Jan. 24, 1992) p. 336, Register 95, Nos. 19-20 (May 19, 1995) p. 335.

[15] "'Dependent,' for purposes of the section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42)." (§ 68121, subd. (d)(1).)

Establish procedures for appeals of residence classifications (Cal Code Regs., tit. 5, § 54060, subd. (b).)[16]

Staff also finds that all other statutes, regulations, and executive orders in the test claim do not constitute a reimbursable state-mandated program.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

[16] Register 82, No. 48 (Nov. 27, 1982) p. 638.2); Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.

STAFF ANALYSIS

Claimant

Contra Costa Community College District

Chronology

5/23/03	Claimant Contra Costa Community College District files test claim
7/1/03	Department of Finance requests extension of time to file comments
7/8/03	Commission staff grants extension
8/13/03	Department of Justice requests extension of time to file comments
8/18/08	Commission staff grants extension
10/28/03	Department of Finance requests extension of time to file comments
11/7/03	Commission staff grants extension
2/13/04	Department of Finance requests extension of time to file comments
2/18/04	Commission staff grants extension
3/17/04	Department of Finance requests extension of time to file comments
3/19/04	Commission staff grants extension
6/9/04	Department of Finance requests extension of time to file comments
6/14/04	Commission staff grants extension
9/8/04	Department of Finance requests extension of time to file comments
9/14/04	Commission staff grants extension
9/22/04	Department of Justice requests to be removed from the mailing list
12/21/04	Department of Finance requests extension of time to file comments
12/28/04	Commission staff grants extension
3/14/05	Department of Finance requests extension of time to file comments
3/17/05	Commission staff grants extension
9/22/05	Department of Finance requests extension of time to file comments
10/3/05	Commission staff grants extension
2/3/06	Department of Finance requests extension of time to file comments
2/7/06	Commission staff grants extension
11/20/07	Claimant sends test claim supplement, a history of the title 5 regulations
5/2/08	Commission staff requests information on title 5 regulations from Claimant
5/14/08	Claimant responds to request for information
12/4/08	Commission staff issues draft staff analysis

Background

The test claim alleges various activities in the Education Code,[17] title 5 of the California Code of Regulations, and in one publication of the Chancellor's Office of the California Community Colleges, that involve classifying students[18] as residents or nonresidents and related activities at community colleges.

Education Code section 68040 requires students to be classified as either residents or nonresidents at community colleges and other segments of California public higher education. A resident is defined as a student who has residence in the state for more than one year immediately preceding the residence determination date (§ 68017). Conversely, a nonresident is a student who does not have residence in the state for more than one year immediately preceding the residence determination date[19] (§ 68018). The community college classifies a student as either a resident or nonresident after the student fills out a residence questionnaire (Cal.Code Regs., tit. 5, § 54012).

Although residence determination is normally governed by the student's physical presence and intent requirements,[20] the Legislature has granted residence status to certain categories of students who do not meet these requirements, such as members of the armed forces (§ 68075), members of the armed forces after discharge (§ 68075.5), military dependents (§ 68074), dependents of California residents who have been in California for more than one year (§ 68076), aliens (Cal.Code Regs., tit. 5, § 54045), graduates of Bureau of Indian Affairs schools (§ 68077), public school employees holding a valid credential (§ 68078), Native Americans (§ 68082), amateur student athletes at the Olympic Training Center (§ 68083), federal civil service employees and dependents in California due to military mission realignments (§ 68084), or nonresident California high school graduates (§ 68130.5). Students claiming to fall within one of these categories must provide proof of eligibility (Cal.Code Regs., tit. 5, §§ 54010 and 54026).

Nonresident students are required to pay nonresident tuition that resident students do not pay (§ 68050).

Community college students who are dependents of victims of the September 11, 2001 terrorist attacks and who meet certain qualifications are exempt from all fees and tuition (§ 68121).

Community colleges are also required to notify students regarding their resident classification (Cal.Code Regs., tit. 5, §§ 54060) and regarding the amount of nonresident tuition (§ 76140), and are required to refund any fees collected in error or as a result of the student's reduction in units

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[17] All references are to the Education Code unless otherwise indicated.

[18] "'Student' means a person enrolled in or applying for admission to an institution" (§ 68015). The definition of an "institution" includes a community college (§ 68011).

[19] The residence determination date is "a date or day established by the…district governing boards, as appropriate for each semester, quarter, or term to determine a student's residence" (§ 68023).

[20] Education Code section 68060 et seq.; California Code of Regulations, title 5, sections 54022 and 54024.

(Cal.Code Regs., tit. 5, § 54070). Students may appeal their residence classification (Cal.Code Regs., tit. 5, § 54060).

Claimant's Position

Claimant alleges that the test claim statutes, regulations, and alleged executive order impose a reimbursable mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

A Establishing and implementing policies and procedures, and periodically revising and updating those policies and procedures, to provide for the classification of students as residents or nonresidents, pursuant to Education Code section 68044.

(1) Residence classification, or reclassification, for each student at the time applications for admissions are accepted and whenever a student has not been in attendance for more than one semester or quarter, pursuant to title 5, California Code of Regulations, Section 54010, subdivision (a).

(2) Receiving and reviewing evidence supplied by students showing physical presence in California and intent to make California their home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, evidence of financial independence, pursuant to title 5, California Code of Regulations, Section 54010, subdivision (b).

(3) Weighing the information received from each student and making a determination whether the student has clearly established that he or she has been a resident for one year prior to the residence determination date, pursuant to title 5, California Code of Regulations, Section 54010, subdivision (d).

(4) Verifying that the residence questionnaires that have been submitted by the student under oath or penalty of perjury, pursuant to title 5, California Code of Regulations, Section 54010, subdivision (e).

(5) Verifying that the student has been physically present in California for one year prior to the residence determination date, pursuant to title 5, California Code of Regulations, Section 54022.

(6) For those students who are unable to establish a presumption of residence pursuant to either subdivision (b) or (c), requiring them to provide evidence of residence, such as: ownership of residential property or continuous occupancy of rented or leased property in California; registering to vote and voting in California; professional licensing in California; active membership in service or social clubs; presence of spouse, children or other close relatives in the state; showing a California address on a federal tax return; paying California income tax as a resident; possessing California motor vehicle license plates; possessing a California driver's license; maintaining a permanent military address; establishing and maintaining active California bank accounts; and/or being the petitioner for a divorce in California, pursuant to title 5, California Code of Regulations, Section 54024, subdivision (d).

(7) If a student, or the parents of a minor student, relinquishes California residence, requiring evidence of one full year of physical presence coupled with one full year of demonstrated intent, pursuant to title 5, California Code of Regulations, Section 54030.

(8) If a student previously classified as a nonresident seeks reclassification as a resident, requiring and verifying the student's financial independence, pursuant to title 5, California Code of Regulations, Section 54032.

(9) Notifying each student of his or her resident classification not later than 14 calendar days after the beginning of the session for which the student had applied, or 14 calendar days after the student's application for admission, whichever is later, pursuant to title 5, California Code of Regulations, Section 54060, subdivision (a).

B Using residence questionnaires in making residence classifications pursuant to title 5, California Code of Regulations, Section 54012, subdivision (a). The questionnaire shall ask each student:

(1) Where the student has maintained his or her home for the past two years and whether the student has maintained voter registration or voted in another state, has been a petitioner for a divorce in another state, attended an out-of-state institution as a resident of that other state and whether he or she has declared nonresidence for state income tax purposes, pursuant to title 5, California Code of Regulations, Section 54012, subdivision (b).

(2) If the student is under age 19, where his or her parent has lived for the past two years and whether the parent has maintained voter registration or voted in another state, has been a petitioner for a divorce in another state, attended an out-of-state institution as a resident of that other state and whether he or she has declared nonresidence for state income tax purposes, pursuant to title 5, California Code of Regulations, Section 54012, subdivision (c).

(3) When the student is under age 19, if the student or the parent has either maintained a home outside of California at any time during the past two years or maintained voter registration or voted in another state, or has been a petitioner for a divorce in another state, or attended an out-of-state institution as a resident of that other state, or whether he or she has declared nonresidence for state income tax purposes, the student shall be asked to supply additional evidence of intent to reside in California, such as ownership of residential property or continuous occupancy of rented or leased property in California; registering to vote and voting in California; professional licensing in California; active membership in service or social clubs; presence of spouse, children or other close relatives in the state; showing a California address on a federal tax return; paying California income tax as a resident; possession of California motor vehicle license plates; possession of a California driver's license; maintaining a permanent military address; establishing and maintaining active California bank accounts; and/or being the petitioner for a divorce in California, pursuant to title 5, California Code of Regulations, Section 54012, subdivision (d).

C Granting or limiting residence classification for tuition purposes;

(1) For no more than one academic year for undergraduate students who are dependent children or spouses of a member of the armed forces of the United States stationed in California on active duty when thereafter transferred on military orders to place outside of California, or thereafter retires from the armed forces, pursuant to Education Code section 68074, and

a) Requiring from those seeking an exemption as provided in paragraph (1), to obtain a statement from the military person's commanding officer or

personnel officer that the military person's duty station is in California, pursuant to title 5, California Code of Regulations, section 54041.

b) Obtaining from those seeking an exemption, as provided in paragraph (1), proof that they are still in their first year of current physical presence in California, pursuant to title 5, California Code of Regulations, section 54050.

(2) Limiting residence classification for tuition purposes for members of the armed forces of the United States stationed in this state on active duty for other than educational purposes to only undergraduates and for no more than one academic year, pursuant to Education Code Section 68075.

a) Requiring from those seeking an exemption pursuant to paragraph (2), to obtain a statement from the student's commanding officer or personnel officer that the assignment to California is not for educational purposes and evidence of the date of assignment to California, pursuant to title 5, California Code of Regulations, Section 54042.

b) Obtaining from those seeking an exemption, as provided in paragraph (2), proof that they are still in their first year of current physical presence in California, pursuant to title 5, California Code of Regulations, section 54050.

(3) Students who were members of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged, pursuant to Education Code section 68075.5.

(4) For students who have not been adult residents of California for more than one year and are either a dependent child of a California resident for more then one year prior to residence determination, or a student who has a parent who is a California resident for a minimum of one year and who has contributed court-ordered support for the student on a continuous basis, pursuant to Education Code Section 68076.

(5) For students who are graduates of any school located in California and operated by the United States Bureau of Indian Affairs including, but not limited to, the Sherman Indian High School, pursuant to Education Code Section 68077.

(6) For no more than one year to students holding valid emergency permits authorizing service in California public schools who are employed by a school district in a full-time position requiring certification qualifications to full teacher credential requirements, pursuant to Education Code Section 68078, subdivision (b).

a) For those students applying for resident status pursuant to paragraph (6) obtaining a statement from the student's employer showing fulltime employment in a public school, pursuant to title 5, California Code of Regulations, section 54046, and

b) Obtaining evidence that the student holds a credential and will enroll in courses necessary to obtain another type of credential, pursuant to title 5, California Code of Regulations, section 54046.

c) Obtaining evidence that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements, pursuant to title 5, California Code of Regulations, section 54046.

(7) For students who are native Americans if also attending a school administered by the Bureau of Indian Affairs located within the community college district, pursuant to Education Code Section 68082.

(8) For students who are amateur athletes in training at the United States Olympic Training Center in Chula Vista, pursuant to Education Code Section 68083.

(9) For students, and their dependent children, who are federal civil service employees if transferred to California as a result of a military mission realignment action that involves the relocation of at least 100 employees, pursuant to Education Code Section 68084.

(10) For alien students claiming they are not precluded from establishing domicile in the United States are required to show that they did not enter the United States illegally, that they did not enter under a visa which requires residence outside of the United States, and that they did not enter the United States under a visa which permits entry solely for some temporary purpose, pursuant to title 5, California Code of Regulations, section 54045, subdivision (b).

(11) For an alien precluded from establishing domicile in the United States, requiring evidence that he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service, pursuant to title 5, California Code of Regulations, section 54045, subdivision (c).

D Exempting from the payment of nonresident tuition, students, other than nonimmigrant aliens, who meet the following requirements, pursuant to Education Code Section 68130.5, subdivision (a), title 5, California Code of Regulations, section 54045.5, subdivision (a) and Chancellor's Revised Guidelines and Information dated May 2002, paragraph 3:[21]

(1) High school attendance in California for three or more years,

(2) Graduation from a California high school or attainment of the equivalent thereof,

(3) Registration as an entering student at, or current enrollment at, the community college not earlier than the fall semester or quarter of the 2001-2002 academic year, and

(4) In case of a person without lawful immigration status, the filing of an affidavit with the community college stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(5) Obtaining, from students applying for an exemption from the requirement to pay nonresident tuition, a completed questionnaire, on a form prescribed by the Chancellor, verifying their eligibility for the exemption, pursuant to title 5, California Code of Regulations, Section 54045.5, subdivision (b) and the Chancellor's Revised Guidelines and Information dated May 2002, paragraphs 12, 13 and 14 and attachment four.

(6) Obtaining, from students applying for an exemption from the requirement to pay nonresident tuition, additional documentation or evidence, as necessary or when the district is in possession of conflicting information, to verify eligibility for the exemption, pursuant to title 5, California Code of Regulations, Section 54045.5, subdivision (b) and Chancellor's Revised Guidelines and Information dated May 2002, paragraph 17.

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[21] Claimant designated this paragraph as "C" in the test claim (p. 10) so this outline is one letter ahead of that in the test claim from letter "C" forward.

(7) Obtaining, from students without lawful immigration status applying for an exemption from the requirement to pay nonresident tuition, an affirmation by the student that he or she has filed an application to legalize his or her immigration status, pursuant to title 5, California Code of Regulations, Section 54045.5, subdivision (c).

E Exempting from the payment of all fees and tuition, undergraduate students who meet the following requirements, pursuant to Education Code Section 68121, subdivision (b)(2):
(1) They meet the financial need requirements of the Cal Grant A Program, and
(2) Until January 1, 2013, he or she is a dependent surviving spouse of an individual killed in the September 11, 2001, terrorist attacks and either he or she, or the individual killed, was a resident of California on September 11, 2001, or
(3) Until he or she obtains the age of 30 years, for a dependent child of an individual killed in the September 11, 2001, terrorist attacks and either he or she, or the individual killed, was a resident of California on September 11, 2001, and
(4) When necessary verifying an individual's eligibility from the California Victim Compensation and Government Claims Board on a case-by-case basis.

F Establishing and implementing policies and procedures, and from time to time revising and updating those policies and procedures, for the calculation of the amount of nonresident tuition, the method of payment of nonresident tuition, and the method and amount of refunds of nonresident tuition, pursuant to Education Code Section 68051. This includes:
(1) Providing advance notice of nonresident tuition charges during the spring term before the fall term in which the charges will take effect, pursuant to Education Code Section 76140, subdivision (d).
(2) Adopting and implementing rules for refunds of fees collected in error, fees refundable due to a reduction of the education program, and/or fees refundable as a result of the student's reduction in units, pursuant to title 5, California Code of Regulations, Section 54070. However, no refund of nonresident tuition paid for any term prior to January 1, 2002 is authorized, pursuant to title 5, California Code of Regulations, Section 54045.5, subdivision (f).
(3) Refunding nonresident tuition collected when the student is subsequently determined to be eligible for the exemption, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 8.
(4) Seeking reimbursement from students for nonresident fees that have been waived when the original certification is subsequently determined to be false, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 38.

G Considering the student's original certified affidavit and other materials used by the district as Class1, Permanent Records, and retaining them indefinitely, unless copied or reproduced as specified, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 20.

H Participating in surveys conducted by the Chancellor's office concerning students receiving exemptions for nonresident tuition, when requested, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 40.

I The loss of nonresident tuition fees when students are classified as residents for tuition purposes, pursuant to Education Code Sections 58074, 68075.5, 68076, 68077, 68078(b), 68082, 68083, 68084, and California Code of Regulations, Section 54045, subdivisions (b) and (c).

J The loss of nonresident tuition fees when nonresident students are exempted from the payment of nonresident tuition pursuant to Education Code Section 68130.5 and California Code of Regulations 54045.5.

The claimant's declaration estimates costs of $1000 or more in excess of any funding provided from July 1, 2001 through June 30, 2002 to implement these new duties.

State Agency Positions

No state agencies have commented on this test claim.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[22] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[23] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[24] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[25]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[26]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

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[22] Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[23] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[24] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[25] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[26] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.[27] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[28] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[29]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[30]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[31] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[32]

Each test claim statute or executive order is discussed to determine whether it is a state-mandated new program or higher level of service, and whether it imposes costs mandated by the state within the meaning of Government Code section 17514.

I. Do the test claim statutes, regulations, and executive order impose a state-mandated new program or higher level of service within the meaning of article XIII B, section 6?

At the outset, staff finds that the test claim statutes, regulations, and the executive order constitute a "program" within the meaning of article XIII B, section 6. The statutes and executive orders carry out the governmental function of providing a service to the public[33] by classifying community college students as residents or nonresidents for tuition fee purposes and determining nonresident tuition. In addition, these activities are unique to school districts, defined to include community colleges (Gov. Code, § 17519). Thus, the analysis continues to determine whether the statutes and executive orders impose a state-mandated new program or higher level of service on community college districts.

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[27] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[28] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[29] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[30] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[31] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[32] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[33] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

A. District Governing Board Rules and Regulations on Residence Classification and Nonresident Tuition

Residence classification rules (§ 68044): Section 68044 (amended by Stats. 1981, ch. 102, Stats. 1982, ch. 1070) states: "The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification."

The "governing board" is defined in section 68012, subdivision (c), as "the Board of Governors of the California Community Colleges" as well as California's other public university systems.

Section 68044 specifies that the rules and regulations "shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residence." The criteria for financial independence are specified. The last paragraph of section 68044 states: "Other factors which may be considered in determining California residence shall be defined by the governing boards. In addition, the adopted rules and regulations shall include, but are not limited to, the evidence necessary to determine residence, procedures for obtaining residence information and procedures for administering oaths in connection with taking of testimony relative to residence."

The portion of section 68044 that requires the Community Colleges Board of Governors (a state agency) to adopt rules and regulations for classifying a student as a resident or nonresident, and regarding the financial independence of students, imposes no activity on a local community college district, so staff finds that it is not a state mandate.

In the same vein, section 68044 states that a "district governing board[34] may adopt rules and regulations which are not inconsistent with those adopted by the Board of Governors of the California Community Colleges." Because this section uses "may" and is therefore permissive[35] as to community college districts, staff finds that section 68044 (Stats. 1981, ch. 102, Stats. 1982, ch. 1070) does not impose a state mandate on them to adopt rules and regulations to determine a student's classification.

In 1982, section 68044 was amended to add the second paragraph, stating that "the adopted rules and regulations shall, beginning the 1983-84 school year, exempt nonresident students who have been appointed to serve as graduate student teaching assistants, graduate student research assistants, or graduate student teaching associates on any campus of the University of California or the California State University ..." Because this amendment does not apply to community colleges, staff finds that section 68044 (Stats. 1982, ch. 1070) is not a state mandate on them to include the specified exemptions in the adopted rules and regulations.

Nonresident tuition rules (§ 68051): Enacted by Statutes 1976, chapter 1010,[36] section 68051 was amended in 1990 (Stats. 1990, ch. 1372) to add the underlined text as follows:

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[34] "District Governing Board" is defined in section 68012, subdivision (b), as "the governing board of a district maintaining one or more community colleges."

[35] Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

[36] Statutes 1976, chapter 1010 was not pled by claimant, so staff makes no finding on it.

> Unless otherwise provided by law, the governing board or district governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund.

Former Education Code section 22841 (Stats. 1972, ch. 1100) stated: "Unless otherwise provided by law, the governing board shall adopt rules and regulations relating of the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund." As used in this section, "governing board" referred to the Board of Governors of the California Community Colleges (former Ed. Code, § 22807).

Prior to 1975, section 54001 of title 5 of the California Code of Regulations (Register 73, No. 26 (Jun. 30, 1973) p. 635) stated:

> A student classified as a nonresident shall be required, except as otherwise provided herein, to pay nonresident tuition. The amount of tuition shall be determined by the district governing board pursuant to the provisions of Education Code Section 25505.8."[37]

Thus, although it was the responsibility of the district governing board to "determine" the amount of nonresident tuition before 1975, it was not required to "adopt rules and regulations" regarding the nonresident tuition, which was the responsibility of the state Board of Governors.[38]

Between the time it was enacted in 1972 (as former § 22841) and when it was amended in 1990, section 68051 only applied to the Board of Governors of the California Community Colleges, a state agency.

In interpreting this 1990 amendment to section 68051, the Commission, like a court, uses rules of statutory construction. One of those rules is that the plain and ordinary meaning of the word "or" in a statute is to mark an alternative such as "either this or that."[39] Using this rule, the plain language of the 1990 amendment to section 68051 indicates that either the state governing board *or* the district governing board must adopt rules and regulations, but both need not do so. And the requirement for the state to adopt these rules and regulations had been in place since 1972 (Ed. Code, § 22841, Stats. 1972, ch. 1100).

There is no evidence in the record, however, of the existence of state regulations regarding "the method of calculation of the amount of nonresident tuition [or] the method of payment." Education Code section 76140, subdivisions (d) and (e), contain information regarding the method of calculation of payment, but not the method of payment, and this statute is not a regulation. The lack of state-issued regulations in compliance with section 68051 means that the

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[37] Former section 25505.8 (Stats. 1973, ch. 209) was similar to section 76140. The former provision stated in part: "A community college district may admit and shall charge a tuition fee to nonresident students."

[38] Former section 22841 (Stats. 1972, ch. 1100).

[39] *Fiorentino v. City of Fresno* (2007) 150 Cal.App.4th 596, 603; *Houge v. Ford* (1955) 44 Cal.2d 706, 712.

1990 amendment (Stats. 1990, ch. 1372) requires the districts to adopt them. Staff also finds that this adoption is a new program or higher level of service.

Therefore, staff finds that section 68051 (Stats. 1990, ch. 1372) is a state-mandated new program or higher level of service for the district governing board to adopt rules and regulations relating to the method of calculation and payment of the amount of nonresident tuition. This is a one-time activity.

As to district regulations regarding the method and amount of refund, section 54070 of the title 5 regulations states:

> The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees: (a) Those collected in error. (b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid. (c) Those refundable as a result of the student's reduction in units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

This regulation, which has been virtually unchanged since 1973 (see discussion of § 54070 below) does not relate to "the method and amount of refund." It merely specifies instances in which the requirement to issue a refund of nonresident tuition fees would be triggered.

Therefore, staff finds that section 68051 (Stats. 1990, ch. 1372) is a state-mandated new program or higher level of service for the district governing board to also adopt rules and regulations relating to the method and amount of refund of nonresident tuition. This is a one-time activity.

B. Determining Residence Classification

Generally, community college districts are required by Education Code section 68040[40] to classify students as either residents or nonresidents. A resident is defined as a student who has residence in the state for more than one year immediately preceding the residence determination date (§ 68017). Conversely, a nonresident is a student who does not have residence in the state for more than one year immediately preceding the residence determination date (§ 68018).[41]

Every person is presumed to have a residence (§ 68060) and section 68062 establishes rules for determining the place of residence. One of those rules is that "residence can be changed only by the union of act and intent." (§ 68062, subd. (d).) Other rules include: "The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child" (§ 68062, subd. (f)), and "The residence of an unmarried minor who has a parent living cannot be changed by his or her own act, by the appointment of a legal guardian, or by relinquishment of a parent's right of control." (§ 68062, subd. (g).)

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[40] Section 68040 was not pled by claimant, so staff makes no finding on it.

[41] The residence determination date is "that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college." (Cal.Code Regs., tit. 5, § 54002.)

Nonresident students are required to pay nonresident tuition that resident students do not pay (§ 68050).

The various regulations and statutes for determining residence classification that claimant pled are discussed below.

Residence classification determination (Cal.Code Regs., tit. 5, §§ 54002 & 54010, subd. (a)): Section 54010, subdivision (a), of the title 5 regulations[42] requires a determination of residence classification as follows:

> Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

Staff finds, based on the plain permissive language used, that the second sentence is not a state mandate to reclassify a student previously classified as a nonresident. Staff also finds, based on the plain language in the first sentence of the regulation, that section 54010, subdivision (a), is a state mandate for community colleges to make a residence classification for each student at the time applications for admission are accepted, and whenever the student has not been in attendance for more than one semester or quarter. The issue is whether doing so is a new program or higher level of service.

Former section 22835 of the Education Code (Stats. 1972, ch. 1100) stated: "Each student shall be classified as ... a district resident, nondistrict resident or nonresident at a California community college." Similarly, the 1973 version of section 54000 (Register 73, No. 26 (Jun. 30, 1973) p. 635) of the title 5 regulations stated "Each student shall be classified by the college of enrollment as a district resident, nondistrict resident, or a nonresident." And the 1973 version of section 54010 (Register 73, No. 26 (Jun. 30, 1973) pp. 636-637) in the regulations stated in part: "Residence classification of all students shall be made for each term at each college starting at the time processing is commenced on applications for admission, readmission, or registration." [Emphasis added.]

According to former section 22835 of the Education Code and former sections 54000 and 54010 of the title 5 regulations, residence classification was required prior to 1975.

There is nothing to indicate that the minor difference in prior and current law regarding timing constitutes a new program or higher level of service. In other words, classifying students "at the time applications for admissions are accepted" (as required under current law) is not a higher level of service than (or different from) classifying students "at the time processing is commenced on applications for admission, readmission or registration" as required under the 1973 version of section 54010 (Register 73, No. 26 (Jun. 30, 1973) pp. 636-637).

Nor does the phrase requiring residence classification "whenever a student has not been in attendance for more than one semester or quarter" (§ 54010, subd. (a)) create a new program or higher level of service. The pre-1975 version of section 54010 was very broad in requiring

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[42] Section 54010 was added and amended by Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (Jun. 7, 1991) p. 334; and Register 95, No. 19 (May 19, 1995) p. 333.

classification "of all students" "for each term at each college" at the time application processing is commenced for "admission [or] readmission, or registration." This would have included students who had not been in attendance for more than one semester or quarter, so classifying them was also required before 1975.

The Legislature may, but need not, reimburse state mandates if they were enacted prior to 1975 (Cal. Const., art. XIII B, § 6, subd. (a)(3)). Therefore, staff finds that residence classification for student admission or readmission (Cal. Code Regs., tit. 5, § 54010, subd. (a))[43] is not a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

Section 54002[44] defines residence determination date as "that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college." This definition, by itself, does not mandate a community college activity, so staff finds that it is not a state mandate subject to article XIII B, section 6 of the California Constitution.[45]

Although student residence classification itself is not new, the methods and factors required to determine it may be. These are discussed below.

Require applicant to supply, and district to weigh, residence classification information (§ 54010, subds. (b)-(d)): Subdivision (b) of section 54010 requires students to submit evidence supporting their residence classification. The evidence shall demonstrate physical presence in California, intent to make California home for other than a temporary purpose, and if the student was classified as a nonresident in the preceding term, financial independence.

Subdivision (c) requires community college districts to "require applicants to supply information as specified in this subchapter [Subchapter 1 – Student Residence Classification, in §§ 54000-54072 of title 5] and may require additional information as deemed necessary."

Subdivision (d) requires the district to "weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date."

The issue is whether these activities in subdivision (b), (c) and (d) are state mandates. Staff finds that they are, based on the mandatory language used. Thus, the issue becomes whether they constitute a new program or higher level of service.

Former section 22836 of the Education Code (Stats. 1972, ch. 1100) stated: "Each student enrolled or applying for admission to an institution shall provide such information and evidence of residence as deemed necessary by the [state] governing board to determine his classification."

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[43] Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (Jun. 7, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

[44] Register 77, No. 45 (Nov. 5, 1977) p. 636; Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (Jun. 7, 1991) p. 334; and Register 95, No. 19 (May 19, 1995) p. 333. Register 99, No. 20 (May 14, 1999) p. 333.

[45] Moreover, section 54002 is nearly identical to section 54005.9 in the 1973 regulations (Register 73, No. 26 (Jun. 30, 1973) p. 636).

The 1973 version of section 54002 (Register 73, No. 26 (Jun. 30, 1973) p. 635) in the title 5 regulations stated: "In order to be classified as a resident for tuition purposes, a student must have been a legal resident of California for more than one year immediately preceding the residence determination date for the term during which he proposes to attend a California Community College. Additionally, former section 54010 (Register 73, No. 26 (Jun. 30, 1973) pp. 636-637) in the title 5 regulations stated:

> Classifications shall be based on evidence presented in, and supporting, the applicant's answers to residence questionnaires and supplemental residence questionnaires authorized by the district governing board, such further evidence of residence deemed necessary by the institution, and such further evidence of residence as the applicant wishes to submit. Applicants answering their residence questionnaires and supplemental residence questionnaires shall be required to certify them under penalty of perjury or certify them under oath before an employee of the institution authorized by the district governing board at each institution to administer such oaths, or to certify them under oath before a person authorized to administer oaths under the laws of the political entity where the oath is to be administered.

The 1973 version of section 54020 (Register 73, No.26 (Jun. 30, 1973) p. 637) of the title 5 regulations specifies what evidence is necessary to establish legal residence in California.

Read together with the former requirements to "classify" the student, former Education Code section 22836 and former sections 54002, 54010 and 54020 of the 1973 title 5 regulations (Register 73, No. 26 (Jun. 30, 1973) pp. 635-637) cited above indicate that the following activities were state-mandated before 1975: (1) receiving and reviewing the evidence supplied by students showing physical presence in California and showing intent to make California their home for other than a temporary purpose (§ 54010, subd. (b)); (2) weighing the information received and making a determination whether the student has clearly established that he or she has been a resident for one year prior to the residence determination date (§ 54010, subd. (d)). Therefore, staff finds that performing these activities (as required by Cal. Code Regs., tit. 5, § 54010, subds. (b) & (d))[46] is not a state-mandated new program or higher level of service within the meaning of article XIII B, section 6, for student residence information required before 1975.[47]

These activities in section 54010, subdivisions (b) through (d), may be new, however, for new (i.e., post-1975) evidence or information that the college must require the student to submit to support his or her residence classification (Cal.Code Regs., tit. 5 § 54010, subd. (b)). This is also true for information that the college must "weigh" that was not required to be submitted before

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[46] Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (Jun. 7, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

[47] This finding does not apply to the portion of section 54010, subdivision (b), regarding receiving and reviewing evidence of the student's financial independence, which is discussed separately below.

1975 (Cal.Code Regs., tit. 5 § 54010, subd. (d)). The regulations to which these subdivisions apply are discussed below.

Subdivision (f) of section 54010, added in 1999 (Register 99, No. 20 (May 14, 1999) p. 333) states that "the district may authorize any information required by this section to be submitted electronically using encrypted digital signatures, as specified in Section 54300." Since this section uses "may" and is therefore permissive as to the community college's activity, staff finds that it is not a state mandate within the meaning of article XIII B, section 6.

Require applicant to supply, and district to weigh, residence determination factors (§§ 54020, 54022, 54024 & 54030): Claimant also pled sections 54020, 54022, 54024 and 54030[48] of the title 5 regulations regarding residence determination. Section 54020 lays out the general regulatory intent:

> In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

Section 54022 states that the person "must be physically present in California for one year prior to the residence determination date to be classified as a resident student." It also states, in subdivision (b), that temporary absences do not result in losing California residence "if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent." And subdivision (c) states that physical presence "solely for educational purposes does not constitute establishing California residence regardless of the length of that presence."

Section 54024 lists the factors that demonstrate intent "to make California the home for other than a temporary purpose ...." Students who have maintained a home continuously for two years in California (or if under 19, both the student and his or her parent) are presumed "to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent" by engaging in specified activities. According to subdivision (d), a student who has not maintained a home continuously for two years "shall be required to provide evidence of intent to make California the home for other than a temporary purpose." Twelve "objective manifestations of intent" are listed in subdivision (e) of section 54024, such as ownership or continuous occupancy of property, registering to vote and voting in California, licensing from California for professional practice, active membership in service or social clubs, presence of spouse, children or other close relatives, showing a California home address on a federal income tax form, paying California state income tax as a resident, possessing California vehicle license plates, possessing a California driver's license, maintaining permanent military address or home of record in California while in the armed forces, establishing and maintaining active California bank accounts, and being the petitioner for a divorce in California.

Section 54030 outlines the requirements to reestablish residency after relinquishing it by moving from the state.

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[48] All these regulations were added or amended by Register 82, No. 48 (Nov. 27, 1982) p. 636; Register 91, No. 23 (Jun. 7, 1991) p. 335; Register 95, No. 19 (May 19, 1995) p. 333.

The issue is whether these regulations (§§54020, 54022, 54024 & 54030) impose a state-mandated new program or higher level of service. The Commission, like a court, does not examine these regulations in isolation, but in context of the entire scheme of law of which they are a part so that the whole may be harmonized and retain effectiveness.[49] Although these regulations do not mandate an activity themselves, they do when read in conjunction with the requirement (in § 54010, subds. (b) & (c)) to require applicants to supply, and the district to weigh, evidence or information when making a residence classification. Thus, staff finds that requiring applicants to supply information on, and for the district to weigh, the factors in these regulations is a state mandate.

Staff finds, however, that sections 54020, 54022, 54030, and most of section 54024 of the title 5 regulations are not a new program or higher level of service. Former Education Code section 22847, subdivision (d), also stated: "The residence can be changed only by the union of act and intent." Former section 54020 of the regulations (Register 73, No. 26 (Jun. 30, 1973) p. 637) provided:

> In order to establish a residence, it is necessary that there be a union of act and intent. The act necessary to establish legal residence is physical presence in California. Relevant indications of intent to make California one's residence include, but are not limited to: voting in elections in California and not in any other state; satisfying California personal income tax obligations; establishing an abode in the state where one's belongings are kept, licensing from the state for professional practice; maintaining active resident memberships in California professional organizations; maintaining California vehicle license plates and/or operator's license; maintaining active savings and checking accounts in California banks; maintaining permanent military address or home of record in California in the armed forces; engagement in litigation for which residence is required; showing California as home address on federal income tax forms; and absence of any of these indications in other states during any period for which residence in California is asserted. Documentary evidence, including but not limited to the foregong, [sic] may be required. No single factor is controlling or decisive.

Section 54022 defines physical presence in California for purposes of residence determination. Staff finds that it is substantively the same activity as the residence determination under section 54010, subdivision (d), as discussed above.

Subdivision (a) of section 54022 is also substantially similar to the 1973 version of section 54002. The 1977 version (Register 77, No. 45 (Nov. 5, 1977) p. 636) reads as follows with strikeout text for the 1973 version, compared to the underlined text in the current version:

> In order to be classified as a resident for tuition purposes, a student must ~~have been a legal resident of~~ be physically present in California for ~~more than~~ one year ~~immediately preceding~~ prior to the residence determination date ~~for the term during which he proposes to attend a California Community College~~ to be classified as a resident student.

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[49] *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, 280.

And the 1973 version of section 54020 (Register 73, No. 26 (Jun. 30, 1973) p. 637) included: "The act necessary to establish legal residence is physical presence in California."

Therefore, because it does not mandate a new activity on a community college that is different from the pre-1975 regulation, staff finds that section 54022 of the title 5 regulations[50] does not constitute a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

Section 54024 defines expression of intent to make California a home for other than a temporary purpose. Most of the factors that establish this intent are the same as those in the 1973 version of section 54020 (Register 73, No. 26 (Jun. 30, 1973) p. 637). The information regarding these factors establishing intent is obtained through a questionnaire (Cal. Code Regs., tit. 5, § 54012), which is discussed separately below.

The 1973 version of section 54024 (Register 73, No. 26 (Jun. 30, 1973) p. 637) stated that "Documentary evidence, including but not limited to the foregong [sic] may be required [to establish residence]." The "foregoing" refers to the 11 factors that establish intent to make California one's residence. This is read together with former section 54010 requiring "residence classification of all students" to be made "for each term at each college ...." Thus, consideration of most of the factors regarding residence classification was required prior to 1975 (under former §§ 54010 & 54024).

One factor merits mention: The 1973 regulation required weighing "voting in elections in California and not in any other state." The current regulation requires weighing "registering to vote and voting in California." Since these require submission and consideration of different facts, staff finds that weighing "registering to vote in California" is a new program or higher level of service on a community college. Requiring submission of, and weighing, information on "voting in California" is not a new program or higher level of service, however, because it was required before 1975.

Requiring information on and weighing the following factors was not required under prior law. These were added in 1982 (Register 82, No. 48 (Nov. 27, 1982) p. 637) and are required under current section 54024, subdivision (e), of the title 5 regulations:

- Ownership of residential property (former § 54020 only stated "establishing an abode in the state where one's belongings are kept.")
- Registering to vote in California.
- Active membership in service or social clubs.
- Being the petitioner for a divorce in California.

Therefore, staff finds that it is a state-mandated new program or higher level of service for a community college to require applicants to supply the four points of information listed above,

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[50] As added or amended by Register 82, No. 48 (Nov. 27, 1982) p. 636; Register 91, No. 23 (Jun. 7, 1991) p. 335; Register 95, No. 19 (May 19, 1995) p. 333.

and for the district to weigh them, in order to determine the student's residence classification (Cal. Code Regs., tit. 5, §§ 54024[51]).

Section 54030 (added by Register 82, No. 48 (Nov. 27, 1982) p. 637) states that if a student or parents of a minor student "relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes, except as provided in Education Code section 68070."[52]

It is mandatory for the community college districts to require applicants to supply information regarding reestablishing residence, and for the district to weigh it to determine the student's residence (Cal.Code Regs., tit. 5, § 54010, subds. (c) & (d)). And this determination, for a student or parents of a minor student who relinquished residence, was not required before the 1982 regulation. Therefore, staff finds that it is a state-mandate for a community college district to require a student to supply information, and for the district to weigh it, regarding whether the student or the parents of a minor student who relinquished California residence after moving from the state has reestablished residence by one full year of physical presence coupled with demonstrated intent to be a California resident. (Cal.Code Regs., tit. 5, §§ 54030 (Register 82, No. 48 (Nov. 27, 1982) p. 637.) Staff also finds that this is a new program or higher level of service, since it was not required before the 1982 regulation.

Residence classification questionnaires (Cal.Code Regs., tit. 5, §§ 54010 (e) & 54012): Section 54010, subdivision (e) of the title 5 regulations states: "Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury."

Claimant also pled section 54012, subdivision (a) (added by Register 82, No. 48 (Nov. 27, 1982) pp. 635-636) of the title 5 regulations, which states: "Each community college district shall use a residence questionnaire in making residence classifications." Subdivisions (b) through (d) identify what the residence questionnaire must ask. Subdivision (e) states: "The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement."

Based on the mandatory language in sections 54012 and 54010, subdivision (e), staff finds that it is a state mandate for community colleges to use residence questionnaires, and to require applicants to certify their answers on them under oath or penalty of perjury.

As to whether these activities are a new program or higher level of service, however, the 1973 title 5 regulations, section 54010 (Register 73, No. 26 (Jun. 30, 1973) p. 635) stated:

> Residence classifications of all students shall be made for each term at each college starting at the time processing is commenced on applications for admission, readmission, or registration. Classifications shall be based on evidence presented in, and supporting, the applicant's answers to residence

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[51] Register 82, No. 48 (Nov. 27, 1982) p. 637; Register 91, No. 23 (Jun. 7, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333.

[52] Education Code section 68070 involves a student who remains in California after his or her parents move elsewhere.

questionnaires and supplemental residence questionnaires authorized by the district governing board, such further evidence of residence deemed necessary by the institution, and such further evidence of residence as the applicant wishes to submit. Applicants answering their residence questionnaires and supplemental residence questionnaires shall be required to certify them under penalty of perjury or certify them under oath before an employee of the institution authorized by the district governing board at each institution to administer such oaths, or to certify them under oath before a person authorized to administer oaths under the laws of the political entity where the oath is to be administered. [Emphasis added.]

This 1973 version of section 54010 indicates that residence questionnaires were used before 1975. Since residence classification was required under prior law (as discussed above), and it was based on the residence questionnaires, then using residence questionnaires was required under the 1973 version of section 54010, and it is not a new program or higher level of service.

Moreover, under current law the Chancellor's office provides a sample residence questionnaire (§ 54012, subd (e)). Under prior law, the "residence questionnaires and supplemental residence questionnaires [were] authorized by the district governing board." (Former § 54010.) Thus, developing the questionnaires is also not a new program or higher level of service.

Staff finds, therefore, that sections 54012, subdivision (a), and 54010, subdivision (e) of the title 5 regulations are not a state-mandated new program or higher level of service. The requirement to use questionnaires, and requiring applicants to certify their answers under oath or penalty of perjury, were both required under the 1973 version of section 54010, as quoted above.

Although the questionnaires are not new, the 1973 regulations did not list their contents, which is now listed in section 54012, subdivisions (b) through (d) (added by Register 82, No. 48 (Nov. 27, 1982) pp. 635-636) as follows:

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subdivision (f) of section 54024.[53]

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and where the parent has engaged in any activity listed in subsection (f) of section 54024.

(e) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student

[53] Section 54024 of the title 5 regulations, subdivision (f), states: "Conduct inconsistent with a claim of California residence includes but is not limited to: (1) maintaining voter registration and voting in another state. (2) Being a petitioner for a divorce in another state. (3) Attending an out-of-state institution as a resident of that other state. (4) Declaring nonresidence for state income tax purposes."

shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.[54]

This expanded information in the questionnaire requires the community college to revise the questionnaire based on the sample provided by the Chancellor's Office (a one-time activity) and to "weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date." (Cal. Code Regs., tit. 5, § 54010, subd. (e), Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.)

Therefore, staff finds that section 54012, subdivisions (b), (c) and (d),[55] and section 54010, subdivision (e),[56] of the title 5 regulations constitutes a state-mandated new program or higher level of service within the meaning of article XIII B, section 6, for the community college district to revise its questionnaire based on the sample provided by the Chancellor's Office (a one-time activity), and to require the student to supply "under oath or penalty of perjury," (§ 54010, subd. (e)) and for the district to weigh, the following information in residence questionnaires to determine the student's residence classification:

- Where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subdivision (f) of section 54024 of the title 5 regulations, i.e., has maintained voter registration in another state and voted in another state; was a petitioner for a divorce in another state, has attended an out-of-state institution as a resident of that other state; has declared nonresidence for state income tax purposes.
- For each student under 19 years of age, consideration of where the parent has lived for the last two years and where the parent has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations.
- If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any

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[54] Section 54024 of the title 5 regulations, subdivision (e), states: "Objective manifestations of intent to establish California residence include but are not limited to: (1) Ownership of residential property or continuous occupancy of rented or leased property in California. (2) Registering to vote and voting in California. (3) Licensing from California for professional practice. (4) Active membership in service or social clubs. (5) Presence of spouse, children or other close relatives in the state. (6) Showing California as home address on federal income tax form. (7) Payment of California state income tax as a resident. (8) Possessing California motor vehicle license plates. (9) Possessing a California driver's license. (10) Maintaining permanent military address or home of record in California while in armed forces. (11) Establishing and maintaining active California bank accounts. (12) Being the petitioner for a divorce in California."

[55] Register 82, No. 48 (Nov. 27, 1982) pp. 635-636; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333.

[56] Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

activity listed in subsection (f) of section 54024 of the title 5 regulations, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024 of the title 5 regulations.

Financial independence (§ 68044, Cal.Code Regs., tit. 5, §§ 54010 & 54032): Education Code section 68044 (Stats. 1981, ch. 102) requires the state-adopted rules and regulations to "include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency." Later in section 68044, it defines a financially independent student as one who meets all of the following criteria:

> (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Section 54010, subdivision (b), of the title 5 regulations (added by Register 82, No. 48 (Nov. 27, 1982) p. 635) states: "The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident the preceding term, financial independence." [Emphasis added.]

Section 54032 of the title 5 regulations (added by Register 82, No. 48 (Nov. 27, 1982) p. 637) also concerns financial independence. Subdivision (a) of section 54032 requires students seeking reclassification as residents, if they were classified as nonresidents in the preceding term, to be "determined financially independent or dependent in accordance with Education Code section 68044." A financially independent student "may be reclassified as a resident if the student has met the requirements of section 54020[57] for one year prior to the residence determination date." (§ 54032, subd. (b).) Section 54032's remaining subdivisions specify how financial independence affects the residence classification as follows:

> (c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

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[57] Section 54020: "In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose."

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if: (1) the parent on whom the student is dependent is a California resident, or (2) there is no evidence of the student's continuing residence in another state.

Staff finds that determining the student's financial dependence or independence, if he or she was classified as a nonresident in the preceding term, is a state mandate. As stated in subdivision (a) of section 54032: "A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code section 68044." [Emphasis added.] Subdivisions (c) and (d) of section 54032 expound on the weight financial independence is given in determining California residence. These subdivisions, in addition to the definition of financial independence in section 68044 of the Education Code, define the scope of the mandate to determine financial independence.

Subdivision (b) of section 54010 in title 5 (Register 82, No. 48 (Nov. 27, 1982) p. 635) similarly requires the student to "present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence." This section contains the same requirement as in section 54032, subdivision (a), but emphasizes the student's responsibility in presenting the evidence of financial independence. And subdivision (c) of section 54010 emphasizes the community college district's responsibility to "require applicants to supply information as specified ..." regarding student financial independence, among other things.

The next issue is whether this determination is a new program or higher level of service. Prior to 1975, former Education Code section 22851 (Stats. 1972, ch. 1100) stated:

A student who is a minor and who provides evidence that he has been entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date shall be entitled to establish his own residence if he meets the other requirements of this chapter.

Former section 54031 of the title 5 regulations stated:

Any minor student claiming application of the self-supporting exception pursuant to Education Code Section 22851 shall provide evidence to the admissions officer such as: documentation showing earnings for the year immediately preceding the residence determination date for the quarter, semester or term of attendance, a statement that the student has actually been present in California for said year (short durational stays away from the state will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.[58]

Thus, although a self-supporting exception existed under prior law, the current definition of financial independence does not resemble pre-1975 law in that the current definition consists in

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[58] Former California Code of Regulations, title 5, section 54031; Register 73-26 (Jun. 30, 1973) pages 636-637.

the factors in subdivisions (a) through (c) of Education Code section 68044. Those factors require that the student not be claimed as a tax exemption by his or her parents, not receive more than $750 in financial assistance from them, and not live in the parents' home for more than six weeks during the calendar year.

Therefore, staff finds that determining financial dependence or independence, for a student classified as a nonresident in the preceding term, is a new program or higher level of service, since it was not required before the 1982 adoption of sections 54010 or 54032 of the regulations. Specifically, staff finds that it is a state-mandated new program or higher level of service for the community college district to require the student to submit, and for the district to weigh, information on whether the student (1) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (2) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (3) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application. (Ed. Code, § 68044, subds. (a), (b) & (c), Stats. 1981, ch. 102, Stats. 1982, ch. 1070; Cal.Code Regs, tit. 5, § 54010, subd. (b), Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.)

C. Nonresident Tuition Fee

Education Code section 68050 states: "A student classified as a nonresident shall be required, except as otherwise provided in this part, to pay, in addition to other fees required by the institution, nonresident tuition."

Education Code section 76140 requires community college districts to charge a tuition fee to nonresident students, and authorizes the colleges to exempt all or parts of the fee for nonresidents who (1) enroll for six or fewer units, or (2) nonresidents who are citizens and residents of foreign countries if they demonstrate a financial need for the exemption. Subdivision (b) authorizes the community college district to contract with other governments (state, county contiguous to California, federal, or foreign) for payment of nonresident student's tuition fee. Subdivision (c) prohibits nonresident students from being reported as full-time equivalent students for purposes of apportionment, with exceptions. Subdivision (d) requires the community college district to set the nonresident tuition fee not later than February 1 of each year for the succeeding fiscal year, and requires notice to the nonresident students of tuition fee charges. Subdivisions (e) and (f) provide formulas for setting tuition rates for nonresidents.

The first issue is over which amendments to section 76140 does the Commission have jurisdiction. In addition to more recent amendments, claimant pled section 76140 as amended by Statutes 1975, chapter 78 and Statutes 1976, chapter 990, both of which only amended former Education Code section 25505.8 (a precursor to section 76140, renumbered as such in Stats.

1976, ch. 1010[59]). But since former section 25505.8 was not pled as a test claim statute, staff makes no findings on Statutes 1975, chapter 78,[60] and Statutes 1976, chapter 990.[61] The Commission has jurisdiction over all the amendments to section 76140 from 1977 to 1995.[62] Staff finds, however, that none of these amendments[63] impose a state mandate on community college districts except for Statutes 1989, chapter 985, as discussed below.

Subdivision (g), as added by Statutes 1989, chapter 985, states "In adopting a tuition fee for nonresident students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states." Also added by Statutes 1989, chapter 985 was the following now in subdivision (d):

> The governing board of each community college district shall provide nonresident students with notice of nonresident tuition fee charges during the spring term before the fall term in which the change will take effect. Nonresident tuition fee increases shall be gradual, moderate, and predictable.

Based on the plain language of the provision, staff finds that subdivision (d) of Education Code section 76140 (Stats. 1989, ch. 986) is a state mandate to notify the nonresident student of nonresident tuition fee charges during the spring term before the fall term in which the change will take effect. For the same reason, staff also finds that section 76140, subdivision (g), (Stats.

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[59] The amendment to section 76140, renumbering former section 25505.8, by Statutes 1976, chapter 1010, was not pled by claimant.

[60] This 1975 amendment altered the calculation for the per-unit tuition fee for colleges operating on a quarter system (the 1973 version only considered dividing the fee by 30 units, which was amended to add "for colleges operating on the semester system and 45 (units) for colleges operating on the quarter system." It also changed the criteria for the exception to the mandatory fee for nonresidents.

[61] The 1976 amendment required the citizen and resident of a foreign country for which a community college district may exempt from the nonresident tuition fee to demonstrate a financial need for the exemption, and capped the exemption at not more than 10 percent of the nonresident foreign students attending. It also changed the method for calculating the nonresident tuition.

[62] Statutes 1977, chapter 36 and Statutes 1977, chapter 242 replaced references to grades 13 and 14 with "a community college" and made other nonsubstantive changes. Statutes 1979, chapter 797 removed a requirement to report to the Board of Governors. Statutes 1980, chapter 789, changed the provision regarding reporting nonresident attendance, set a deadline of February 1 for the district governing board to set nonresident tuition rates, made permissive the former requirement for the fee to be paid in equal installments, and altered the tuition setting formula. Statutes 1983, chapter 317, amended the nonresident tuition formula. Statutes 1992, chapter 170 also amended the nonresident tuition formula. Statutes 1992, chapter 1236 added subdivisions (i), (j), and (k), which authorize certain smaller districts to exempt certain students from the mandatory fee, under certain circumstances, and describes how those students are reported for apportionment purposes. Statutes 1995, chapter 758, made nonsubstantive changes.

[63] The amendment of Statues 2005, chapter 654, was not pled so staff makes no finding on it.

1989, ch. 985) is a state mandate for community college district governing boards to consider nonresident tuition fees of public community colleges in other states in determining nonresident tuition fees, and to make the tuition fee increases gradual, moderate, and predictable.

Staff also finds that these activities in amended subdivisions (d) and (g) are a new program or higher level of service, since they did not exist before Statutes 1989, chapter 986.

D. Exceptions to Determination of Nonresidence

The Legislature has granted specified groups of students the right to resident classification who would not otherwise qualify for residence, entitling those students to resident tuition.

In determining whether the following regulations constitute a state-mandated new program or higher level of service for the individual categories of students discussed below, the following regulation (Cal.Code Regs., tit. 5, § 54010)[64] applies to the regulations discussed in this section of the analysis:

> (c) Community college districts shall require applicants to supply information as specified in this subchapter [Subchapter 1 – Student Residence Classification] and may require additional information as deemed necessary.

And for those activities that require determining California residence, the following title 5 regulation (also in § 54010) also applies:

> (d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

The Commission, like a court, does not examine the following regulations and statutes in isolation, but in context of the entire scheme of law of which they are a part, including subdivisions (c) and (d) above, so that the whole may be harmonized and retain effectiveness.[65] This means that when the statutes discussed below (Ed. Code, §§ 68074, 68075.5, 68076, 68077, 68082, 68083, 68084, 68130.5) entitle the student to classification as a California resident, the statutes are interpreted in light of the community college's duty to classify the student as a resident (Ed. Code § 68040, even though this section was not pled and staff makes no finding on it). It also means that when a student is required to provide documentation in compliance with the regulations discussed below, it triggers the community college district's duty to require an applicant to supply, and the district to weigh, the specified documentation to determine the student's residence status (Cal.Code Regs., tit. 5, § 54010, subds. (c) & (d)).

Dependent of member of armed forces (Ed. Code, § 68074; Cal.Code Regs., tit. 5, §§ 54041 & 54050): Section 68074 of the Education Code concerns "a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces" ("military dependent") stationed in California on active duty. Military dependents are entitled to resident classification for purposes of tuition and fees (§ 68074, subd. (a)(1)). For military dependents whose spouse or

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[64] Register 82, No. 48 (Nov. 27, 1982) p. 635; Register 91, No. 23 (April 5, 1991) p. 34; Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

[65] *Hartwell Corp. v. Superior Court, supra,* 27 Cal.4th 256, 280.

parent is transferred out of state or retires from active duty, the student dependent does not lose resident classification until "he or she has resided in the state the minimum time necessary to become a resident" (§ 68074, subd. (b)).

The issue is whether section 68074 is a state-mandated new program or higher level of service. Former section 22853 of the Education Code (Stats. 1974, ch. 388) entitles a military dependent to resident classification "until he has resided in the state the minimum time necessary to become a resident." If the member of the armed forces is transferred "to a place outside the continental United States where the member continues to serve in the armed forces ... the student shall not lose his resident classification until he has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained."

A comparison of the pre-1975 statute (former § 22853) and the current one (§ 68074) indicates that classifying as residents the dependents of transferred active-duty personnel was required before 1975, so staff finds that doing so is not a state-mandated new program or higher level of service.

Classifying as residents the dependents of *retired* military personnel, however, was not a part of the pre-1975 statutes. Therefore, staff finds that Education Code section 68074 (Stats. 1980, ch. 580) is a state mandate on the community college to classify as residents those students who are dependents (as defined) of military personnel who retire from active duty after the residence determination date. Staff also finds that doing so is a new program or higher level of service.

Section 54050 of the title 5 regulations indicates the length of the exception from paying nonresident tuition:

> Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) ... apply for so long as the student qualifies under the terms of either section 68074 or 68075. Resident classification for purposes of determining the amount of tuition and fees includes eligibility for Board of Governor's fee waivers.

The 1973 title 5 regulations, in former section 54040, stated as follows (changed to § 54050 by Register 82, No. 48 (Nov. 27, 1982) p. 638.2):

> Those exceptions from payment of nonresident tuition provided by Education Code Sections ... 22853 (military dependents), and 22854 (military members) apply only so long as the student has not been in California long enough to have one year of California residence.

Staff finds that section 54050 in the title 5 regulations is not a state-mandated new program or higher level of service. Before 1975, the exception for military dependents was limited to one year before obtaining California residence.[66] The current regulation states that the exception from payment of nonresident tuition applies for so long as the resident qualifies under the terms of Education Code section 68074, which states that the student dependent does not lose resident classification until "he or she has resided in the state the minimum time necessary to become a

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[66] Former California Code of Regulations, title 5, section 54040; Register 73, No. 26 (Jun. 30, 1973) page 638.

resident."[67] According to section 68017, that minimum time is one year. Since the current section 54050 regulation is essentially the same as section 54040 in the 1973 title 5 regulations,[68] staff finds that, as it applies to Education Code section 68074, section 54040 not a state-mandated new program or higher level of service (Register 82, No. 48 (Nov. 27, 1982) p. 638.2; Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.)

Section 54041 of the title 5 regulations requires the military dependent claiming residence status to do the following. The 1983 amendments are marked in underline and strikeout (Register 82, No. 48 (Nov. 27, 1982) p. 638; Register 83, No. 24 (Jun. 11, 1983) p. 638):

> [P]rovide ... a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date ~~or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station,~~ or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes shall also be provided.

In both versions of section 54041, in order to obtain resident classification, the student must submit the documentation listed. This requirement is read in conjunction with section 54010, subdivision (c) and (d)'s requirement for the community college district to require applicants to supply information, and for the district to weigh it. Thus, staff finds that requiring a student to supply a statement from the military person's commanding officer or personnel officer, as specified, and a statement regarding the student's tax status as a dependent, and for the district to weigh this information, is a state mandate (Cal.Code Regs, tit. 5, § 54041). This requirement would apply to both current as well as retired military personnel.

Staff also finds that requiring submission of these documents is a new program or higher level of service. The 1973 title 5 regulations, in former section 54032, stated as follows (changed to § 54041 by Register 82, No. 48 (Nov. 27, 1982) p. 638):

> A dependent or natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 22853 of the Education Code *should* provide the college admissions officer with a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the opening of the semester, quarter or term, or is outside the continental United States on active duty after having been transferred immediately and directly from a

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[67] Education Code section 68074, subdivision (b).

[68] Former California Code of Regulations, title 5, section 54040; Register 73, No.26 (Jun. 30, 1973) page 638.

California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes *should* also be provided. [Emphasis added.]

The 1973 and 1977 versions of the title 5 regulation (former § 54032, Register 73, No. 26 (Jun. 30, 1973) pp. 637-638; Register 77, No. 45 (Nov. 5, 1977) p. 638.1) stated that the student *should* provide the admissions officer with a statement from the student that he or she is a dependent of the military person for exemption on federal income taxes, and *should* provide the admissions officer with the following:

> [A] statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the opening of the semester, quarter or term, or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station.

Staff finds that former section 54032 of the title 5 regulations (Register 73, No. 26 (Jun. 30, 1973) pp. 637-638; Register 77, No. 45 (Nov. 5, 1977) p. 638.1) does not mandate an activity.

By contrast, current section 54041 (added by Register 82, No. 48 (Nov. 27, 1982) p. 638) states that those statements "shall" be provided regarding active duty status, or "that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States." Therefore, staff finds that section 54041 of the title 5 regulations (as added by Register 82, No. 48 (Nov. 27, 1982) p. 638) is a state-mandated new program or higher level of service on community colleges to require the student to supply the documentation specified.

In summary, staff finds that Education Code section 68074, in the context of the community college's duty to classify a student as a resident or nonresident (§ 68040), imposes a state-mandated new program or higher level of service on community colleges to:

- Classify as residents for the purpose of determining the amount of tuition and fees those dependents (defined as a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces) of military personnel who retire from active duty after the residence determination date until the student dependent has resided in the state the minimum time necessary to become a resident. (Ed. Code, § 68074, Stats. 1980, ch. 580, Stats. 1989, ch. 900, Stats. 2000, ch. 571.)

Staff also finds that section 54041 of the title 5 regulations is a state-mandated new program or higher level of service for a community college district to require applicants claiming residence status pursuant to section 68074 of the Education Code (for current or retired military personnel) to supply, and for the district to weigh, the following in determining the applicant's residence:

- A statement from the military person's commanding officer or personnel officer that: (1) the military person's duty station is in California on active duty as of the residence determination date; or (2) that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or (3) that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States.

- A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes. (Cal.Code. Regs., tit. 5, § 54041; Register 82, No. 48 (Nov. 27, 1982) p. 638; Register 83, No. 24 (Jun. 11, 1983) p. 638. Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 335.)

Member of armed forces (Ed. Code, § 68075; Cal.Code Regs., tit. 5, §§ 54042 & 54050): Section 68075, subdivision (a), of the Education Code (Stats. 2000, ch. 571) states:

> An undergraduate student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to a state-supported institution of higher education, is entitled to resident classification only for the purpose of determining the amount of tuition and fees.

Subdivision (b) of section 68075 concerns students seeking a graduate degree and is therefore not applicable to community colleges, the subject of this claim. Claimant pled versions of section 68075 starting with Statutes 1989, chapter 900.

The issue is whether section 68075 is a state-mandated new program or higher level of service. Former Education Code section 22854 (Stats. 1972, ch. 1100) stated:

> A student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, shall be entitled to resident classification until he has resided in the state the minimum time necessary to become a resident.

Because there is no substantive difference between section 68075, subdivision (a), and former section 22854, the pre-1975 statute (or former § 68075, Stats. 1976, ch. 1010), staff finds that section 68075 does not impose a state-mandated new program or higher level of service on community colleges within the meaning of article XIII B, section 6.

Section 54050 of the title 5 regulations (Register 82, No. 48 (Nov. 27, 1982) p. 638.2) indicates the length of the exception from paying nonresident tuition, as follows:

> Those exceptions from payment of nonresident tuition provided by Education Code ... 68075 (military members) apply for so long as the student qualifies under the terms of either section 68074 or 68075. Resident classification for purposes of determining the amount of tuition and fees includes eligibility for Board of Governor's fee waivers.

Former section 54040 (Register 73, No. 26 (Jun. 30, 1973) p. 638) of the title 5 regulations states: "Those exceptions from payment of nonresident tuition provided by Education Code ... 22854 (military members) apply for so long as the student has not been in California long enough to have one year of California residence."

The current version of section 54050 excepts members of the military from nonresident tuition, "for so long as the student qualifies under the terms of either section 68074 or 68075." Section 68075 entitles the undergraduate student to resident classification "only for the purpose of determining the amount of tuition and fees" but does not specify a maximum length of time.

Thus, while it may be possible for an active duty member of the military to obtain California residence after one year of active duty military service in the state, the member is not required to do so under the current version of section 54040 in order to be classified as a resident.

Under both the 1973 version of former section 54040 and current section 54050, the student who is a military member on active duty is entitled to resident classification for the purpose of determining the amount of tuition and fees. But the exemption from nonresident tuition is indefinite under the current regulation for undergraduates. If the student is never reclassified as a resident, it may mean a lower level of service than under prior law. Therefore, staff finds that section 54050 of the title 5 regulations (Register 82, No. 48 (Nov. 27, 1982) p. 638.2), as applied to Education Code section 68075, is not a state-mandated new program or higher level of service on the college.

Section 54042 of the title 5 regulations (Register 82, No. 48 (Nov. 27, 1982) p. 638) requires providing documentation, as follows:

> A student claiming application of section 68075 of the Education Code must provide a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

Section 54042 (Register 82, No. 48 (Nov. 27, 1982) p. 638.2) is identically worded to the 1973 version of section 54033 of the title 5 regulations (Register 73, No. 26 (Jun. 30, 1973) p. 638.1). Both require the student to supply (and the community college to require submission of and weigh, § 54010, subds. (c) & (d)) "a statement from the student's commanding officer or personnel office that the assignment to active duty in this state is not for educational purposes." Moreover, plain language of the section, by stating the student "should" produce evidence, indicates that producing evidence of the date of assignment to California is not required. Thus, staff finds that section 54042 is not a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 (Register 82, No. 48 (Nov. 27, 1982) p. 638.2); Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 335).

Member of armed forces after discharge (§ 68075.5): Section 68075.5 of the Education Code (Stats. 1995, ch. 389) states:

> A student who was a member of the armed forces of the United States stationed in this state on active duty for more than one year immediately prior to being discharged from the armed forces is entitled to resident classification for the length of time he or she lives in this state after being discharged up to the minimum time necessary to become a resident. [Emphasis added.]

Although by itself section 68075.5 does not mandate a community college activity, making the student "entitled" to resident classification triggers the district's duty in section 68040 to classify students as California residents, or nonresidents if the statutory criteria does not apply.

Therefore, staff finds that section 68075.5 (Stats. 1995, ch. 389) imposes a state-mandate on a community college district to classify as a resident a student who was a member of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged from the armed forces, for the length of time he or she

lives in California after being discharged up to the minimum time necessary to become a resident.

Staff also finds that this activity is a new program or higher level of service, since there was no statute similar to section 68075.5 before it was enacted by Statutes 1995, chapter 389.

Dependent of California resident for more than one year (§ 68076): Section 68076 of the Education Code, enacted by Statutes 1988, chapter 753, and amended in 1991 and 1993, states as follows:

> Notwithstanding Section 68062, [regarding determination of place of residence] a student who (a) has not been an adult resident of California for more than one year and (b) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year, shall be entitled to resident classification. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution. [Emphasis added.]

This statute entitles specified dependent students to California residency status. Read in conjunction with section 68040's duty to classify students as residents or nonresidents, staff finds that section 68076 imposes a state mandate to classify students as residents if they meet the qualifications of section 68076. Staff also finds that this requirement is a new program or higher level of service, since it did not exist before Statutes 1988, chapter 753.

Therefore, staff finds that Education Code section 68076 (Stats. 1988, ch. 753, Stats. 1991, ch. 455, Stats. 1993, ch. 8) imposes a state-mandated new program or higher level of service for community colleges to classify as a resident a student who (a) has not been an adult resident of California for more than one year; and (b) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at a community college.

Graduate of Bureau of Indian Affairs school (§ 68077): Section 68077 of the Education Code, added by Statutes 1989, chapter 424, states:

> Notwithstanding Section 68062, [regarding determination of place of residence] a student who is a graduate of any school located in California that is operated by the United States Bureau of Indian Affairs, including, but not limited to, the Sherman Indian High School, shall be entitled to resident classification. This exception shall continue so long as continuous attendance is maintained by the student at an institution. [Emphasis added.]

By entitling a category of students to resident status, section 68077 (Stats. 1989, ch. 424, Stats. 1993, ch. 8), triggers the district's duty to classify students who meet the criteria as residents. (§ 68040). Therefore, staff finds that section 68077 is a state mandate on community

colleges to classify as a resident a student who graduated from any school located in California that is operated by the United States Bureau of Indian Affairs, so long as continuous attendance is maintained by the student at a community college.

Staff also finds that this requirement is a new program or higher level of service, since it did not exist before Statutes 1989, chapter 424.

Student holding emergency permit or public school credential (§ 68078, Cal.Code Regs., tit. 5, § 54046): Section 68078 of the Education Code was amended by Statutes 2000, chapter 949[69] to add subdivision (b), which entitles a student to resident classification for:

> [H]olding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements.

The classification is "only for the purpose of determining the amount of tuition and fees for no more than one year." (*Ibid.*)

Subdivision (c) (also added by Stats. 2000, ch. 949) states that section 68078 "shall not be construed to affect the admissions policies of any teacher preparation program." Staff finds that subdivision (c) of section 68078 (Stats. 2000, ch. 949, specifying that the section shall not be construed to affect the admissions policies of any teacher preparation program) is not a state mandate because it does not require a community college activity.

Subdivision (b) of section 68078, added by Statutes 2000, chapter 949, entitles a new category of student to residence classification, one "holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements."[70] [Emphasis added.] The classification is "only for the purpose of determining the amount of tuition and fees for no more than one year."

To qualify under the statute, a student must be seeking a teaching credential. Although eligibility for a credential requires "a baccalaureate or higher degree" (§ 44259, subd. (b)(1)), it is possible for a person with that degree to take courses toward earning a credential at a community college. For example, one of the credential requirements is "satisfactory completion of a program of professional preparation that has been accredited." (*Id.* at subd. (b)(3).)

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[69] Section 68078 was enacted in 1976 (Stats. 1976, ch. 1010), the content of which is currently subdivision (a) of that section. Claimant did not plead the 1976 statute, and staff makes no finding on it.

[70] There are 17 types of emergency permits. (Cal.Code Regs., tit.5, § 80023.) An application for an emergency permit is submitted by the school district, charter school, county office of education, et cetera, which is termed the "employing agency." (Cal.Code Regs., tit.5, § 80023.1, subd. (a)(1).) The permits are good for one year, but may be extended for four additional years if issued on or after January 1, 1998. (Cal.Code Regs., tit.5, § 80023.1, subd. (c).)

Completion of this requirement may be satisfied through "lower division" courses available at a community college (§ 44259.1, subd. (b)(2)).

By entitling a category of students to resident status, subdivision (b) of section 68078 triggers the district's duty to classify students who meet the criteria as residents (§ 68040). Therefore, staff finds that subdivision (b) of section 68078 (Stats. 2000, ch. 949) is a state mandate on a community college to classify as a resident a student who holds a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements. This classification is only for the purposes of determining the amount of tuition and fees for no more than one year.

Staff also finds that subdivision (b) of section 68078 is a new program or higher level of service that did not exist before Statutes 2000, chapter 949.

Section 54046 of the title 5 regulations (Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337) states:

> A student claiming residence status pursuant to section 68078 of the Education Code shall provide a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements.[71]

Staff finds that section 54046 of the title 5 regulations is a state mandate on community college districts to require students claiming resident classification as specified to supply the statements and credential as stated in the regulation.

The next issue is whether section 54046 is a new program or higher level of service. Former section 54036 (Register 73, No. 44 (Nov. 3, 1973) p. 638) stated as follows:

> **Public School Employee Holding Valid Credential.** A student claiming residence status pursuant to Section 22857 of the Education Code[72] should provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a provisional credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that he student holds a credential issued pursuant to

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[71] Prior to AB 1725 (Stats. 1988, ch. 973) the Board of Governors of the Community Colleges issued credentials, and possession of an appropriate credential was required before a person could be hired as a faculty member (including teaching faculty, counselors, librarians, etc.) or an academic administrator.

[72] Former Education Code section 22857 was equivalent to subdivision (a) of section 68078.

Section 13125 of the Education Code and is enrolled in courses necessary to fulfill credential requirements, or is enrolled in courses necessary to fulfill credential requirements of the fifth year of education prescribed by subdivision (b) of Section 13130 of the Education Code.

The 1977 amendment to section 54036 (Register 77, No. 45 (Nov. 5, 1977) p. 638.2) amended the 1973 version as follows:

> **Public School Employee Holding Valid Credential.** A student claiming residence status pursuant to Section ~~22857~~ 68078 of the Education Code should provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a ~~provisional~~ credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section ~~13125~~ 87274 of the Education Code and is enrolled in courses necessary to fulfill credential requirements, ~~or is enrolled in courses necessary to fulfill credential requirements of the fifth year of education prescribed by subdivision (b) of Section 13130 of the Education Code.~~

As to the first sentence, the plain language of both the 1973 and 1977 versions of the regulation (using the word "should") did not require providing the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. This "should" was changed to "shall" in the 1982 version of the regulation, which also changed the section number to 54046.

Therefore, staff finds that section 54046 is a state-mandated new program or higher level of service on the district to require the student to supply, and for the district to weigh, a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. (Cal. Code Regs., tit. 5, § 54046; Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337).[73] This section is state-mandated new program or higher level of service for students claiming residence under section 68078. This includes those claiming residence under both subdivision (b) of section 68078 (students holding a valid emergency permit, as specified) as well as subdivision (a)[74] (student holding a valid credential, as specified, who is seeking another

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[73] The 1991 amendment to the first sentence of section 54046 was not substantive. It removed the term "admission's officer."

[74] Subdivision (a) of section 68078 provides:

> (a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution is entitled to resident classification if that student meets any of the following requirements:

type of credential, or holds a provisional credential seeking another type of credential, is enrolled in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259[75]).

As to the second sentence in the regulation, the word "must' is interpreted the same as "shall" which is mandatory.[76] Under former (pre-1975) law the student was only required to supply (and the district was to require) a student's provisional credential, while under the current version the district is required to look at the types of credential in section 68078 (to include an emergency permit after Statutes 2000, chapter 949). Thus, staff finds that requiring a student to supply a provisional credential is not a new program or higher level of service for the district.

Staff also finds, however, that section 54046 of the title 5 regulations is a state-mandated new program or higher level of service on the district to require the student to supply, and for the district to weigh, any teaching credential except a provisional credential. The district also shall require the student to show he or she will either enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or the student holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements. (Former Cal. Code Regs., tit. 5, § 54036; Register 77, No. 45 (Nov. 5, 1977) p. 638.2. Cal. Code Regs., tit. 5, § 54046; Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337.)

Native American student (§ 68082): Education Code section 68082 (Stats. 1977, ch. 36) states:

> A student who is a native American is entitled to resident classification for attendance at a community college if the student is also attending a school administered by the Bureau of Indian Affairs located within the community college district. As used in this section, "native American" means an American Indian. [Emphasis added.]

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(1) He or she holds a provisional credential and is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools,

(2) He or she holds a credential issued pursuant to Section 44250 and is enrolled at an institution in courses necessary to fulfill credential requirements [§ 44250 states that the commission (on teacher credentialing) issues only the following two types of credentials: "(a) A teaching credential. (b) A services credential. The commission may issue an internship teaching or services credential.]

(3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259. [See fn. 68.]

[75] Section 44259, subdivision (b), specifies the minimum requirements for the preliminary multiple or single subject teaching credential.

[76] *Board of Supervisors v. Simpson* (1951) 36 Cal.2d 671, 675-676. "Rules governing the interpretation of statutes also apply to interpretation of regulations." *Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1037.

Because of the entitlement language in this section, the district's duty to classify Native American students as residents is triggered if they fall within the statutory criteria. Therefore, staff finds that section 68082 (Stats. 1977, ch. 36) is a state mandate on community colleges to classify as residents Native American students who attend a school administered by the Bureau of Indian Affairs located with the community college district. Staff also finds that this requirement is a new program or higher level of service, since it did not exist before Statutes 1977, chapter 36.

Amateur student athlete in training at U.S. Olympic Training Center (§ 68083): Section 68083 of the Education Code (added by Stats. 1997, ch. 438) states:

> (a) Any amateur student athlete in training at the United States Olympic Training Center in Chula Vista is entitled to resident classification for tuition purposes until he or she has resided in the state the minimum time necessary to become a resident. [Emphasis added.]
> (b) "Amateur student athlete," for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes.

Section 68083 triggers the district's duty to classify an eligible amateur student athlete as a California resident (§ 68040). Therefore, staff finds that section 68083 (Stats. 1997, ch. 438) is a state mandate on community colleges to classify a student as a resident if he or she is an amateur student athlete in training at the United States Olympic Training Center in Chula Vista, and meets the definition in subdivision (b) of section 68083. Staff also finds that this mandate is a new program or higher level of service, since it did not exist before Statutes 1997, chapter 438.

Therefore, staff finds that section 68083 (Stats. 1997, ch. 438) is a state-mandated new program or higher level of service for a community college to classify as a resident for tuition purposes any amateur student athlete (as defined in § 68083, subd. (b)) in training at the United States Olympic Training Center in Chula Vista, until he or she has resided in the state the minimum time necessary to become a resident.

Federal civil service employee in state due to military mission realignment (§ 68084): Added by Statutes 1998, chapter 952, Education Code section 68084[77] provides:

> (a) A parent who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification at ... a California community college if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident pursuant to Section 68017 [the definition of "resident"], so long as the

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[77] Subdivision (b) of section 68084 was added by Statutes 2004, chapter 225, regarding community colleges, California State University, and University of California certification of qualifying military mission realignment actions (originally, the Trade and Commerce Agency was to certify qualify military mission realignment actions and provide the information to the community colleges and other segments of higher education). Staff makes no finding on Statutes 2004, chapter 225 because it was not pled by claimant.

student continuously attends an institution of public higher education. [Emphasis added.]

By entitling eligible federal civil service employees, as specified, to resident status, section 68084 requires the college to classify those students as residents if they meet the statutory criteria. Therefore, staff finds that section 68084 is a state mandate. As a mandate that did not exist before Statutes 1998, chapter 952, staff also finds that this section is a new program or higher level of service.

Specifically, staff finds that section 68084 (Stats. 1998, ch. 952) is a state-mandated new program or higher level of service for community colleges to classify as a state resident a federal civil service employee and his or her natural or adopted dependent children if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees, until the student is entitled to be classified as a resident pursuant to section 68017, so long as the student continuously attends a community college.

Nonresident California high school graduates (§ 68130.5 & Cal.Code Regs., tit. 5, § 54045.5 & Chancellor's Office document): Education Code section 68130.5, enacted by Statutes 2001, chapter 814, exempts specified students from paying nonresident tuition as follows:

> Notwithstanding any other provision of law:
> (a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:
>
> (1) High school attendance in California for three or more years.
>
> (2) Graduation from a California high school or attainment of the equivalent thereof.
>
> (3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year.
>
> (4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.
>
> (b) A student 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.

The legislative intent of Statutes 2001, chapter 814 was expressed in the legislative findings and declarations enacted as section 1 of the bill:

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

Section 54045.5 of the title 5 regulations (Register 02, No. 25 (Jun. 21, 2002) p. 335) repeats the criteria for resident tuition in Education Code section 68130.5. Subdivision (b) of section 54045.5 requires students seeking exemptions under this category to "complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption" and states that the student may be required to provide additional documentation. Subdivision (c) states that any student without lawful immigration status who is seeking this exemption, "shall, in the questionnaire described in subdivision (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so." Subdivision (d) states that the student has the burden of providing evidence of compliance with the requirements. The remaining subdivisions clarify that the section does not modify standards for student financial aid, and that a refund is not authorized for tuition paid for terms before January 2002.

Based on the language in the statute, staff finds that Education Code section 68130.5 (Stats. 2001, ch. 814) is a state mandate on a community college to exempt a student (other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code) from paying nonresident tuition if he or she meets the following criteria: (1) High school attendance in California for three or more years; (2) Graduation from a California high school or attainment of the equivalent thereof; (3) Registers for or is enrolled in a course offered by any college in the district not earlier than the fall semester or quarter of the 2001-02 academic year.[78] Staff also finds that section 68130.5 imposes a new program or higher level of service, since the mandate did not exist before Statutes 2001, chapter 814.[79]

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[78] The regulation states that the student must register for or be enrolled for any term commencing on or after January 1, 2002. Although the language of the statute controls the terms of the mandate, community colleges would not be eligible for reimbursement before the effective date of the statute, should the Commission approve this mandate.

[79] On September 15, 2008, California's Third District Court of Appeal issued an opinion on section 68130.5 (Stats. 2001, ch. 814). The opinion reverses a lower court's decision to grant a demurrer, and holds that plaintiffs stated a viable claim that section 68130.5 conflicts with and is

Staff further finds that California Code of Regulations, title 5, section 54045.5 (Register 02, No. 25 (Jun. 21, 2002) p. 335), constitutes a state mandate on a district to require the applicant for the exemption to complete a questionnaire, on a form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, in which the student in the questionnaire affirms that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so (Cal.Code Regs., tit. 5, § 54045.5, subd. (b)). And it is a state mandate for the district to weigh the information on the questionnaire in determining the student's eligibility for the exemption (Cal.Code Regs., tit. 5, § 54010, subd. (c)). Requiring and weighing the questionnaire information is also a new program or higher level of service for the community college district, since it did not exist prior to the June 2002 regulation.

Staff finds that the following phrase in subdivision (b) of section 54045.5 is not a state mandate: "Any student seeking an exemption under subdivision (a) … may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption." Because the regulation does not expressly require the submission of additional documentation, it would be required at the discretion of the community college. Therefore, requiring to be submitted and weighing any additional documentation to verify eligibility for exempting students from nonresident tuition at a community college is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution.

Aside from the statutes and regulations, the Chancellor's Office issued a document, "Revised Guidelines and Information on AB540" in May 2002, which was pled in the test claim. Staff finds that this document is an "executive order" within the meaning of Government Code section 17516 because it is an "order, plan, requirement, rule, or regulation issued by … any agency, department, board, or commission of state government." The Chancellor's document explains section 68130.5 of the Education Code and section 54045.5 of the title 5 regulations, and includes the questionnaire cited in section 54045.5. It also imposes the following new requirements not in the statutes or regulations, which are discussed below:

- If a student is determined eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student (p.2).
- Individually printed old (questionnaire) forms must be discarded and replaced with newly prescribed (Chancellor's) form, in printed materials for Summer 2002 or Fall 2002, unless the district's form is part of a major preprinted document such as a Schedule of Classes (p. 3).
- The original certified affidavit and other materials utilized by a district in meeting the certification requirements, shall be considered Class 1 – Permanent Records, under the

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preempted by federal title 8 U.S.C. sections 1623 and 1621. (*Martinez v. Regents of the University of California* (2008) 166 Cal.App.4th 1121.) The case was remanded back to the trial court. If the court ultimately finds that section 68130.5 is invalid, the statute would become void. At that point (if the Commission finds that § 68130.5 is a reimbursable state-mandated program) reimbursement for activities under section 68130.5 would end on the date the court's decision becomes final.

provisions of title 5 of Section 59023. The Class 1 records shall be retained indefinitely, unless copied or reproduced by photograph, microphotograph or reproduced on film or electronically (p. 4).

Claimant pled the activity of "obtaining ... additional documentation or evidence, as necessary or when the district is in possession of conflicting information, to verify eligibility for the exemption." Staff finds that collecting documentation beyond the information in the questionnaire is not a state mandate. Section 54045.5 of the title 5 regulation states that the student "may be required to provide documentation in addition to the information required by the questionnaire." The chancellor's office document states that "if the district is in possession of conflicting information regarding any aspect of the student eligibility, the district should pursue additional verification ... to resolve discrepancies prior to granting this exemption." [p. 3, emphasis added.] Because neither the regulation nor the chancellor's document requires additional documentation be provided, staff finds that obtaining it is not mandated by the state.

Paragraph 20 on page 4 of the Chancellor's documents states:

> The original certified affidavit and other materials utilized by a district in meeting the certification requirements shall be considered Class 1 – Permanent Records, under the provisions of title 5 of Section 59023. The Class 1 records shall be retained indefinitely, unless copied or reproduced by photograph, microphotograph or reproduced on film or electronically. It is suggested, for audit purposes, that the original documents should be maintained for at least five years.

Staff finds, based on the plain language of this paragraph, that retaining indefinitely (as Class 1 Permanent Records) the original certified affidavit and other materials utilized by a district in meeting the certification requirements *or* copying, reproducing them by photograph, micrograph, or via film or electronically, is a state mandate. Staff also finds that doing so is a new program or higher level of service, since it was not required before the Chancellor's document was issued. And although there is a list in subdivision (d) of section 59023 of the title 5 regulations of student records comprising Class 1 – Permanent Records, the affidavit and other materials are not included, making paragraph 20 a new program or higher level of service.

The context of the last two sentences in paragraph 20 indicates that "original documents" mean those not copied or reproduced on film or electronically. Thus, the Chancellor suggests the original documents be maintained for at least five years even if photographic or microphotographic reproduction is effected. Retaining these original documents for five years, however, is not a state mandate because doing so is a suggestion, according to the plain language of the Chancellor's document.

Paragraph 8 on page 2 of the Chancellor's document states: "If a student is determined eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student." Staff finds that, based on the language, this is a state mandate. Staff also finds that it is a new program or higher level of service to refund the tuition if the student is determined eligible for the exemption after he or she has paid nonresident tuition, since it was not required before issuance of the Chancellor's document.

Paragraph 14 on page 3 of the Chancellor's document states that individually printed old (questionnaire) forms must be discarded and replaced with newly prescribed (Chancellor's) form, in printed materials for Summer 2002 or Fall 2002, unless the district's form is part of a major preprinted document such as a Schedule of Classes. Staff finds that discarding this old form, if necessary, is a state mandated, one-time activity. Staff also finds that doing so is a new program or higher level of service.

Paragraph 38 on page 6 of the Chancellor's document states as follows:

> If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student shall be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may be subject to disciplinary proceedings per district policy. The student self-certification contains a student acknowledgement of this potential liability.

The language of paragraph 38 in the Chancellor's document only states that the student is liable for the funds, but does not require the community college to collect them. It also states that the student may be subject to disciplinary proceedings per district policy, but does not require the community college to conduct any proceedings. It would be local officials who would decide to incur the costs.[80] Therefore, staff finds that seeking reimbursement from students when the certification is determined to be false, or conducting disciplinary proceedings, are not mandated by the state. This also means that establishing and implementing policies and procedures regarding seeking reimbursement from students for nonresident fees that have been waived when the original certification is subsequently determined to be false, as stated by claimant, is not mandated by the state.

Claimant also pled the following activities:

- Participating in surveys conducted by the Chancellor's office concerning students receiving exemptions for nonresident tuition, when requested, pursuant to the Chancellor's Revised Guidelines and Information dated May 2002, paragraph 40.
- The loss of nonresident tuition fees when students are classified as residents for tuition purposes, pursuant to Education Code Sections 58074, 68075.5, 68076, 68077, 68078(b), 68082, 68083, 68084, and California Code of Regulations, Section 54045, subdivisions (b) and (c).
- The loss of nonresident tuition fees when nonresident students are exempted from the payment of nonresident tuition pursuant to Education Code Section 68130.5 and California Code of Regulations 54045.5.

Staff finds that these are not state-mandated activities. Regarding the surveys, the Chancellor's document (p. 6, par. 40) states that, "from time to time districts are asked to participate in such research." The language does not indicate that participating in the survey research is required or that receiving funds is conditional on it, so staff finds that survey participation is not a state mandate.

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[80] *San Diego Unified School Dist, supra,* 33 Cal.4th 859, 880.

The loss of nonresident tuition fees for either classifying students as residents, or exempting them from paying nonresident tuition, is also not reimbursable. In *County of Sonoma v. Commission on State Mandates* ((2000) 84 Cal.App.4th 1264), the challenged legislation reduced the amount of property tax revenue to be allocated to counties pursuant to a formula, keeping funding for schools stable. The court rejected the county's argument that the reallocation of tax revenues constituted a state-mandated cost of a new program, holding that section 6 subvention is limited to increases in actual costs. As the *County of Sonoma* court stated, "we cannot extend the provisions of section 6 [of article XIII B] to include concepts such as lost revenue… some actual cost must be demonstrated, and not merely decreases in revenue." (*Id.* at 1285.) Thus, staff finds that loss of nonresident tuition fees is not a reimbursable cost within the meaning of article XIII B, section 6.

Alien students (Cal.Code Regs., tit. 5, § 54045): In the title 5 regulations (Register 86, No. 10 (Mar. 8, 1986) p. 638.1) section 54045, subdivision (a), states: "An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residence pursuant to the provisions of this subchapter."

Subdivision (b) of section 54045 provides three scenarios when an alien is precluded from establishing domicile in the United States (entered the US illegally,[81] entered under a visa requiring the alien have a residence outside the US, or entered US under a visa that permits entry solely for some temporary purpose). Subdivision (c)[82] prohibits the alien who is precluded from establishing domicile in the United States from being classified as a resident "unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020 – 54024 related to physical presence and the intent to make California home for other than a temporary purpose."

Section 54045 was added to the title 5 regulations in 1986. Earlier, Statutes 1983, chapter 680 enacted section Education Code 68062, subdivision (h), (not pled by claimant, so staff makes no findings on it), which authorized aliens to establish residence unless precluded by the Immigration and Nationality Act from establishing domicile in the United States (Ed. Code, § 68082, subds. (h) & (i)). The constitutionality of subdivision (h) of section 68082[83] was upheld by the Second District Court of Appeal, which provided the following background:

> By law, California's public colleges and universities charge lower tuition for California residents than for nonresidents. (See Ed. Code, §§ 68050-68051.) At one time, students who were not United States citizens were classified by statute as nonresidents unless they were "lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States."

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[81] Entering the U.S. illegally was added by Register 92, No. 4 (Jan. 24, 1992) page 336.

[82] Subdivision (c) was added by Register 95, Nos. 19-20 (May 19, 1995) page 335.

[83] Subdivision (h) of section 68082, states: "An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States."

(Former Ed. Code, §§ 68076-68077, repealed 1983.)

In 1982, however, in a suit by alien University of Maryland students whose parents were admitted to this country as employees of official international organizations, the Supreme Court of the United States ruled that when federal immigration law authorizes a particular classification of nonimmigrant aliens to establish domicile in the United States, a state university is precluded, under the supremacy clause, from refusing to regard them as residents. (*Toll v. Moreno* (1982) 458 U.S. 1 [73 L.Ed.2d 563, 102 S.Ct. 2977].)

Accordingly, in 1983 our Legislature amended the Education Code to eliminate the requirement that alien students seeking the benefits of resident tuition must show they were lawfully admitted for permanent residence. (Stats. 1983, ch. 680, § 1, p. 2636.) A new rule was substituted: an alien student may be classified as a resident for tuition purposes "unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States." (Ed. Code, § 68062, subd. (h).)

The Chancellor of the California State University asked the Attorney General whether, under this new statute, "undocumented aliens"-i.e., noncitizens who lack valid visas, having entered or remained in the United States in violation of federal immigration law-are precluded from qualifying as California residents for tuition purposes. In June 1984 the Attorney General published his formal opinion that undocumented aliens are, under the statute, considered nonresidents. (67 Ops.Cal.Atty.Gen. 241 (1984).)[84]

In addition to declaring Education Code section 68062, subdivision (h), to be constitutional, the Second District Court of Appeal opinion attached the June 1984 Attorney General opinion, which concluded that this section allowing alien students to be classified as residents for tuition purposes unless precluded from doing so by the Immigration and Nationality Act, "was intended only to implement federal law as declared by the United States Supreme Court in *Toll v. Moreno, supra,* 458 U.S. 1, and was not intended to encompass undocumented or illegal aliens."[85]

Staff finds that subdivisions (b) and (c) of section 54045 of the title 5 regulations (Register 95, No. 19-20 (May 19, 1995) p. 335) are state mandates. Subdivision (b) provides:

> An alien is precluded from establishing domicile in the United States if the alien: (1) entered the United States illegally (undocumented aliens); (2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or (3) entered the United States under a visa which permits entry solely for some temporary purpose.

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[84] *Regents of the University of California v. Bradford* (1990) 225 Cal.App.3d 972, 975-976.

[85] 67 Opinions of the California Attorney General 241 (1984). The Opinion also concluded that section 68062, subdivision (h), does not permit undocumented or illegal aliens to acquire residence for tuition purposes.

Read in conjunction with section 54010, subdivisions (c) and (d), that require the district to require applicants to supply information as specified and for the district to weigh it, staff finds that section 54045, subdivision (b), of the title 5 regulations (Register 86, No. 10 (Mar. 8, 1986) p. 638.1) is a state mandate for a community college district to require a student alien to supply information on whether he or she is precluded from establishing domicile, as specified, and for the district to weigh the information.

Subdivision (c) of section 54045 of the title 5 regulations (Register 95, No. 19-20 (May 19, 1995) p. 335) states:

> An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose.

Based on the plain language of this regulation, staff finds that it is a state mandate for a community college district to determine whether a student who is an alien has: (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and (2) met the residence requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose.

Both of these sections go beyond federal law or court mandate, both of which would preclude reimbursement under Government Code section 17556. The holding of the United States Supreme Court in *Toll v. Moreno, supra,* 458 U.S. 1, was that when federal immigration law authorizes a particular classification of nonimmigrant aliens to establish domicile in the United States, a state university is precluded, under the supremacy clause, from refusing to regard them as residents.[86] Neither this decision nor federal law requires students to submit information regarding residence or domicile.

The next issue is whether these activities are a new program or higher level of service. Prior law did not preclude an alien from establishing domicile in the United States under specified circumstances. Former Education Code sections 22855 and 22856 (Stats. 1972, ch. 1100) stated:

> 22855. A student who is an adult alien shall be entitled to resident classification if he has been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States; provided, that he has had residence in the state for more than one year after such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution.
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> 22856. A student who is a minor alien shall be entitled to resident classification if both he and his parent have been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States; provided, that he parent has had residence in the state for more than one year after

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[86] *Regents of the University of California v. Bradford, supra,* 225 Cal.App.3d 972, 975.

such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution.

Former sections 54034 and 54035 of the title 5 regulations (Register 73, No. 26 (Jun. 30, 1973) p. 638) stated:

> 54034. Adult Aliens. An adult alien lawfully admitted to the United States for permanent residence and having residence in this state for more than one year and claiming residence immediately prior to the residence determination date and claiming residence for tuition purposes shall show his or her immigrant visa to the admissions officer at the time of classification.
>
> 54035. Minor Aliens. A minor alien claiming residence for tuition purposes shall be required at the time of classification to show his or her immigrant visa, his or her parents' immigrant visa and evidence that the parent has had permanent residence in the state for more than one year after admission of the permanent residence prior to the residence determination date.

Because it was not required under prior law, staff finds that section 54045, subdivision (b), of the title 5 regulations (Register 86, No. 10 (Mar. 8, 1986) p. 638.1) is a state-mandated new program or higher level of service for a community college district to require a student alien to supply, and for the district to weigh, information on whether the student is precluded from establishing domicile. An alien is precluded from establishing domicile in the United States if the alien: (1) entered the United States illegally; (2) entered the United States under a visa requiring that the alien have a residence outside the United States; or (3) entered the United States under a visa that permits entry solely for some temporary purpose. (Cal.Code Regs, tit. 5, § 54045, subd. (b).)[87]

Staff also finds that, because it was not required under prior law, subdivision (c) of section 54045 (Register 86, No. 10 (Mar. 8, 1986) p. 638.1) is a state-mandated new program or higher level of service for a community college district to determine, for an alien who is precluded from establishing domicile in the United States pursuant to subdivision (b) of section 54045 of the title 5 regulations, whether that alien has (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service[88] to a classification which does not preclude establishing domicile, and (2) met the residence requirements of sections 54020-54024[89] of the

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[87] Register 86, No. 10 (Mar. 8, 1986) p. 638.1.; Register 91, No. 23 (April 5, 1991) p. 336; Register 92, No. 4 (Jan. 24, 1992) p. 336, Register 95, Nos. 19-20 (May 19, 1995) p. 335.

[88] The current name of this government agency is U.S. Citizenship and Immigration Services. See < http://www.uscis.gov> as of May 8, 2008.

[89] As described above, section 54020 requires "to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose."

title 5 regulations related to physical presence and the intent to make California home for other than a temporary purpose. (Cal.Code Regs, tit. 5, § 54045, subd. (c).)[90]

E. Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks

Section 68121, added by Statutes 2002, chapter 450, states:

> (a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required or collected by the Regents of the University of California or the Trustees of the California State University, from a student who is in an undergraduate program and who is the surviving dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the

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Section 54022 states:

> (a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.
>
> (b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.
>
> (c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence."

Section 54024 states:

> (a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.
>
> (b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has engaged in any of the activities listed in subdivision (f).
>
> (c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his or her parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f).
>
> (d) A student who does not meet the requirements of subdivision (b) or subdivision (c) shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subdivision (e).
>
> [Subdivision (e) lists 12 objective manifestations of intent to establish California residence. Subdivision (f) lists 4 acts of conduct inconsistent with a claim of California residence.]

[90] Register 95, Nos. 19-20 (May 19, 1995) p. 335; Register 91, No. 23 (April 5, 1991) p. 336; Register 92, No. 4 (Jan. 24, 1992) p. 336, Register 95, Nos. 19-20 (May 19, 1995) p. 335.

crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The surviving dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(b) (1) The California Victim Compensation and Government Claims Board shall identify all persons who are eligible for tuition and fee waivers pursuant to this section or subdivision (j) of Section 76300.[91] That board shall notify these

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[91] Section 76300, subdivision (j): The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following applies:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 for determining nonresident and resident tuition.

(l) (1) "Dependent," for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive, for determination of financial need and delivery of student

persons or, in the case of minors, the parents or guardians of these persons, of their eligibility for tuition and fee waivers under these provisions. This notification shall be in writing, and shall be received by all of the appropriate persons no later than July 1, 2003.

(2) The Trustees of ... the governing board of each community college district in the state shall waive tuition and fees, as specified in this section and in subdivision (j) of Section 76300, for any person who can demonstrate eligibility. If requested by the California State University, the University of California, Hastings College of the Law, or a California Community College, the California Victim Compensation and Government Claims Board, on a case-by-case basis, shall confirm the eligibility of persons requesting the waiver of tuition and fees, as provided for in this section.

(c) A determination of whether a person is a resident of California on September 11, 2001, shall be based on the criteria set forth in this chapter for determining nonresident and resident tuition.

(d) (1) "Dependent," for purposes of this section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under this section until that person obtains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013. [Emphasis added.]

Subdivision (b)(2) of section 68121 (Stats. 2002, ch. 450) requires community colleges to waive tuition and fees for dependents of the victims of the 9/11 terrorist attacks. Because doing so was not required before Statues 2002, chapter 450, staff finds that section 68121, subdivision (b)(2) is a state-mandated new program or higher level of service for a community college to waive mandatory systemwide fees or tuition of any kind for a student in an undergraduate program who

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financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

is the surviving dependent (as defined)[92] of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if the student is determined eligible by the California Victim Compensation and Government Claims Board. The waiver lasts until January 1, 2013, unless the dependent is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, in which case the tuition and fees are waived until the person obtains the age of 30 years (Ed. Code, § 68121, Stats. 2002, ch. 450).

Determining eligibility (including financial need and residence) for the waiver of "all systemwide fees or tuition of any kind" is the responsibility of the California Victim Compensation and Government Claims Board (VCGCB), not the community college districts. According to subdivision (b)(2) of section 68121, confirmation of the student's eligibility is made by the VCGCB "if requested by … a California Community College." Thus, the plain language of subdivision (b)(2) indicates that the college's confirmation of the student's eligibility is authorized but not required. Therefore, staff finds that confirmation of the student's eligibility for the waiver is not a state mandate. The Board of Governor's Fee Waiver Application requires applicants to submit eligibility documentation received from the VCGCB.[93]

F. Notifying Students of Classification Decision and Appeal Procedure

Notification and appeal of classification decision (Cal.Code Regs., tit. 5, § 54060): In the title 5 regulations, section 54060, subdivision (a), (added by Register 82, No. 48 (Nov. 27, 1982) p. 638.2) states:

> A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

According to subdivision (b), "Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college shall establish procedures for appeals of residence classifications." [Emphasis added.]

Subdivision (c) states that the Chancellor "will advise community college districts on issues in residence classification" and states that "the student shall have no right of appeal [residence classification] to the Chancellor or Board of Governors."

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[92] "'Dependent,' for purposes of the section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42)." (§ 68121, subd. (d)(1).)

[93] For example, see the 2004-2005 Board of Governors Fee Waiver Application at <http://www.cccco.edu/LinkClick.aspx?fileticket=RvsAIDfijE4%3d&tabid=678&mid=1866> as of May 12, 2008.

Education Code section 68044 states that the State Board of Governors "shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and *appeal* of that classification." [Emphasis added.]

Pre-1975 law (Cal. Code Regs., tit. 5, § 54060; Register 73, No. 26 (Jun. 30, 1973) p. 638.1) did not require notifying each student of his or her resident classification outside the context of an appeal.

Therefore, staff finds that it is a state-mandated new program or higher level of service for the community college to notify a student of his or her residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later. (Cal. Code Regs., tit. 5, § 54060, subd. (a).)[94]

The 1973 regulations gave students the right to appeal a residence classification (Cal. Code Regs., tit. 5, § 54060; Register 73, No. 26 (Jun. 30, 1973) p. 638.1) but did not require establishing procedures for appeals of residence classification, so staff finds that section 54060, subdivision (b),[95] is a state-mandated new program or higher level of service for community colleges to establish procedures for appeals of residence classifications. (Register 82, No. 48 (Nov. 27, 1982) p. 638.2; Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.)

G. Adopting Rules for Refunds of Nonresident Tuition Fees

Refund rules (Cal.Code Regs., tit. 5, § 54070): Section 54070 of the title 5 regulations states as follows:

> The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:
>
> (a) Those collected in error.
>
> (b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.
>
> (c) Those refundable as a result of the student's reduction in units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the governing board.

This regulation was in place prior to 1975. Section 54070 of the title 5 regulations, as early as 1973 (Register 73, No. 26 (Jun. 30, 1973) p. 638.1) stated:

> The governing board of each Community College district shall adopt rules providing for refund of the following nonresident tuition fees:

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[94] Register 82, No. 48 (Nov. 27, 1982) p. 638.2; Register 91, No. 23 (Jun. 7, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.

[95] Register 82, No. 48 (Nov. 27, 1982) p.638.2; Register 91, No. 23 (Jun. 7, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 336.

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the education program at the Community College for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or his withdrawal from an education program at the Community College for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

The Legislature may, but need not, reimburse state mandates if they were enacted prior to 1975 (Cal. Const., art. XIII B, § 6). Because section 54070 was a requirement prior to 1975, staff finds that section 54070 of the title 5 regulations[96] is not a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

II. Do the test claim statutes and executive order impose costs mandated by the state within the meaning of Government Code section 17514 and 17556?

The final issue is whether the test claim statutes and executive orders impose costs mandated by the state,[97] and whether any statutory exceptions listed in Government Code section 17556 apply to the claim. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In the test claim declaration,[98] claimant Contra Costa Community College District estimates that it has incurred "$1000 or more, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001, through June 20, 2002, to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement."

Surviving dependents of victims of 9/11 terrorist attacks: Section 68121, subdivision (b)(1), states the following:

> The California Victim Compensation and Government Claims Board shall identify all persons who are eligible for tuition and fee waivers pursuant to this section or subdivision (j) of Section 76300.

Subdivision (j) of section 76300 outlines the tuition fee waiver requirements, as listed above. Subdivision (m) of section 76300 states: "It is the intent of the Legislature that sufficient funds

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[96] Register 77, No.45 (Nov. 5, 1977) p.638.3; Register 82, No. 48 (Nov. 27, 1982) p. 638.2; Register 91, No. 23 (Jun. 7, 1991) p. 337; and Register 95, No. 19 (May 19, 1995) p. 336.

[97] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[98] Test Claim 02-TC-21, Exhibit 1, Declaration of Jeanette Moore, May 7, 2003.

be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive."

Thus, the Legislature expressed intent that "sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility" as a dependent (as defined) of a victim of the 9/11 terrorist attacks, as specified in subdivision (j) of section 76300 and section 68121.

The issue is whether this fee waiver activity is subject to Government Code section 17556, subdivision (e), which prohibits the Commission from finding "costs mandated by the state" if:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Staff finds no evidence in the record or the test claim statutes, or in the 2002-03 State Budget Act,[99] or subsequent budget acts,[100] of an appropriation for tuition fee waivers for dependents of victims of the 9/11 terrorist attacks. Therefore, staff finds that Government Code section 17556, subdivision (e), does not preclude reimbursement for this activity, and that Education Code section 68121 imposes costs mandated by the state within the meaning of Government Code section 17514.

Therefore, staff finds that there are costs mandated by the state within the meaning of Government Code sections 17514 and 17556 for the activities found to be state-mandated new programs or higher levels of service, as discussed above.

CONCLUSION

For the reasons discussed above, staff finds that the test claim statutes, regulations, and executive order impose a reimbursable state-mandated program within the meaning of article XIII B,

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[99] The 2002-2003 Budget (Stats. 2002, ch. 379) states as follows (in 6870-101-1001, Schedule (1), Provision (2)): "Of the funds appropriated in Schedule (1), Apportionments, up to $100,000 is for a maintenance allowance, pursuant to regulations adopted by the board of governors. Up to $500,000 is to reimburse colleges for the costs of federal aid repayments related to assessed fees for fee waiver recipients. This reimbursement only applies to students who completely withdraw from college before the census date."

[100] The 2003-2004 Budget Act (Stats. 2003, ch. 157) states as follows in 6870-101-1001, Provision (7): "Notwithstanding Section 76300 of the Education Code, or any other provision of law, if the funds appropriated in Schedule (5) [Student Financial Aid Administration] are insufficient to fund all claims, the chancellor shall prorate available funds to each district."

The 2004-2005 Budget Act (Stats. 2004, ch. 208) states as follows in 6870-101-1001, Provision 11(a): Of the funds appropriated in Schedule (5),[Student Financial Aid Administration] not less than $10,338,000 is available to reimburse community college districts for the provision of Board of Governors of the California Community Colleges fee waiver awards.

section 6 of the California Constitution and Government Code section 17514 for community college districts to be reimbursed for the following:

District Governing Board Rules and Regulations on Nonresident Tuition

- Adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund (Ed. Code, § 68051, Stats. 1990, ch. 1372). This is a one-time activity.

Determining Residence Classification

- Require applicant to supply, and district to weigh, the residence determination factors: Require applicants to supply, and for the district to weigh, the following information to determine the student's residence classification (Cal. Code Regs., tit. 5, § 54024, subd. (e)).[101]
  - o Ownership of residential property
  - o Registering to vote in California
  - o Active membership in service or social clubs.
  - o Being the petitioner for a divorce in California.

  Require a student to supply, and for the district to weigh, information regarding whether the student or the parents of a minor student who relinquished California residence after moving from the state has reestablished residence by one full year of physical presence coupled with demonstrated intent to be a California resident. (Cal.Code Regs., tit. 5, § 54030, Register 82, No. 48 (Nov. 27, 1982) p. 637.)
- Residence classification questionnaires: To revise the residence questionnaire based on a sample residence questionnaire provided by the Chancellor's Office (a one-time activity).

  To require the student to supply, and for the district to weigh, the following information in a residence questionnaire to determine the student's residence classification:
  - o Where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subdivision (f) of section 54024 of the title 5 regulations, i.e., has maintained voter registration in another state and voted in another state; was a petitioner for a divorce in another state; has attended an out-of-state institution as a resident of that other state; has declared nonresidence for state income tax purposes.
  - o For each student under 19 years of age, consideration of where the parent has lived for the last two years and where the parent has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations.
  - o If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations, the student shall

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[101] Register 82, No. 48 (Nov. 27, 1982), Register 91, No. 23 (April 5, 1991) p. 334, Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.[102] (Cal.Code Regs., tit. 5, § 54012, subds. (b), (c) & (d).)[103]

- Financial independence: Determine whether the student is financially independent or dependent, in accordance with Education Code section 68044, when a student is seeking reclassification as a resident who was classified as a nonresident in the preceding term. (Cal. Code Regs., tit. 5, § 54032, subd (a).)[104]

  Determine whether the student seeking reclassification as a resident who was classified as a nonresident in the preceding term is financially dependent or independent, by requiring the student to supply, and the district to weigh, information on whether the student (1) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (2) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (3) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application. (Ed. Code, § 68044, subds. (a), (b) & (c); Stats. 1981, ch. 102, Stats. 1982, ch. 1070.)

Nonresident Tuition Fee

- Provide nonresident students with notice of nonresident tuition fee charges during the spring term before the fall term in which the change will take effect, and to consider nonresident tuition fees of public community colleges in other states in determining nonresident tuition fees, and to make nonresident tuition fee increases gradual, moderate, and predictable. (Ed. Code, § 76140, subd. (d), Stats. 1989, ch. 985.)

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[102] Section 54024, subdivision (e), of the title 5 regulations states: "Objective manifestations of intent to establish California residence include but are not limited to: (1) Ownership of residential property or continuous occupancy of rented or leased property in California. (2) Registering to vote and voting in California. (3) Licensing from California for professional practice. (4) Active membership in service or social clubs. (5) Presence of spouse, children or other close relatives in the state. (6) Showing California as home address on federal income tax form. (7) Payment of California state income tax as a resident. (8) Possessing California motor vehicle license plates. (9) Possessing a California driver's license. (10) Maintaining permanent military address or home of record in California while in armed forces. (11) Establishing and maintaining active California bank accounts. (12) Being the petitioner for a divorce in California."

[103] Register 82, No. 48 (Nov. 27, 1982) pp. 635-636; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333.

[104] Register 82, No. 48 (Nov. 27, 1982) p. 637; Register 91, No. 23 (April 5, 1991) p. 335; Register 95, No. 19 (May 19, 1995) p. 334.

Exceptions to Determination of Nonresidence

The following are entitled to resident tuition or are exempted from paying nonresident tuition:

- Dependent of member of armed forces: Classify as residents for the purpose of determining the amount of tuition and fees those dependents (defined as a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces) of military personnel who retire from active duty after the residence determination date until the student dependent has resided in the state the minimum time necessary to become a resident. (Ed. Code, § 68074, Stats. 1980, ch. 580, Stats. 1989, ch. 900, Stats. 2000, ch. 571.)

  Require applicants claiming residence status pursuant to section 68074 of the Education Code (dependent member of the armed forces) to supply, and for the district to weigh, the following documentation in determining the applicant's residence:

  - A statement from the military person's commanding officer or personnel officer that: (1) the military person's duty station is in California on active duty as of the residence determination date; or (2) that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or (3) that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States.
  - A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes (Cal.Code. Regs., tit. 5, § 54041).[105]

- Member of armed forces after discharge: Classify as a resident a student who was a member of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged from the armed forces, for the length of time he or she lives in California after being discharged up to the minimum time necessary to become a resident (Ed. Code, § 68075.5, Stats. 1995, ch. 389).

- Dependent of California resident for more than one year: Classify as a resident a student who (a) has not been an adult resident of California for more than one year and (b) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at a community college (Ed. Code, § 68076, Stats. 1988, ch. 753, Stats. 1991, ch. 455, Stats. 1993, ch. 8).

- Graduate of Bureau of Indian Affairs school: Classify a student as a resident if he or she has graduated from any school located in California that is operated by the United States Bureau

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[105] Register 82, No. 48 (Nov. 27, 1982) p. 638; Register 83, No. 24 (Jun. 11, 1983) p. 638. Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 335.

of Indian Affairs, so long as continuous attendance is maintained by the student at a community college (Ed. Code, § 68077, Stats. 1989, ch. 424, Stats. 1993, ch. 8).

- Student holding emergency permit or public school credential: Classify as a resident a student who holds a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements. This classification is only for the purposes of determining the amount of tuition and fees for no more than one year. (Ed. Code, § 68078, subd. (b), Stats. 2000, ch. 949).

For students claiming residency status pursuant to section 68078 of the Education Code, require the student to supply, and for the district to weigh, the following:

- A statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. (Cal. Code Regs., tit. 5, § 54046; Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.) This section is state-mandated new program or higher level of service for students claiming residence under subdivision (a) of section 68078,[106] as well as subdivision (b) (student holding a valid emergency permit, as specified).
- Any teaching credential (except a provisional credential). Require the student to show he or she will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements. (Former Cal. Code

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[106] Subdivision (a) of section 68078 provides:

(a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution is entitled to resident classification if that student meets any of the following requirements:

(4) He or she holds a provisional credential and is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

(5) He or she holds a credential issued pursuant to Section 44250 and is enrolled at an institution in courses necessary to fulfill credential requirements [§ 44250 states that the commission (on teacher credentialing) issues only the following two types of credentials: "(a) A teaching credential. (b) A services credential. The commission may issue an internship teaching or services credential.]

(6) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259. [§ 44259, subd. (b), specifies the minimum requirements for the preliminary multiple or single subject teaching credential.]

Regs., tit. 5, § 54036; Register 77, No. 45 (Nov. 5, 1977) p. 638.2. Cal. Code Regs., tit. 5, § 54046.)[107]

- Native American student: Classify as a resident a Native American student who attends a school administered by the Bureau of Indian Affairs located within the community college district (Ed. Code, §68082, Stats. 1977, ch. 36).
- Amateur student athlete in training at U.S. Olympic Training Center: Classify as a resident for tuition purposes any amateur student athlete (as defined in Ed. Code, § 68083, subd. (b))[108] in training at the United States Olympic Training Center in Chula Vista, until he or she has resided in the state the minimum time necessary to become a resident (Ed. Code, § 68083, Stats. 1997, ch. 438).
- Federal civil service employee in state due to military mission realignment: Classify as a state resident a federal civil service employee and his or her natural or adopted dependent children if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees, until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education (Ed. Code, § 68084, Stats. 1998, ch. 952).
- Nonresident California high school graduates: Exempt a student (other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code) from paying nonresident tuition if he or she meets the following criteria: (1) high school attendance in California for three or more years; (2) graduation from a California high school or attainment of the equivalent thereof; (3) registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002; (4) in the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so; and (5) completion of a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment verifying eligibility for this nonresident tuition exemption. (Ed. Code, § 68130.5, Stats. 2001, ch. 814, & Cal.Code Regs., tit. 5, § 54045.5, subd. (b); Register 02, No. 25 (Jun. 21, 2002) p. 335.)[109] For these students:

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[107] Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.

[108] "'Amateur student athlete,' for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes." (§ 68083, subd. (b).)

[109] On September 15, 2008, California's Third District Court of Appeal issued an opinion on section 68130.5 (Stats. 2001, ch. 814). The opinion reverses a lower court's decision to grant a demurrer, and holds that plaintiffs stated a viable claim that section 68130.5 conflicts with and is preempted by federal title 8 U.S.C. sections 1623 and 1621. (*Martinez v. Regents of the University of California* (2008) 166 Cal.App.4th 1121.) The case was remanded back to the trial court. If the court ultimately finds that section 68130.5 is invalid, the statute would become void. At that point (if the Commission finds that § 68130.5 is a reimbursable state-mandated

- Retain indefinitely, as Class 1 permanent records, the original certified affidavit and other materials utilized by a district in meeting the certification requirements; or, copying or reproducing by photograph, microphotograph or reproduced on film or electronically the original certified affidavit and other materials utilized by a district in meeting the certification requirements (Chancellor of the California Community Colleges, "Revised Guidelines and Information on AB 540 Exemption From Nonresident Tuition" May 2002, p. 4, par. 20).
- Refund the student's nonresident tuition if the student is determined eligible for the exemption after he or she has paid nonresident tuition (*Id.*, p. 2, par. 8).
- Discard and replace old questionnaire forms with the newly prescribed Chancellor's form in printed materials for Summer or Fall 2002, unless the district's form is part of a major preprinted document such as a Schedule of Classes. This is a one-time activity (*Id.* at p. 3, par. 14).

- Alien students: Require a student alien to supply, and for the district to weigh, information on whether the student is precluded from establishing domicile. An alien is precluded from establishing domicile in the United States if the alien: (1) entered the United States illegally; (2) entered the United States under a visa requiring that the alien have a residence outside the United States; or (3) entered the United States under a visa that permits entry solely for some temporary purpose. And for the community college district to determine, for an alien who is precluded from establishing domicile in the United States pursuant to subdivision (b) of section 54045 of the title 5 regulations, whether that alien has (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service[110] to a classification which does not preclude establishing domicile, and (2) met the residence requirements of sections 54020-54024[111] of the title 5 regulations related to physical presence

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program) reimbursement for activities under section 68130.5 would end on the date the court's decision becomes final.

[110] The current name of this government agency is U.S. Citizenship and Immigration Services. See < http://www.uscis.gov> as of May 8, 2008.

[111] Section 54020 of the title 5 regulations requires "to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose."

Section 54022 of the title 5 regulations states:

> (a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.
>
> (b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

and the intent to make California home for other than a temporary purpose. (Cal. Code Regs., tit. 5, § 54045, subds. (b) & (c).)[112]

Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks

- Surviving dependents of victims of 9/11 terrorist attacks: Waive mandatory systemwide fees or tuition of any kind for a student in an undergraduate program who is the surviving dependent (as defined)[113] of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if the student is determined eligible by the California Victim Compensation and Government Claims Board. The waiver lasts until January 1, 2013, unless the dependent is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, in which case

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(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence."

Section 54024 of the title 5 regulations states:

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has engaged in any of the activities listed in subdivision (f).

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his or her parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f).

(d) A student who does not meet the requirements of subdivision (b) or subdivision (c) shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subdivision (e).

[Subdivision (e) lists 12 objective manifestations of intent to establish California residence. Subdivision (f) lists 4 acts of conduct inconsistent with a claim of California residence.]

[112] Register 86, No. 10 (Mar. 8, 1986) p. 638.1, Register 91, No. 23 (April 5, 1991) p. 336; Register 92, No. 4 (Jan. 24, 1992) p. 336, Register 95, Nos. 19-20 (May 19, 1995) p. 335.

[113] "'Dependent,' for purposes of the section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42)." (§ 68121, subd. (d)(1).)

the tuition and fees are waived until the person obtains the age of 30 years (Ed. Code, § 68121, Stats. 2002, ch. 450).

Notifying Students of Classification Decision and Appeal Procedure

- Notification and appeal of classification decision: Notify a student of his or her residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later. (Cal. Code Regs., tit. 5, § 54060, subd. (a); Register 82, No. 48 (Nov. 27, 1982) p. 638.2.)

  Establish procedures for appeals of residence classifications (Cal Code Regs., tit. 5, § 54060, subd. (b).)[114]

Staff also finds that all other statutes, regulations, and executive orders in the test claim do not constitute a reimbursable state-mandated program.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

[114] Register 82, No. 48 (Nov. 27, 1982) p. 638.2); Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.

DRAFT STAFF ANALYSIS
ATTACHMENTS

Tuition Fee Waivers
02-TC-21

Fiorentino v. City of Fresno (2007) 150 Cal.App.4th 596, 603.

Houge v. Ford (1955) 44 Cal.2d 706, 712

Hartwell Corp. v. Superior Court (2002) 27 Cal.4th 256

Board of Supervisors v. Simpson (1951) 36 Cal.2d 671, 675-676.

Diablo Valley College Faculty Senate v. Contra Costa Community College Dist. (2007) 148 Cal.App.4th 1023

Former California Code of Regulations, title 5, section 54036; Register 73, No. 44 (Nov. 3, 1973) pp. 638-638.1

Regents of the University of California v. Bradford (1990) 225 Cal.App.3d 972

Revised 2004-2005 Board of Governors Fee Waiver Application: http://www.cccco.edu/LinkClick.aspx?fileticket=RvsAIDfijE4%3d&tabid=678&mid=186

67 Opinions of the California Attorney General 241 (1984)

U.S. Citizenship and Immigration Services website: http://www.uscis.gov

Martinez v. Regents of the University of California (2008) 166 Cal.App.4th 1121

HFiorentino v. City Of Fresno
Cal.App. 5 Dist.,2007.

Court of Appeal, Fifth District, California.
Carol FIORENTINO et al., Plaintiffs and Appellants,
v.
CITY OF FRESNO et al., Defendants and Respondents.
No. F050578.

April 5, 2007.
Certified for Partial Publication.[FN*]

FN* This opinion is certified for publication with the exception of the part subtitled Relief Under Code of Civil Procedure section 473 under the heading FACTS AND PROCEEDINGS, and parts III.-V. under the heading DISCUSSION.

As Modified May 4, 2007.
Review Denied July 18, 2007.

Background: Association of taxpayers and its member filed petition for a writ of mandate to enforce the California Environmental Quality Act (CEQA) as to city's resolution to charge homeowners for water based on volume of water used. The Superior Court, Fresno County, No. 05CECG02617,Rosendo Peña, Jr., J., dismissed petition and subsequently denied plaintiffs relief from the dismissal. They appealed.

Holdings: The Court of Appeal, Dawson, J., held that:
(1) dismissal of petition was mandatory for failure to file request for hearing within 90 days of filing action;
(2) late-filed request for hearing did not cure violation of 90-day deadline; and
(3) Court of Appeal would not create an exception to the 90-day deadline for circumstances where request for hearing was filed after deadline but before motion to dismiss.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ⚿842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(1) k. In General. Most Cited Cases
The Court of Appeal independently reviews questions of law, which include issues of statutory construction and the application of that construction to a set of undisputed facts.

[2] Environmental Law 149E ⚿669

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek669 k. In General. Most Cited Cases
The statutory language providing a petitioner in an action or proceeding alleging noncompliance with California Environmental Quality Act (CEQA) "shall request a hearing within 90 days from the date of filing the petition" was not ambiguous, either on its face or latently, with respect to creating a filing deadline. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[3] Environmental Law 149E ⚿696

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek694 Determination, Judgment, and Relief
149Ek696 k. Dismissal. Most Cited Cases
Use of the word "or" in statute providing a petitioner in an action or proceeding alleging noncompliance with California Environmental Quality Act (CEQA) shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal was not ambiguous and plainly meant that if the mandatory requirement for filing a request for hearing was not met, then the statutory alternative

applied. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[4] Statutes 361 ⚿197

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k197 k. Conjunctive and Disjunctive Words. Most Cited Cases
The plain and ordinary meaning of the word "or" in a statute is to mark an alternative such as "either this or that."

[5] Environmental Law 149E ⚿696

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek694 Determination, Judgment, and Relief
149Ek696 k. Dismissal. Most Cited Cases
Under the plain meaning of the statutory language, a California Environmental Quality Act (CEQA) action must be dismissed when a timely request for hearing is not filed, provided that a motion is made by any interested party or the court. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[6] Environmental Law 149E ⚿696

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek694 Determination, Judgment, and Relief
149Ek696 k. Dismissal. Most Cited Cases
Dismissal of petition for a writ of mandate filed by association of taxpayers and its member to enforce the California Environmental Quality Act (CEQA) as to city's resolution to charge homeowners for water based on volume of water used was mandatory for failure to file request for hearing within 90 days of filing action, where city, as an interested party, made a motion to dismiss. West's Ann.Cal.Pub.Res.Code § 21167.4(a).
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 858; 9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25:194; Cal. Jur. 3d, Pollution and Conservation Laws, § 656; Cal. Civil Practice (Thomson/West 2003) Environmental Litigation, § 8:29.

[7] Environmental Law 149E ⚿671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases
The late-filed request of association of taxpayers and its member for hearing on petition for writ of mandate to enforce the California Environmental Quality Act (CEQA) as to city's resolution to charge homeowners for water based on volume of water used did not cure the violation of requirement that they file a request for hearing within 90 days of filing the action. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[8] Statutes 361 ⚿47

361 Statutes
361I Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases
A statute need not identify explicitly all of the factual situations that might fall within its general rule; only relevant facts need be expressed by the Legislature when creating a general rule.

[9] Environmental Law 149E ⚿671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases
Court of Appeal would not create an exception to the 90-day deadline for requesting hearing in an action or proceeding alleging noncompliance with California Environmental Quality Act (CEQA) for circumstances where the request for hearing was filed after the deadline but before the motion to dismiss, as the Legislature did not express one; nothing in CEQA conditioned dismissal on the filing of a motion to dismiss before a late-filed request for hearing. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

**31 Griswold, LaSalle, Cobb, Dowd & Gin, Raymond L. Carlson, Hanford, and Kristine M.

Howe for Plaintiffs and Appellants.
Hatch & Parent, Lisabeth D. Rothman and Robert J. Saperstein, Santa Barbara, for Defendants and Respondents.

*598 OPINION

DAWSON, J.
Appellants contend that the superior court committed reversible error when it dismissed their petition for a writ of mandate to enforce the California Environmental Quality Act (CEQA) [FN1] and subsequently denied them relief from the dismissal under Code of Civil Procedure section 473.

FN1. Public Resources Code section 21000 et seq. All further statutory references are to the Public Resources Code unless otherwise indicated.

We conclude that the superior court correctly interpreted and applied the dismissal provisions contained in section 21167.4. Dismissal of the CEQA petition occurred because appellants did not file a request **32 for hearing within 90 days of filing their petition, as was required by subdivision (a) of section 21167.4. Furthermore, filing a request for hearing on the 91st day did not cure the failure to meet the deadline, even though it was filed before the motion to dismiss.

In addition, in an unpublished part of this opinion, we conclude the superior court did not abuse its discretion when it denied relief under the discretionary relief provisions of Code of Civil Procedure section 473.

Accordingly, the order dismissing the CEQA action is affirmed.

*599 FACTS AND PROCEEDINGS

Appellant Carol Fiorentino alleged that she owned property in an unincorporated portion of Fresno County that is supplied with water by the City of Fresno at a fixed or flat rate.

Appellant San Joaquin Valley Taxpayers Association alleged that it was a nonprofit unincorporated association of taxpayers formed to fight the wrongful imposition of taxes, charges, fees, and assessments. Appellant Fiorentino is a member of the San Joaquin Valley Taxpayers Association and has acted as its treasurer and custodian of its books and records.

In 2005, the City of Fresno and its city council (collectively, City) adopted resolution No.2005-311 titled "A Resolution of the Council of the City of Fresno, California, Certifying the Finding of Conformity for the Long-Term Renewal of the Central Valley Project ('CVP') Contract with the United States Bureau of Reclamation and Authorizing the Department of Public Utilities to Execute the Long-Term CVP Contract."

Appellants allege that in 2004 representatives of City and the United States Bureau of Reclamation negotiated the renewal of a contract made in 1961 under which the United States agreed to deliver to City 60,000 acre-feet of Class I water per year from March 1, 1966, through March 1, 2006. Class I water refers to the first 800,000 acre-feet of water of the San Joaquin River, which is considered a firm water supply that is available each year.

Appellants allege that all of the actions leading to the adoption of the resolution constitute a project for purposes of CEQA. Appellants further allege that the project includes a plan to (1) fit meters on all homes located in City and (2) charge for water based on volume of water used as measured by the meters. Appellants allege City's long-standing practice has been to charge flat rates for water supplied to homes. Appellants allege this plan will raise monthly utility bills, which currently average about $66 per month in City.

Appellants challenged City's adoption of resolution No.2005-311 by filing a petition for writ of mandate that included four causes of action. Each cause of action alleged a violation of CEQA. The first cause of action alleged the environmental review documents prepared by City in connection with the project were inadequate because they failed to consider all of the significant environmental impacts and cumulative impacts of the project. The second cause of action alleged City did not adequately address feasible mitigation measures. The third cause of action alleged City failed to adopt an environmentally superior alternative. The fourth cause of action alleged City performed an inadequate

evaluation of environmental impacts of water diversion *600 and extraction on water quality, particularly the withdrawals required to serve new development that is dependent in whole or in part on water saved by imposing metered water rates.

Appellants filed their petition for a writ of mandate to enforce CEQA on Friday, August 19, 2005.

On November 10, 2005, the parties met and conferred regarding settlement of the matter in accordance with section 21167.8. At the meeting, City requested additional time to compile the record of proceedings, and appellants agreed to the request.

**33Late Request for Hearing and Resulting Dismissal.

Appellants filed a request for hearing under section 21167.4, subdivision (a) on Friday, November 18, 2005. November 18, 2005, was 91 days after August 19, 2005. The request for hearing proposed (1) a deadline for the service and filing of the record of proceeding, (2) a briefing schedule, and (3) a hearing on the petition during the week of May 22, 2006.

On November 21, 2005, City filed a motion to dismiss that asserted appellants failed to request a hearing within 90 days from the date they filed the petition and, as a result, section 21167.4, subdivision (a) mandated dismissal of the petition. Appellants filed an opposition to the motion to dismiss and three declarations in support of their opposition.

The motion to dismiss was heard by the superior court on December 16, 2005, and was taken under advisement. On December 28, 2005, the superior court issued a nine-page document titled "Ruling," which included the statement that "the motion to dismiss must be granted because dismissal is mandatory...."

Relief Under Code of Civil Procedure section 473[FN**]

FN** See footnote *, *ante*.

Nine days later, appellants filed a motion to set aside the ruling granting the motion to dismiss. The motion was supported by the declarations of two attorneys from the law firm representing appellants. The declarations asserted, among other things, that the deadline for filing the request for hearing was miscalendared and, because the attorney responsible for filing the request was busy with other matters, the error was not discovered until late in the *601 afternoon of the last day to file the request. One declaration asserted the belief that the wrong date was calendared "because when the days were counted at the time of calendaring October was incorrectly counted as a 30 day month and the fact that October is a 31 day month was forgotten." The declaration also stated the calendaring error was discovered too late in the day to prepare the request and get it from Hanford to Fresno before the clerk's office closed.

Appellants' motion was argued and submitted on March 24, 2006. On April 20, 2006, the superior court issued a written ruling stating that the motion for relief under Code of Civil Procedure section 473 was denied because appellants failed to show excusable neglect. In addition, the superior court stated that the ordered dismissal was reaffirmed, "except that the order should be modified to make the dismissal 'without prejudice.' "

Orders

The attorneys representing City submitted a proposed order dismissing the action without prejudice. The superior court signed and filed the order on May 23, 2006. Notice of entry of the order was served on appellants on May 31, 2006.

On June 2, 2006, appellants filed a notice of appeal that referenced the order entered on April 20, 2006, and the order filed on May 23, 2006.

DISCUSSION

I. Appealability

We assume without deciding that the order of dismissal and the order denying relief under Code of Civil Procedure section 473 are properly before this court.

II. Motion to Dismiss

City based its motion to dismiss on section 21167.4.

Appellants argue the motion to dismiss was granted improperly because they filed the request for hearing before City filed its motion to dismiss. Because the request for hearing was filed before the motion to dismiss, appellants contend the motion to dismiss was moot.

A. Applicable Statutory and Regulatory Language

Subdivision (a) of section 21167.4 provides that "[i]n any action or proceeding alleging noncompliance with [CEQA], the petitioner shall request *602 a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding."

The regulation that corresponds to section 21167.4 is California Code of Regulations, title 14, section 15232, which provides: "In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or **34 otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit." This regulation restates, with slight variations, the original version of section 21167.4, which was enacted in 1980. (Stats.1980, ch. 131, § 3, p. 304, eff. May 28, 1980.)

Appellants contend that Code of Civil Procedure section 1005.5 is relevant to understanding their argument regarding the significance of filing the request for hearing before City filed its motion to dismiss. Code of Civil Procedure section 1005.5 provides:

> "A motion upon all the grounds stated in the written notice thereof is deemed to have been made and to be pending before the court *for all purposes,* upon the due service and filing of the notice of motion, but this shall not deprive a party of a hearing of the motion to which he is otherwise entitled." (Italics added.)

B. Standard of Review

[1] Appellants' argument presents a question of statutory construction. We independently review questions of law, which include issues of (1) statutory construction and (2) the application of that construction to a set of undisputed facts. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1492, 35 Cal.Rptr.3d 596(*Coburn*).)

C. Rules of Statutory Construction

The principles for determining the meaning of a statute have been set forth in detail by this court in *Coburn, supra,* 133 Cal.App.4th at pages 1494 through 1496, 35 Cal.Rptr.3d 596. We will not restate those principles here.

D. Meaning of Section 21167.4, Subdivision (a)

1. Deadline for requesting a hearing

[2] First, we conclude that the statutory language that provides a "petitioner shall request a hearing within 90 days from the date of filing the petition" is not ambiguous on its face with respect to creating a filing deadline. Second, appellants have not shown that the language contains a *603 latent ambiguity. In short, it means what it plainly says-the request for a hearing must be filed within 90 days from the date the petition was filed. (See *Coburn, supra,* 133 Cal.App.4th at p. 1495, 35 Cal.Rptr.3d 596 [facial and latent ambiguity].)

The undisputed facts of this case establish that appellants failed to comply with this statutory language.

2. "Or"

[3][4] The mandatory 90-day deadline is connected to the clause about dismissal by the word "or." The plain and ordinary meaning of the word "or" is "to mark an alternative such as 'either this or that' [citations]." (*Houge v. Ford* (1955) 44 Cal.2d 706, 712, 285 P.2d 257.) Therefore, the use of the word "or" in section 21167.4, subdivision (a) is not ambiguous. It plainly means that if the mandatory requirement for filing a request for hearing is not met, then the statutory alternative applies.

3. Dismissal

[5] The alternative to the timely filing of a request for hearing is that the petitioner "shall be subject to dismissal on the court's own motion or on the motion

of any party interested ...." (§ 21167.4, subd. (a).) This language is plainly mandatory. (§ 15 [" 'Shall' is mandatory"]; *Guardians of Elk Creek Old Growth v. Department of Forestry & Fire Protection* (2001) 89 Cal.App.4th 1431, 1435, 108 Cal.Rptr.2d 259.) It is also conditional. The condition is that a motion must be made by an interested **35 party or by the court itself. No other conditions for dismissal are set forth in the statutory language. Consequently, under the plain meaning of the statutory language, a CEQA action must be dismissed when a timely request for hearing is not filed, provided that a motion is made by any interested party or the court.

[6] The undisputed facts of this case establish that City is an interested party and that City made a motion to dismiss. Thus, the conditional language expressed in the statute was satisfied, and dismissal was mandatory.

4. Appellants' arguments

First, appellants argue that City's motion to dismiss was made and pending "for all purposes" as of November 21, 2005, as that phrase is used in Code of Civil Procedure section 1005.5. Appellants contend the motion "was filed after the Request for Hearing and was therefore moot, as the condition complained of, failure to file a request for hearing within 90 days of filing the action, no longer existed when the dismissal motion was filed and served."

[7] *604 We disagree. This argument is wrong on the facts. When City filed and served its motion to dismiss, a request for hearing had not been filed *within 90 days* from the date the petition was filed. In other words, a violation of the 90-day deadline existed at the time the motion to dismiss was filed and the violation still exists today. The late-filed request for hearing did not cure the violation. Section 21167.4 does not mention any cure for late-filed requests. Furthermore, we will not conclude the Legislature intended to imply a cure provision because such a provision would directly contradict the language used to create the 90-day deadline. (See Code Civ. Proc., § 1858 [when construing a statute, judges may not insert what Legislature has omitted].)

Stated otherwise, appellants' argument has it exactly backwards. City has not sought the retroactive application of its motion to dismiss. Rather, appellants have asked, in effect, that their late-filed request for hearing be given retroactive effect so that the violation of the mandatory 90-day deadline is deemed to no longer exist.

Second, appellants argue that the "phrase 'shall be subject to dismissal' suggests that a CEQA claimant risks dismissal if the request for hearing is not filed by the 90th day, but that this risk may be cured if the request is filed before the motion to dismiss." Appellants point out that section 21167.4 does not address the specific circumstances where the request for hearing is filed after the 90-day deadline but before the motion to dismiss. Because the statutory language does not explicitly address this specific factual situation, appellants contend the only fair import of the statutory language is that the request may be filed after the 90-day deadline.

[8][9] These arguments are not convincing. The literal language of subdivision (a) of section 21167.4 applies to the factual situation presented in this case as well as others. Furthermore, a statute need not identify explicitly all of the factual situations that might fall within its general rule. Only relevant facts need be expressed by the Legislature when creating a general rule. It follows that, if the Legislature had intended the filing of a request for hearing after the deadline to be relevant to whether the CEQA proceeding was dismissed, it would have said so. Thus, we will not create an exception to the 90-day deadline where the Legislature did not express one. (Code Civ. Proc., § 1858.)

**36 Appellants are correct in observing that the phrase "shall be subject to dismissal" is consistent with the existence of one or more conditions that must be met before dismissal is mandatory. Appellants are wrong, however, in identifying the applicable condition. It is plainly set forth in the statute-a *605 motion by the court or an interested party. Nothing in the statute also conditions dismissal on the filing of a motion to dismiss before a late-filed request for hearing.

5. Summary

The meaning of the language used in section 21167.4, subdivision (a) is unambiguous. It requires superior courts to grant a motion to dismiss filed by an interested party when a CEQA petitioner has

failed to file a request for hearing within 90 days from the date of filing the petition.[FN2] Furthermore, dismissal is mandatory regardless of whether a request for hearing was filed before the motion to dismiss.

FN2. This opinion does not reach a number of issues and should not be interpreted to contain implied rulings. For example, City filed its motion to dismiss four calendar days (two business days) after the 90-day deadline expired. We have concluded that City did not wait too long to file the motion. In other words, City's motion cannot be characterized by the phrase "unduly delayed," "lacking in promptness," or other words describing untimeliness. Because the motion was filed promptly in this case, we need not decide whether the law requires such a motion to be brought promptly or not. Questions such as whether it is possible to wait too long to bring such a motion and, if so, what factors are relevant to determining how long is too long must await another day.

Similarly, the facts of this case do not require us to address (1) appellants' concern that a superior court might delay (perhaps until the petition has been heard on its merits) before bringing its own motion to dismiss or (2) whether any constraints are placed on the authority of the superior court to bring its own motion to dismiss. For example, is the *bringing* of such a motion committed to the discretion of the superior court and, as such, subject to review under an abuse of discretion standard? Again, these issues must await another day.

Accordingly, the superior court correctly applied the language in section 21167.4, subdivision (a) to the facts presented in this case.[FN3]

FN3. The statutory language of section 21167.4 does not parallel the statutory language that addresses judgments on default. Code of Civil Procedure section 585, subdivision (a) states that if no answer or other responsive pleading "has been filed with the clerk, ... within the time specified in the summons, *or such further time as may be allowed,* the clerk ... upon written application of the plaintiff, ... shall enter the default of the defendant...." (Italics added.) When a responsive pleading is filed before a plaintiff's application for default, courts have applied the italicized language to the facts and concluded that the plaintiff, in effect, has *allowed* the defendant *further time.* (E.g., *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141, 112 Cal.Rptr. 215.)Because section 21167.4 does not contain any language that permits City to impliedly extend the 90-day deadline by not filing a motion to dismiss, we reject appellants' attempt to analogize dismissals under section 21167.4 to defaults under Code of Civil Procedure section 585.

III.-V.[FN***]

FN*** See footnote *, *ante*.

*606 DISPOSITION

The order of dismissal is affirmed. Respondents shall recover their costs on appeal.

WE CONCUR: VARTABEDIAN, Acting P.J., and CORNELL, J.

Cal.App. 5 Dist.,2007.
Fiorentino v. City Of Fresno
150 Cal.App.4th 596, 59 Cal.Rptr.3d 30, 07 Cal. Daily Op. Serv. 4994, 2007 Daily Journal D.A.R. 6341

END OF DOCUMENT

Houge v. Ford
Cal.

NORMAN O. HOUGE, Respondent,
v.
PATRICK H. FORD, Appellant.
L. A. No. 23250.

Supreme Court of California
June 24, 1955.

HEADNOTES

(1) Contracts § 153--Interpretation--Construction in Favor of One Party.
Rule requiring interpretation of contract against party causing uncertainty to exist (Civ. Code, § 1654) applies only when uncertainty is not removed by application of other rules of interpretation; it does not apply when plain wording of contract, explained by reference to circumstances under which it was made and matter to which it relates, leaves no doubt as to its meaning. (Civ. Code, § 1647.)
See **Cal.Jur.2d,** Contracts, § 149; **Am.Jur.,** Contracts, § 252.

(2) Attorneys § 100--Contracts for Compensation--Construction.
Where attorney is employed to "protect or collect" client's legacy, the right to which is doubtful because terms of will make such legacy contingent on client's continued employment in trust business, and attorney is vested with authority to settle matter for not less than stated sum, parties have in mind that attorney's services may result either in possible protection of client's legacy by establishing his right thereto, free from condition of continuous employment, in final decree of distribution or possible settlement of disputed claim, and that attorney's obligation to render legal services would be terminated at such time as he might accomplish either objective as set forth in contract; in such circumstances words "protect or collect" are used with reference to two alternative possibilities, and "or" may not be construed in any way other than in its ordinary and popular sense. (Civ. Code, § 1644.)

(3) Statutes § 133--Construction--"Or"Contracts § 144--Interpretation-- "Or."
Construction of word "or" as meaning "and" is sanctioned only when such construction is found necessary to carry out obvious intent of Legislature in statute or obvious intent of parties in contract, when such intent may be gleaned from context.

(4) Statutes § 133--Construction--"Or"Contracts § 144--Interpretation-- "Or."
In its ordinary sense, function of word "or" is to mark alternative such as "either this or that."

(5) Contracts § 127--Interpretation--Intention of Parties.
Object and meaning of parties' contract must be determined by their intent at time of its execution, and cannot be extended beyond its plain import by circumstances which occurred after its execution and which were not within their contemplation at time of execution.

(6) Attorneys § 102--Contracts for Compensation--Contingent Fees.
Attorney's obligation under contingent fee contract to "protect" client's legacy was fully performed when he had taken necessary steps to obtain final decree of distribution establishing client's rights in trust estate, especially where client, on date decedent's estate was closed, executed assignment transferring to attorney 40 per cent of his "right, title and interest" in legacy and declared that it was executed pursuant to foregoing contract, and client, who subsequently became dissatisfied with amount of income distributed to beneficiaries of trust, could not thereafter claim that attorney was still obligated to perform legal services, on client's demand, to force accounting by or removal of trustee.
See **Cal.Jur.2d,** Attorneys at Law, § 188 et seq.; **Am.Jur.,** Attorneys at Law, § 163 et seq.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Philbrick McCoy, Judge. Reversed with directions.

Action for declaratory relief. Judgment for plaintiff reversed with directions.

COUNSEL

Patrick H. Ford, in pro. per., Macbeth & Ford and Moira D. Ford for Appellant.

Harry A. Daugherty and Lyman A. Garber for Respondent.

SPENCE, J.

Defendant Ford, an attorney, appeals from an adverse judgment in a declaratory relief action brought by plaintiff, his former client, for the purpose of settling controverted *708 claims relative to a contingent fee contract, which was followed by an assignment. The trial court construed the original contract in line with plaintiff's contention that defendant had failed to complete the agreed legal services; and upon that basis, it concluded that the contract and the assignment were of no further force and effect. Defendant maintains that the court erred in its construction of the parties' contract, and in its adjudication that the above-mentioned instruments were of no further force and effect. The record supports defendant's position.

Carl Hugo Johanson died in 1939. The residue of his estate-consisting primarily of stock in the Panama Glove Company, a corporation, and certain patents and contracts, relating thereto-was bequeathed in trust to his widow, his attorney Oscar Houge, and his "faithful employee" Helen Smith. The will directed the trustees to keep the income from the securities and the income "from patents and [related] contracts" in separate accounts. The income from the securities was to be paid 50 per cent to the testator's widow, 35 per cent to Miss Smith, and 15 per cent to one Weber, another employee, "as long as he continued to work for the Glove Company." The patent income was to be paid 50 per cent to the testator's widow, 20 per cent to Miss Smith, 5 per cent to Weber, and 25 per cent to the attorney Oscar Houge. Upon the death of the testator's widow, two-thirds of such portion of the income which she was entitled to receive under the trust was to be paid to the remaining beneficiaries in certain proportions.

The trust was to terminate on the death of both the testator's widow and Miss Smith. At that time the corpus was to be distributed, with one-third going to the testator's church. As to the remaining two-thirds of the corpus, the will provided for distribution as follows: To Oscar Houge during his lifetime an undivided 25 per cent in all the patents and contracts relating thereto in the trust estate; but if at the time of distribution of the trust estate, he should not be living, then said 25 per cent should go to "his son, Norman O. Houge (plaintiff herein), provided he is still engaged in devoting his time to the successful operation of the promotion of the sale and operation of the machinery and equipment and methods described in said patents"; and as to "all the rest, residue and remainder of the trust estate not specifically heretofore distributed," 21 per cent was to go to a named beneficiary and "the rest ... to Norman O. Houge provided *709 he is still engaged in working for the businesses of the trust estate and promoting its best interests."

Plaintiff anticipated that he would be called into military service, and he voluntarily quit his employment in the trust's business. Then fearing that he might not secure reemployment there, plaintiff discussed with defendant the effect of such absence from the business on his interests under the will, and the possibility of a forfeiture because of his failure to meet the employment condition. Defendant advised plaintiff that it would probably be necessary to take legal action to protect plaintiff's interest in the trust estate. Accordingly, the parties on February 6, 1941, entered into the following "attorney and client" contract: "The undersigned client (plaintiff) hereby employs the undersigned attorney (defendant) to render legal service in connection with the following matter, to wit: Drawing contracts and taking other necessary legal steps to protect or collect legacy of client under estate of Carl Hugo Johanson now pending in L.A. Superior Court. As consideration the client agrees to pay said attorney a fee as follows: ... Contingent: Forty (40) percent of the amount recovered preserved or protected by the legal services rendered. ... Attorney is vested with authority to compromise and settle this matter, in his discretion, except that no settlement shall be made for less than $10,000.00."

On February 18, 1941, nine days after the above contract was signed, the testator's widow, Mrs. Johanson, died. In March, 1941, plaintiff was drafted into the Army. Upon his discharge, he was refused further employment in the trust's business. In October, 1944, plaintiff's father, Oscar Houge, died. Oscar Houge had been the executor of the Johanson will, as well as a trustee and a life-income beneficiary of the trust estate. In 1946, the subsequently appointed administrator with the will annexed

submitted a final account and petition for distribution in the Johanson estate, wherein attempt was made to eliminate plaintiff from taking any distributive share therein because of his failure to meet the condition of continuous employment in the trust's business. On plaintiff's behalf, defendant filed objections, and the issue of plaintiff's alleged forfeiture of his legacy went to a contested trial in 1947. While the trial court indicated from the bench an unfavorable ruling on plaintiff's claim, defendant was able ultimately to obtain a decision in plaintiff's favor upon the signing of the findings and conclusions. *710

The decree of distribution in the Johanson estate was entered in 1948, vesting plaintiff's interest in the trust free of the employment condition and giving plaintiff a twofold status: (1) as an income beneficiary of the trust; and (2) as a remainderman of the corpus of the trust, upon its termination. The Johanson will had not given plaintiff a share in the trust income, but apparently his claim thereto was successfully advanced by defendant following the death of Mrs. Johanson and Oscar Houge, two of the life-income beneficiaries, with plaintiff succeeding to the share of his deceased father as such income beneficiary. An appeal was taken from the 1948 decree by Helen Smith, the surviving trustee, and then dismissed. Thus in early 1950 the decree, establishing plaintiff's distributive rights in both the income and corpus of the trust estate, became final-nine years after the execution of the 1941 contract by plaintiff and defendant. The trust was then to continue, but to terminate upon the death of Helen Smith, the sole surviving trustee. On March 6, 1950, a stipulation leading to the closing of the Johanson estate was signed.

On this same last-mentioned date-March 6, 1950-plaintiff, at defendant's request, executed the following assignment: "For Value Received, pursuant to written contract dated February 6, 1941, the undersigned, Norman O. Houge, hereby assigns, sets over, and transfers to Patrick H. Ford, forty (40) percent of his right, title, and interest in and to the corpus and beneficial right in the trust created by the will of Carl Johanson (L.A. Superior Court, Probate No. 191032) of which Helen Smith is now the trustee." By virtue of this assignment, defendant has received to date approximately $1,000.

Sometime in 1951 plaintiff became dissatisfied with the sums distributed to him out of the patent income, and he attempted to persuade defendant to take some legal action to compel the trustee to increase the amount of income distributed to the beneficiaries of the trust. In particular, plaintiff assailed the trustee's failure to cause the Glove Company, which was controlled by the trust, to declare dividends, which, if issued, would have come into the trust estate. Accordingly, plaintiff urged defendant to seek an accounting from the trustee and, if necessary, to petition for her removal. Defendant advised against such action, contending that it would be unwise in that it would seriously diminish the small income then being produced by the trust if the trustee used trust income to *711 defend herself. Ultimately, in November, 1952, in discussing the matter with defendant, plaintiff cited their contractual arrangement and insisted that defendant was thereby obligated to initiate such further legal proceedings as plaintiff desired. Defendant, on the other hand, maintained that plaintiff's legacy was fully vested by the final decree of distribution, that their 1941 contract was thereby completely performed, and that he was under no further obligation to plaintiff. Plaintiff then brought this action for declaratory relief.

The principal point in controversy is the proper construction to be placed on the parties' contract for the purpose of determining their rights and obligations. Defendant contends that his services under the contract ended when the decree for distribution had become final and the Johanson estate had been distributed to the trustee; that the contingent fee arrangement entitled him to 40 per cent of everything plaintiff received by virtue of that final decree; and that the assignment merely confirmed the proportionate division of plaintiff's share in the trust estate, whether income or corpus. On the other hand, plaintiff contends that the contract imposed upon defendant a continuing duty, obligating him not only to exert every effort to secure a favorable decree of distribution, but also to take such further action during the entire existence of the trust as might appear necessary to plaintiff to obtain both income and corpus; and that the latter obligation would require defendant to institute legal proceedings based upon alleged illegal acts of the trustee, and for the purpose of obtaining further distribution of income.

(1) Plaintiff relies upon section 1654 of the Civil

Code, and contends that as defendant prepared the contract, any possible doubt as to its meaning should be resolved against defendant. That section, however, applies by its terms only "In cases of uncertainty not removed by the preceding rules ..." (see 12 Cal.Jur.2d, § 149, p. 363, and cases cited); and in our opinion, the plain wording of the contract, when "explained by reference to the circumstances under which it was made, and the matter to which it relates" (Civ. Code, § 1647) leaves no doubt as to its meaning.

(2) It will be recalled that defendant was employed by plaintiff to "protect or collect" plaintiff's legacy "under estate of Carl Hugo Johanson." Plaintiff's right to any legacy was doubtful because the terms of the Johanson will made such legacy contingent on plaintiff's continuous employment *712 in the trust business, and plaintiff had already discontinued such employment with a view to entering the military service. Plaintiff obviously had in mind a possible settlement in cash, as he authorized defendant to settle for not less than $10,000. Under these circumstances, it is entirely clear that the parties had in mind that defendant's services might result either in (1) the possible protection of plaintiff's legacy by establishing his right thereto, free from the condition of continuous employment, in the final decree of distribution in the Johanson estate; or (2) the possible settlement in cash of his disputed claim; and that defendant's obligation to render legal services under the contract would be terminated at such time as he might accomplish either objective as set forth in the contract. Thus, the words "protect *or* collect" were obviously used advisedly and with reference to the two alternative possibilities; and there is no reason here for construing the word "or" in any way other than in its "ordinary and popular sense." (Civ. Code, § 1644.)(3) The cases cited by plaintiff to sustain his claim that the word "or" should be construed here as meaning "and" do not sustain his position. Resort to such unnatural construction of the word "or" is sanctioned only when such construction is found necessary to carry out the obvious intent of the Legislature in a statute or the obvious intent of the parties in a contract, when such intent may be gleaned from the context in which the word is used. (*Arnold v. Hopkins*, 203 Cal. 553, 563 [265 P. 223]; *Heidlebaugh v. Miller*, 126 Cal.App.2d 35, 38 [271 P.2d 557].) (4) In its ordinary sense, the function of the word "or" is to mark an alternative such as "either this or that" (*Barker Bros., Inc. v. Los Angeles*, 10 Cal.2d 603, 606 [76 P.2d 97];*People v. Smith, ante*, pp. 77, 79 [279 P.2d 33]); and such was the plain meaning of the word "or" as used by the parties here in the phrase "protect *or* collect."

It should be further recalled that at the time the 1941 contract was made, neither plaintiff nor defendant contemplated the possibility of the receipt by plaintiff of any income from the trust during the life of the trust. The Johanson will did not make plaintiff an income beneficiary, and plaintiff's whole concern was directed at the establishment of his right to a share of the corpus at the termination of the trust, which right was made contingent by the will upon plaintiff's continuous employment in the trust business. It was only after the deaths of Mrs. Johanson and of plaintiff's father, *713 who were two of the trustees and life income beneficiaries, that defendant succeeded in establishing not only plaintiff's claim to a share of the corpus at the termination of the trust, but, in addition, plaintiff's right to participate in the income of the trust during the life thereof by reason of the intervening death of plaintiff's father. And as plaintiff testified, it was only after the 1947 trial and following defendant's explanation, that plaintiff became aware that he might have a right to participate in the income during the life of the trust.

(5) The object and meaning of the parties' contract must be determined by their intent at the time of its execution, and it cannot be extended beyond its plain import by circumstances which occurred after its execution, and which were not within their contemplation at the time of execution. Plaintiff testified that at the time of making the contract in 1941, he had no idea of instituting any action to force an accounting by the trustees or the removal of the trustees. Yet it is plaintiff's present claim that long after defendant had established plaintiff's rights by the final decree of distribution in 1950, defendant was still obligated to perform legal services by bringing an action, on plaintiff's demand, to force an accounting by, or the removal of, the trustee.

(6) We are of the opinion that defendant's obligation under the contract to "protect" plaintiff's legacy was fully performed when he had taken the necessary steps to obtain a final decree of distribution establishing plaintiff's rights in the trust estate. Moreover, such was the view of the parties, for when the Johanson estate was closed in 1950, plaintiff

executed an assignment transferring to defendant 40 per cent of all plaintiff's "right, title and interest" in plaintiff's legacy. This assignment declares on its face that it was executed pursuant to the 1941 contract. Defendant successfully performed legal services on plaintiff's behalf over a period of nine years, and the assignment recognized the validity of their contract for a 40 per cent contingent fee. No claim of fraud or undue influence is asserted in the making of the contract or the assignment. The only claim made by plaintiff is that there was a partial failure of consideration because of defendant's failure to perform further legal services, which we have held he was under no obligation to perform.

Plaintiff cites and relies upon *Dalzell v. State Bar*, 6 Cal.2d 433 [57 P.2d 1300], but that case is clearly distinguishable. It involved a 25 per cent contingent fee contract to "collect" *714 an "undivided interest in the property of Florence Ferguson Shoemaker, according to the decree of distribution in her estate." (P. 434.) The attorney successfully brought an action and obtained judgment for approximately $18,000. In payment of the judgment, he received various sums totalling in excess of $12,000, of which he wrongfully retained in excess of $7,000, and remitted only $4,950 to his clients. He was disciplined because of his "unwarranted overcharge of his clients and because of his failure to account to them over a period of several years." (P. 438.) No comparable contract or circumstances are before us here.

From what has been said, it follows that the trial court erred in concluding that defendant had not completely performed his obligation under the 1941 contract when he had secured the favorable final decree of distribution establishing plaintiff's right to his legacy. The trial court further erred in declaring that the 1941 contract and the assignment made pursuant thereto were of no further force and effect.

The judgment is reversed, with directions to the trial court to enter judgment in favor of defendant Ford in accordance with the views herein expressed.

Gibson, C. J., Shenk, J., Carter, J., Traynor, J., and Schauer, J., concurred.
Respondent's petition for a rehearing was denied July 20, 1955. *715

Cal.

Houge v. Ford
44 Cal.2d 706, 285 P.2d 257

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HARTWELL CORPORATION et al., Petitioners, v. THE SUPERIOR COURT OF VENTURA COUNTY, Respondent; KRISTIN SANTAMARIA et al., Real Parties in Interest. [And eight other cases.]

HARTWELL CORPORATION et al., Petitioners,
v.
THE SUPERIOR COURT OF VENTURA COUNTY, Respondent; KRISTIN SANTAMARIA et al., Real Parties in Interest.
[And eight other cases. FN*]
No. S082782.

Feb. 4, 2002.

FN* *Boswell v. Superior Court* (No. A085482); *Celi v. Superior Court* (No. A085486); *Adler v. Superior Court* (No. A085488); *Suburban Water Systems v. Superior Court* (No. A085495); *Covina Irrigating Co. v. Superior Court* (No. A085496); *San Gabriel Valley Water Co. v. Superior Court* (No. A085501); *Southern California Water Co. v. Superior Court* (No. A085502); *Santamaria v. Suburban Water Systems* (No. A085761).

SUMMARY

Residents brought multiple actions in two counties against water providers regulated by the California Public Utilities Commission (PUC), and against industrial entities and water providers not regulated by the PUC, seeking injunctive relief and damages for injuries to persons and property plaintiffs alleged were caused by harmful chemicals in the water. The trial court in the first county deferred ruling on defendants' demurrers, motions for judgment on the pleadings, and motions for summary judgment, and stayed the proceedings pending the PUC's completion of an investigation. (Superior Court of Los Angeles County, Nos. KC025995, KC027318, GC020622 and BC169892, Thomas William Stoever and Robert A. Dukes, Judges.) The trial court in the second county sustained the regulated utilities' demurrers without leave to amend, but overruled the demurrers and denied the stay requests by both the water providers not regulated by the PUC and the industrial defendants. (Superior Court of Ventura County, No. CIV180894, Henry J. Walsh, Judge.) The Court of Appeal, First Dist., Div. Five, Nos. A085477, A085482, A085486, A085488, A085495, A085496, A085501, A085502 and A085761, ordered issuance of writs of mandate, ruling that the PUC's statutory authority and jurisdiction over water quality preempted all of plaintiffs' claims against the regulated utilities, but not those against the nonregulated water providers and the industrial defendants.

The Supreme Court reversed in part and affirmed in part the judgment of the Court of Appeal, and remanded to that court for further proceedings. The court held that while Pub. Util. Code, § 1759, which deprives the superior court of jurisdiction to review any order or decision of the PUC or to interfere with the PUC in the performance of its official duties, did not preempt plaintiffs' damage claims alleging past violations of federal and state drinking water standards against the regulated utilities, it did preempt plaintiffs' requests for injunctive relief against those utilities and their challenge to the adequacy of federal and state water quality standards. The court also held that § 1759 did not bar plaintiffs' claims against the nonregulated water providers and the industrial defendants, since the duties of the PUC by constitutional mandate apply only to regulated utilities. (Opinion by Chin, J., with George, C. J., Kennard, Baxter, Brown, and Moreno, JJ., concurring. Concurring opinion by Kline, J. FN* (see p. 283).)

FN* Presiding Justice of the Court of Appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c)Public Utilities § 20--Public Utilities

Commission-- Jurisdiction--Statutory Preclusion of Judicial Control--Action Against Water Utilities Seeking Damages and Injuctive Relief.Waters § 182--Water Utilities.

In multiple actions alleging damage to persons and property caused by harmful chemicals in water, brought by residents of two counties against water providers regulated by the California Public Utilities Commission (PUC), and against industrial entities and water providers not regulated by the PUC, while some of plaintiffs' claims were barred by Pub. Util. Code, § 1759, others were not. Section 1759 deprives the superior court of jurisdiction to review any order or decision of the PUC or to interfere with the PUC in the performance of its official duties. While § 1759 preempted plaintiffs' requests for injunctive relief and challenge to the adequacy of federal and state water quality standards regulated by the PUC in conjunction with the Department of Health Services, § 1759 did not preempt plaintiffs' damage claims alleging past violations of those standards against the regulated utilities. Despite the fact the PUC had found that the regulated utilities had complied with those standards, since the PUC cannot provide relief for past violations, damages actions based on past violations would not interfere with the PUC. However, any prospective judicial relief would conflict with the PUC's regulatory role. Section 1759 also did not bar plaintiffs' claims against the nonregulated water providers and the industrial defendants, since the duties of the PUC by constitutional mandate apply only to regulated utilities.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 893, 894, 911; See West's Key Digest System, Public Utilities 183.]

(2a, 2b)Public Utilities § 22--Public Utilities Commission-- Jurisdiction--Statutory Preclusion of Judicial Control--Determinative Factors.

In applying Pub. Util. Code, § 1759, which deprives the superior court of jurisdiction to review any order or decision of the California Public Utilities Commission (PUC) or to interfere with the PUC in the performance of its official duties, courts apply a three-part test. First, the court must determine whether the PUC had the authority to adopt a regulatory policy on the subject germane to the lawsuit. Second, the court must determine whether the PUC had exercised its authority. Third, the court must determine whether the superior court action would hinder or interfere with the PUC's exercise of its regulatory authority. Superior court lawsuits against public utilities are barred by § 1759 not only when an award of damages would directly contravene a specific order or decision of the commission, i.e., when it would reverse, correct, or annul that order or decision, but also when an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission, i.e., when it would hinder, frustrate, interfere with, or obstruct that policy. The PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same issue. In short, an award of damages is barred by § 1759 if it would be contrary to a policy adopted by the PUC and would interfere with its regulation of public utilities.

COUNSEL

Carroll, Burdick & McDonough, N. Kathleen Strickland, Donald T. Ramsey, Jack T. Friedman, Elizabeth L. Zepeda; Holland & Knight, N. Kathleen Strickland, Donald T. Ramsey and Devin C. Courteau for Petitioners The Hartwell Corporation, Rubber Urethanes, Inc., Screwmatic, Inc., J.H. Mitchell & Sons Distributors, Fairchild Industries, Azusa Land Reclamation Company, Inc., and Oil and Solvent Process Company.

Beveridge & Diamond, James L. Meeder, Janet C. Loduca; Allen Matkins Leck Gamble & Mallory, James L. Meeder and Alexander C. Crockett for Petitioners Mobil Oil Corporation, Lockheed-Martin Corporation and The Valspar Corporation.

Law Offices of David C. Solinger, David C. Solinger; Resolution Law Group, Philip C. Hunsucker, Michael O. Nelson and Andrea J. Greenberg for Petitioners Whico Machine, Inc., Donald White and John White.

Gallagher & Gallagher, Timothy V. P. Gallagher, Thomas C. Sites and Martin N. Refkin for Petitioner Oil and Solvent Process Company. *259

Engstrom, Lipscomb & Lack, Walter J. Lack, Gary A. Praglin, Joy L. Robertson, Michele Hitt; Girardi & Keese, Thomas V. Girardi; DeWitt, Algorri & Algorri and Mark Steven Algorri for Petitioners and Real Parties in Interest Christine Boswell et al., Loretta Celi et al., and Jeff Adler et al.

McKenna & Cuneo and Joseph F. Butler for Petitioners and Real Parties in Interest Covina Irrigating Company and California Domestic Water Company.

Lagerlof, Senecal, Bradley & Swift and Andrew D. Turner for Petitioner and Real Party in Interest

California Domestic Water Company.
Lemieux & O'Neill, W. Keith Lemieux and Steven P. O'Neill for Petitioners and Real Parties in Interest San Gabriel County Water District and Valley County Water District.
Proskauer Rose, Aaron P. Allan, Barry C. Groveman, Gregory J. Patterson; Musick, Peeler & Garrett, Barry C. Groveman; Timothy J. Ryan; Chapin Shea McNutt & Carter and Steven J. Renshaw for Petitioner and Real Party in Interest San Gabriel Valley Water Company.
Haight, Brown & Bonesteel, Gary C. Ottoson, Rita Gunasekaran; Bacalski, Byre & Koska, William K. Koska; Hatch & Parent, Steven A. Amerikaner and Scott S. Slater for Petitioner and Real Party in Interest Southern California Water Company.
Daniels, Baratta & Fine, Daniels, Fine, Israel & Schonbuch, Mary Hulett, Mark A. Vega, Paul Fine; Ragsdale Liggett and Mary Hulett for Petitioners and Real Parties in Interests Surburban Water Systems and Southwest Water Company, Inc.
Crosby, Heafey, Roach & May, Randall D. Morrison and Joan M. Haratani for Petitioner and Real Party in Interest Baxter Healthcare Corporation.
Shapiro, Mitchell & Dupont, Shapiro & Dupont, Shapiro, Borenstein & Dupont and Norman A. Dupont for Petitioner and for Real Party in Interest Reichhold.
No appearance for Respondent Superior Court.
McCutchen, Doyle, Brown & Enersen, John R. Reese, Barry P. Goode, Jill F. Cooper, Eric F. Pierson and Lonnie Finkel for Real Party in Interest Wynn Oil Company.
Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, Patricia L. Glaser, Terry Avchen, David A. Giannotti and Jan Jensen for Real Party Interest Huffy Corporation. *260
Morgan, Lewis & Bockius, Jeffrey N. Brown, Steven J. Oppenheimer and Wendy K. Kilbride for Real Party in Interest Avery Dennison Corporation.
Munger, Tolles & Olson and Peter R. Taft for Real Party in Interest Aerojet General Corporation.
Belcher, Henzie & Biegenzahn, E. Lee Horton, John S. Curtis, Scott J. Leipzig; Steefel, Levitt & Weiss, Lenard G. Weiss, Mark Fogelman; and Jan S. Driscoll for Real Party in Interest California-American Water Company.
Rose, Klein & Marias, Barry I. Goldman, Dennis J. Sherwin, David A. Rosen, Christopher P. Ridout and Arlyn M. Latin for Real Parties in Interest Kristin Santamaria et al.
Horvitz & Levy, Frederic D. Cohen and David S. Ettinger for California Water Association as Amicus Curiae.

CHIN, J.

Plaintiffs, residents of the San Gabriel Valley in Southern California, filed lawsuits in superior court, alleging, inter alia, that certain water companies provided them unsafe drinking water causing death, personal injury, and property damage. Public Utilities Code section 1759, [FN1] however, precludes superior court jurisdiction to review any order or decision of the California Public Utilities Commission (PUC) or to interfere with the PUC in the performance of its official duties. We granted review in this case to determine whether section 1759 bars the superior court actions. As explained below, we conclude that the PUC's regulation of water quality and safety does not preempt damage claims alleging violations of federal and state drinking water standards against the water providers subject to PUC regulation, but that the remaining claims against those water providers are preempted. We further conclude that the causes of action against those defendants not subject to PUC regulation are not barred.

FN1 Unless stated otherwise, all statutory references are to the Public Utilities Code.

Procedural History

A. *Superior Court Actions*

1. *Adler, Celi and Boswell Actions*

Three groups of plaintiffs, Jeff Adler and over 100 coplaintiffs, Loretta Celi and about 20 other plaintiffs, and Christine Boswell and 13 other plaintiffs, each filed separate actions for damages in the Los Angeles County Superior Court. The Adler complaint named as defendants Southern California Water Company, California American Water Company, and eight corporate parties that are not water providers or regulated by the PUC (hereafter *261 referred to as industrial defendants). The Celi complaint named as defendants San Gabriel Valley Water Company and the same eight industrial defendants. The Boswell complaint named as defendants Suburban Water Systems, Southwest Water Company, Covina Irrigating Company, California Domestic Water Company, and the same industrial defendants named in the Adler and Celi

complaints. Southern California Water Company, California American Water Company, San Gabriel Valley Water Company, Suburban Water Systems, and Southwest Water Company are water providers subject to PUC regulation (hereafter referred to as regulated utilities). Covina Irrigating Company and California Domestic Water Company are public water districts and mutual water companies not subject to PUC regulation (hereafter referred to as nonregulated water providers).

The complaints sought damages based on causes of action for negligence, strict liability, trespass, public and private nuisance, and fraudulent concealment. Some plaintiffs also sued for wrongful death. These causes of action were based on the following allegations: that defendant water companies had provided the contaminated well water to plaintiffs, longtime residents of the San Gabriel Valley, over a period of years; that the water contaminants included trichloroethylene, perchloroethene, carbon tetrachloride, and perchlorates; and that as a result, plaintiffs suffered physical and mental pain and suffering, including fear of cancer, and property damage. The complaints further alleged that the industrial defendants disposed of toxic substances in the ground.

2. *Santamaria Action*

Kristin Santamaria and some 300 coplaintiffs filed a separate action in Los Angeles County against many of the same defendants. The complaint named additional industrial defendants, as well as nonregulated water providers Valley County Water District and San Gabriel County Municipal Water District. In addition to the same causes of action contained in the Adler, Boswell and Celi complaints, the Santamaria complaint alleged conspiracy, battery, and nine causes of action for unfair business practices based on the same kinds of conduct and toxic substances in the drinking water as alleged in the other lawsuits. The Santamaria plaintiffs prayed for damages, as well as injunctions against disposing toxic materials, supplying contaminated water, and engaging in unlawful business practices. They also sought medical monitoring, a constructive trust against defendants' property to pay for plaintiffs' injuries, and an order compelling defendants to disgorge profits and restore money acquired through unlawful business practices.

The court changed the venue of the Santamaria action to Ventura County on motion of several defendants. *262

B. *PUC Investigation*

In response to the lawsuits filed against the regulated utilities, the PUC filed an order instituting an investigation on March 12, 1998. (Cal.P.U.C. Order Instituting Investigation No. 98-03-013 (Mar. 12, 1998) [1998 Cal.P.U.C. Lexis 73].) Concerned that the complaints "raise public concerns over the safety of the drinking water supplies of these utilities," (*id.*, 1998 Cal.P.U.C. Lexis 73 at p. 2) the PUC instituted "a full-scale investigation" (*id.*, 1998 Cal.P.U.C. Lexis 73 at p. 3) to determine (1) whether current drinking water standards adequately protect the public health and safety; (2) whether the regulated utilities have complied with those standards; (3) what remedies should apply for noncompliance with safe drinking water standards; and (4) whether the occurrence of temporary excursions of contaminant levels above regulatory thresholds are acceptable "taking into consideration economic, technological, and public health and safety issues, and compliance with Public Utilities Code Section 770." (Cal.P.U.C. Order No. 98-03-013,*supra*, 1998 Cal.P.U.C. Lexis 73 at p. 10.) The PUC limited its investigation to the operations and practices of the named defendant public utilities and all other class A and class B public utility water companies, [FN2] which collectively serve over 90 percent of all public utility water customers in California. (Cal.P.U.C. Order No. 98-03-013,*supra*, 1998 Cal.P.U.C. Lexis 73 at p. 4.)

FN2 Class A utilities are those with more than 10,000 service connections. Class B utilities have more than 2,000 connections. (Cal.P.U.C. Final Opinion Resolving Substantive Water Quality Issues (Nov. 2, 2000) Dec. No. 00-11-014 [2000 Cal.P.U.C. Lexis 722, 1, fn. 1].)

Plaintiffs in all four actions intervened in the PUC's investigation. They moved to dismiss or limit the investigation, on the ground the PUC lacked subject matter jurisdiction over the quality of drinking water service provided by regulated utilities. On June 10, 1999, the PUC issued an interim opinion denying plaintiffs' motion. (Cal.P.U.C. Interim Opinion

Denying Motions Challenging Jurisdiction to Conduct Investigation 98-03-013 (June 10, 1999) Dec. No. 99-06-054 [1999 Cal.P.U.C. Lexis 312].) Rejecting plaintiffs' jurisdictional argument, the PUC found that it possessed authority to regulate the quality of the service and the drinking water that the water utilities provide, that it had exercised such authority for decades, and that it continued to do so. It determined that its jurisdictional decision was final and thus subject to rehearing and appellate review. On September 16, 1999, the PUC denied plaintiffs' application for rehearing. (Cal.P.U.C. Order Modifying Decision 99-06-054 For Purposes of Clarification and Denying Rehearing (Sept. 16, 1999) Dec. No. 99-09-073 [1999 Cal.P.U.C. Lexis 594].) *263 Plaintiffs did not seek review of the PUC's jurisdictional decision in this court under section 1756. [FN3]

FN3 Plaintiffs withdrew as interveners after the PUC's denial of the motion to dismiss. (Cal.P.U.C. Final Opinion Resolving Motions to Compel Discovery and Motions to Withdraw From Proceeding (Nov. 21, 2000) Dec. No. 00-11-036.)

The regulated utilities, the California Department of Health Services (DHS), the water division staff of the PUC, and some of the industrial defendants in the lawsuits participated in the investigation. After 31 months of investigation and study, the PUC issued its "Final Opinion Resolving Substantive Water Quality Issues" on November 2, 2000. (Cal.P.U.C. Final Opinion Resolving Substantive Water Quality Issues, *supra*, Dec. No. 00-11-014 [2000 Cal.P.U.C. Lexis 722].) The PUC concluded that existing DHS drinking water quality standards adequately protect the public health and safety and that, over the past 25 years, the regulated utilities, including defendants in these lawsuits, had provided water that was " 'in no way harmful or dangerous to health' " and had satisfactorily complied with DHS drinking water quality requirements. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 39.) It also gave notice of its intention to initiate a future investigation or rulemaking proceeding to investigate specific water quality issues. (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 777 at pp. 71, 73-74.) [FN4]

FN4 The Court of Appeal granted judicial notice of all proceedings before the PUC, including PUC Decision No. 99-06-054. However, the PUC's modification order and denial of rehearing, its final opinion resolving motions to compel discovery and to withdraw from proceeding, and its final opinion resolving the substantive water quality issues occurred after the filing of the Court of Appeal opinion. The regulated utilities request that we take judicial notice of the modification order and denial of rehearing and the final opinion resolving motions to compel discovery and to withdraw from proceedings. Several of the industrial defendants join the regulated utilities in requesting that we take judicial notice of the PUC's final opinion in its investigation. Because the subsequent PUC proceedings are a continuation of the PUC's investigation into water quality safety issues, we grant those requests. (*Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143-144[39 Cal.Rptr. 332].)

C. *Superior Court and Court of Appeal Rulings*

In the meantime, in response to PUC Order No. 98-03-013 instituting an investigation of water quality safety, defendants in the four superior court actions sought dismissal on the ground that the litigation was barred by section 1759. In the alternative, certain defendants requested stays of the court proceedings pending the PUC's investigation. On June 24, 1998, the superior court in the Adler, Celi, and Boswell actions stayed all proceedings until the completion of the PUC's investigation. On August 27, 1998, the Ventura County Superior Court in the Santamaria action sustained the regulated utilities' demurrers without leave to amend, but overruled the *264 demurrers of the nonregulated water providers and the industrial defendants and denied their motions for a stay of proceedings. The court later accepted a stipulation that the proceedings be stayed pending review by the Court of Appeal.

Eight petitions for writs of mandate were filed in the Court of Appeal. The Adler, Celi, and Boswell plaintiffs and the regulated utility defendants filed petitions challenging the stay orders of the Los Angeles County Superior Court. In the Santamaria action, the nonregulated water providers and the

industrial defendants filed petitions challenging Ventura County Superior Court's overruling of the demurrers and denial of the motions for a stay, while the plaintiffs appealed the order granting the demurrer of the regulated utility defendants. The Court of Appeal issued orders to show cause on the petitions and consolidated the appeal with the proceedings on all of the writs.

On September 1, 1999, the Court of Appeal ruled that the PUC's statutory authority over water quality and its exercise of jurisdiction in addressing water quality issues preempted the four actions against the regulated utilities, but did not preempt the actions against the nonregulated water providers and the industrial defendants. Accordingly, it ruled that the Los Angeles County Superior Court in the Adler, Celi, and Boswell actions erred (1) in staying the proceedings instead of ruling on the merits of the preemption issue; (2) in failing to sustain the demurrers and grant the summary judgment motion of the regulated utilities; and (3) in failing to overrule the demurrers and deny the judgment on the pleadings of the nonregulated water providers and industrial defendants. It further upheld the Ventura County Superior Court's rulings in the Santamaria action in all respects.

We granted the petitions for review filed by the Santamaria plaintiffs, and by the nonregulated water providers and the industrial defendants in all four lawsuits.[FN5]

FN5. The Adler, Boswell, and Celi plaintiffs did not seek review.

Discussion

"'The [PUC] is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., art. XII, §§ 1-6.)The Constitution confers broad authority on the [PUC] to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (*Id.*,§§ 2, 4, 6.)' " (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 914-915[55 Cal.Rptr.2d 724, 920 P.2d 669](*Covalt*).) In addition to those powers expressly conferred on the PUC, the California Constitution confers broad *265 authority on the Legislature to regulate public utilities and to delegate regulatory functions to the PUC. (Cal. Const., art. XII, §§ 3, 5.)

Consistent with these constitutional mandates, the Legislature has granted the PUC comprehensive jurisdiction to regulate the operation and safety of public utilities. (§§ 701, 761, 768, 770, subd. (a).) Section 701 authorizes the PUC to "supervise and regulate every public utility in the State and [to] do all things ... which are necessary and convenient in the exercise of such power and jurisdiction." Section 702 commands every public utility to obey the PUC's orders, decisions, directions, or rules "in any way relating to or affecting its business as a public utility ..."

The California Constitution also confers plenary power on the Legislature to "establish the manner and scope of review of commission action in a court of record ..." (Cal. Const., art. XII, § 5.) In the exercise of that power, the Legislature has chosen to limit the jurisdiction of judicial review of the PUC's decisions. Section 1759, subdivision (a), provides that: "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court."

(1a) Defendants, which include the regulated utilities, nonregulated water providers, and the industrial defendants, contend that section 1759 precludes plaintiffs' actions in superior court. In response, plaintiffs argue that section 1759 is inapplicable and that section 2106 permits their lawsuit against the regulated utilities. Section 2106 provides in pertinent part: "Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, or any law of this State, or any other order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom.... An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person."

In *Waters v. Pacific Telephone Co.* (1974) 12 Cal.3d 1[114 Cal.Rptr. 753, 523 P.2d 1161](*Waters*), we concluded that "in order to resolve the potential conflict between sections 1759 and 2106, the latter section must be construed as limited to those situations in which an award of damages would not hinder or frustrate the [PUC's] declared supervisory and regulatory policies." (*Id.* at p. 4.) There, the plaintiffs sued a telephone company in superior *266 court for failing to furnish adequate telephone service. We noted that the PUC, in approving rates charged, had relied on a policy it adopted of limiting liability of telephone utilities for acts of ordinary negligence to a specified credit allowance as set forth in approved tariff schedules. We held that section 1759 barred the superior court action because damage awards would conflict with the PUC's policies and interfere with its regulation of telephone utilities.

(2a) We again addressed the relationship between sections 1759 and 2106 in *Covalt, supra*, 13 Cal.4th 893, in which the issue was whether section 1759 barred a superior court action for nuisance and property damage allegedly caused by electric and magnetic fields (EMF's) from power lines owned and operated by a public utility. (*Covalt, supra*, at p. 903.)In applying section 1759, we used a three-part test: (1) whether the PUC had the authority to adopt a regulatory policy on whether EMF's are a public health risk and what steps the utilities should take, if any, to minimize the risk; (2) whether the PUC had exercised that authority; and (3) whether the superior court action would hinder or interfere with the PUC's exercise of regulatory authority with respect to EMF's. (*Covalt, supra*, at pp. 923, 926, 935.)We found preemption after answering all three questions in the affirmative.

(1b) Plaintiffs argue that *Covalt*'s three prongs have not been met in this case. They argue that the PUC lacks the authority to regulate water quality, that it has never exercised that authority until its recent investigation on water quality, and that the complaints in the lawsuits would not interfere with the PUC's exercise of regulatory authority. We reject plaintiffs' first two arguments, but agree that some of the damage claims would not interfere with any ongoing PUC regulatory program.

A. *Section 1759 Bars the Injunctive Relief Claims and Some of the Damage Claims Against the Regulated Utilities*

1. *Background Information*

Since the enactment of the Public Utilities Act in 1911 (Stats. 1911, Ex. Sess. 1911, ch. 14, § 1, p. 18), the PUC has regulated public utility water companies. (See *In re Application Southern California Mountain W. Co.* (1912) 1 Cal.P.U.C. 841.)From 1912 to 1956, the PUC exercised its public health and safety authority over public utility water service on a case-by-case basis; it examined water quality issues and, where necessary, required water utilities to take specific actions to ensure safe drinking water and authorized rate recovery for the associated costs. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 30, fn. 18, 38.) On its own motion in 1955, the PUC initiated a comprehensive investigation to *267 establish "uniform service standards and service rules applicable to all privately-owned, public utility water companies in the State of California." (*Re Adoption of Service Standards and Service Rules for Water Utilities* (1956) 55 Cal.P.U.C. 56.)The proceeding resulted in the adoption of general order No. 103, which established uniform standards of water quality service for regulated utilities, including specific requirements for the source of water, operation of the water supply system, and water testing requirements. (*Ibid.*)

General order No. 103, which has been amended during the intervening years, presently provides that "[a]ny utility serving water for human consumption or for domestic uses shall provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color, and turbidity." (Cited by Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at pp. 39-40.) It requires each utility to comply with the water quality standards of the DHS and the United States Environmental Protection Agency (EPA) and states that compliance with DHS regulations constitutes compliance with the PUC's rules, " 'except as otherwise ordered by the commission.' " [FN6] (*Id.*, 1999 Cal.P.U.C. Lexis 312 at p. 40.)

FN6 Although general order No. 103 has been amended during the intervening years, the policy of requiring wholesome, potable,

> and healthful water and of adopting the DHS health standards has remained the same since its inception. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at pp. 39-40.)

Until 1974, the PUC's authority to determine the appropriate standards for the water quality and service provided by public utility water systems was limited only by the statutory requirement that such standards be "just and reasonable" and "adequate and serviceable." (§ 770; Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 44.) However, in 1974, Congress enacted the federal Safe Drinking Water Act (federal SDWA) (42 U.S.C. § 300f et seq.), which prohibits states from enacting drinking water laws less stringent than those established by the EPA. (42 U.S.C. § 300g.) "Congress occupied the field of public drinking water regulation with its enactment of the [federal] SDWA. The purpose of the [federal SDWA] is to assure that water supply systems serving the public meet minimum *national standards* for protection of public health.' [Citation.] With minor exceptions, the SDWA applies 'to each public water system in each State.' 42 U.S.C. § 300g .... [A]lthough the primary responsibility for enforcement remains with the States, the Administrator is empowered to enforce State compliance. *Id.* §§ 300g-2, 300g-3." (*Mattoon v. City of Pittsfield* (1st Cir. 1992) 980 F.2d 1, 4.) Accordingly, the federal SDWA grants states primary authority to implement the provisions of the federal standards and allows states to set stricter water quality standards than those of the federal government. (42 U.S.C. § 300g-2(a); see 42 U.S.C. § 300g-1(b).) Although the *268 federal SDWA preempts federal common law nuisance actions (*Mattoon v. City of Pittsfield, supra*, 980 F.2d at p. 4), state common law is not preempted. (*United States v. Hooker Chemical & Plastics Corp.* (W.D.N.Y. 1985) 607 F.Supp. 1052, 1055, fn. 3.)

In 1976, the Legislature enacted the state Safe Drinking Water Act (state SDWA). (Stats. 1976, ch. 1087, § 2.5, pp. 4918-4929, adding Health & Saf. Code, former § 4010 et seq., currently codified at Health & Saf. Code, § 116275 et seq.) When the Legislature enacted the state SDWA, it assumed the primary authority to administer the federal act. The state SDWA, administered by the DHS, establishes standards at least as stringent as the federal SDWA and is intended to be "more protective of public health" than the minimum federal standards. (Health & Saf. Code, §§ 116270, subd. (f), 116325.) The Court of Appeal below described the state SDWA:

"*Paredes v. County of Fresno* (1988) 203 Cal.App.3d 1[249 Cal.Rptr. 593](*Paredes*) described in some detail the California SDWA, in addressing the regulation of water contaminated with DBCP, a toxic substance not specifically in issue in our case. 'The California Legislature has declared water delivered by public water systems in this state should be at all times pure, wholesome, and potable. It has adopted procedures to be followed in an effort to accomplish this objective in [Health and Safety Code] sections 4010.1 through 4039.5.' ([Health & Saf. Code,] § 4010.)These sections [which have since been amended and moved to Health and Safety Code sections 116275 through 117130 (Stats. 1995, ch. 415, § 6)] describe the permit process for the operation of a public water system ([Health & Saf. Code,] art. 1, §§ 4011-4022), the regulation of the quality of the water supply of a public water system ([*id.*,] art. 2, §§ 4023.5-4030.7), violations ([*id.*,] art. 3, § 4031), remedies ([*id.*,] art. 4, §§ 4032-4036.5), judicial review ([*id.*,] art. 4.5, § 4037), and applicable crimes and penalties ([*id.*,] art. 5, §§ 4037.5-4039.5).

" 'Any person who operates a public water system must: comply with primary and secondary drinking water standards; ensure the system will not be subject to backflow under normal operating conditions; and provide a reliable and adequate supply of pure, wholesome, healthful, and potable water. ([Health & Saf. Code,] § 4017.)Primary drinking water standards specify maximum levels of contaminants, which, in the judgment of the DHS director, may have an adverse effect on the health of persons. ([*Id.*,]§ 4010.1, subd. (b)(1).) Secondary drinking water standards specify maximum contaminant levels which, in the judgment of the director, are necessary to protect public welfare. Secondary drinking water standards may apply to any drinking water contaminant which may: (1) adversely affect the odor or appearance of such water and cause a substantial number of persons *269 served by the public water system to discontinue its use; or (2) otherwise adversely affect the public welfare. ([*Id.*,]§ 4010.1, subd. (b)(2).) Maximum contaminant level means the maximum permissible level of a contaminant in water. ([*Id.*,]§ 4010.1, subd. (c).)

" 'The regulations establishing primary and secondary drinking water standards for public water systems are contained in title 22 of California Code of Regulations, section 64401 et seq. (Cal. Code Regs., tit. 22, § 64401, subd. (a).) Those drinking water standards are based upon the national interim primary and secondary drinking water regulations contained in the Code of Federal Regulations.' (*Paredes, supra*, 203 Cal.App.3d at p. 5, fn. omitted.)

"In California, when a contaminant is discovered for which there is no primary or secondary standard, the DHS develops an 'action level' for it. In the early 1980's, the Legislature adopted a program for detecting and monitoring organic chemical contaminants for which mandatory levels did not exist. Legislation authorized the DHS to require monitoring for these unregulated chemicals and notification of the public when action levels were exceeded. DHS implemented the legislation by adopting guidelines for responding when action levels were exceeded. (*Paredes, supra*, 203 Cal.App.3d at pp. 6-7.)

"Although the Legislature moved the Safe Drinking Water Act to Health and Safety Code section 116275 et seq. during a statutory reorganization in 1995 (Stats. 1995, ch. 415, § 6 ...) and amended it in subsequent years (Stats. 1996, ch. 755, §§ 1-12 ...; Stats. 1997, ch. 734, §§ 1-15 ...), the general regulatory scheme described in *Paredes* has remained intact." (Fn. omitted.)

2. *The PUC Has Authority to Enforce Water Quality and Limited Authority to Adopt Water Quality Standards for Regulated Utilities*

Plaintiffs argue that the DHS and the EPA have exclusive authority to set standards and enforce laws related to the state and federal SDWA's and that the regulation of water quality is the function of the DHS, not the PUC. Plaintiffs are correct that the Legislature has vested in DHS primary responsibility for the administration of the safe drinking water laws. (Health & Saf. Code, § 116325.)However, they are incorrect in asserting that the PUC has no authority to set and enforce drinking water standards when regulating water providers. The Legislature has vested the PUC with general and specific powers to ensure the health, safety, and availability of the public's drinking water.

Article X, section 5 of the California Constitution states: "The use of all water now appropriated, or that may hereafter be appropriated, for sale, *270 rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law." Article XII, section 3 of the California Constitution provides that "Private corporations and persons that own, operate, control, or manage a line, plant, or system for ... the production, generation, transmission, or furnishing of ... water ... directly or indirectly to or for the public ... are public utilities subject to control by the Legislature." Such public utilities are thereby subject to regulation by the PUC. (Cal. Const, art. XII, § 5; Pub. Util. Code, §§ 701, 761, 770, 2701.) In regulating utilities, the PUC is authorized to "do all things ... which are necessary and convenient in the exercise of [its] power and jurisdiction" (§ 701) and required to ensure that the service and equipment of any public utility protect the public health and safety. (§§ 451, [FN7] 768. [FN8]) Drinking water quality affects health and safety and is therefore within the PUC's regulatory jurisdiction over public utility water companies to ensure that public health and safety are protected. (§§ 451, 739.8, subd. (a), 761, 768, 770, subd. (b); see *Citizens Utilities Co. v. Superior Court* (1976) 56 Cal.App.3d 399, 408[128 Cal.Rptr. 582].)

FN7 Section 451 provides in pertinent part: "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons ... and the public."

FN8 Section 768 provides in pertinent part: "The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its ... customers, and the public.... The commission may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its ... customers, or the public may

demand...."

The PUC's most obvious regulatory authority includes the regulation of rates: "Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost." (§ 739.8, subd. (a).)

In addition, section 770 addresses water quality regulation and provides in pertinent part: "The commission may after hearing: [¶] ... [¶] (b) Ascertain and fix adequate and serviceable standards for the measurement of ... quality ... or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility. No standard of the commission applicable to any water corporation shall be inconsistent with the regulations and standards of the State Department of Health pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code."

In 1974, when Congress first passed the federal SDWA, the Legislature amended section 770, subdivision (b), to include the following proscription: *271 "No standard of the commission relating to water quality, however, shall be applicable to any water corporation which is required to comply with the regulations and standards of the State Department of Health pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code." (Stats. 1974, ch. 229, § 1, p. 434.) In 1976, the Legislature again amended subdivision (b) to eliminate the proscription and instead to provide that: "No standard of the commission applicable to any water corporation shall be *inconsistent* with the regulations and standards of the State Department of Health pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code." (Stats. 1976, ch. 1087, § 4, p. 4929, italics added; see Stats. 1976, ch. 1037, § 3, p. 4648.) Thus, the present statute gives the PUC authority to develop and apply standards for the quality of the product or service provided by regulated utilities as long as they are not "inconsistent" with the regulations and standards of DHS. [FN9]

FN9 In its final opinion on water quality, the PUC ordered a subsequent investigation and/or rulemaking proceeding, which will consider (1) whether DHS's action levels, which DHS categorizes as nonmandatory and nonenforceable levels, should be mandatory for regulated utilities, and (2) whether the utilities complied with general order No. 103 standards in existence before the adoption by DHS of maximum contaminant levels and action levels. (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 722 at pp. 20, 65, 73-74.) A PUC rule requiring regulated utilities to meet DHS action levels would not be inconsistent with mandatory DHS water quality standards. Indeed, during the investigation, the DHS suggested that the PUC require utility compliance with the DHS action levels and customer notification when DHS action levels are exceeded. (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 722 at p. 37.)

Nevertheless, whether the PUC has independent authority to set water quality standards is not dispositive. The PUC has constitutional and statutory authority and responsibilities to ensure that the regulated utilities provide service (e.g., water) that protects the public health and safety. (§§ 701, 451, 768.)While the water quality standards may be the product of DHS study and expertise, they are the PUC standards as well. The Legislature, by mandating that the PUC standards cannot be "inconsistent" with DHS water quality standards, has established that the DHS safety standards are the minimum standards for the PUC to use in performing its regulatory function of ensuring compliance with safety standards.

Since 1956, the PUC's supervisory policy, as embodied in general order No. 103, has required public utilities to comply with the water quality standards of the relevant state and federal health agencies, " 'except as otherwise ordered by the Commission.' " (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 40.) In implementing that policy, the PUC can require prescribed water quality corrective actions, both in rate and complaint cases affecting particular utilities and in industrywide investigations such as the 1998-2000 investigation into water quality. (Pub. Util. *272 Code, §§ 1701-1702, 2101; Health & Saf.

Code, § 116465; *Ford v. Pacific Gas & Electric Co.* (1997) 60 Cal.App.4th 696, 707[70 Cal.Rptr.2d 359]; see also *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 907[160 Cal.Rptr. 124, 603 P.2d 41].) It can enforce its orders and decisions by suit (Pub. Util. Code, § 2101), by mandamus or injunction (*id.*, §§ 2102-2103), by actions to recover penalties (*id.*, §§ 2104, 2107), and by contempt proceedings (*id.*, § 2113). Thus, the PUC has the authority to adopt a policy on water quality and to take the appropriate actions, if any, to ensure water safety.

3. *The PUC Has Undertaken the Ongoing Regulation of Drinking Water Quality*

As stated above, the PUC exercised its public health and safety authority over public utility water service on a case-by-case basis from 1912 to 1956 and adopted general order No. 103 in 1956. The PUC and DHS confirmed their partnership on water quality issues in a joint memorandum of understanding in 1987, which was updated in 1996. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 28, fn. 16.) It acknowledged "their joint goal to ensure that California water companies regulated by PUC are economically maintaining safe and reliable water supplies." (*Id.*, 1999 Cal.P.U.C. Lexis 312 at p. 111.) The memorandum defined DHS's responsibility for identifying contaminants and the improvements necessary to provide safe water supplies, and for initiating enforcement actions under the state SDWA; the PUC retained responsibility for approving rate changes to finance improvements, for informing customers, and for monitoring non-SDWA water quality requirements. The two agencies agreed to work together and share information. (*Id.*, 1999 Cal.P.U.C. Lexis 312 at pp. 104-120.)

In exercising its regulatory authority over water quality, the PUC has decided what constitutes adequate compliance with applicable water quality standards, whether any increased water treatment is justified in light of its impact on ratepayers, and what marginal increases in safety may be gained. (See, e.g., *California-American Water Co.* (1986) 20 Cal.P.U.C.2d 596 [PUC refused to authorize water utility to install water quality treatment facility, and instead ordered it to evaluate other, less costly alternatives]; *San Gabriel Valley Water Co.* (1998) Cal.P.U.C. Dec. No. 98-08-034 [1998 Cal.P.U.C. Lexis 575] [PUC approved water utility's request for additional water quality treatment facilities, rejecting ratepayers' argument that new treatment plant should be allowed only when prescribed maximum contaminant levels exceed DHS standards].)

The Court of Appeal below noted other actions by the PUC with respect to the quality of drinking water provided by public utilities: "In 1983, it *273 adopted a service improvement policy, requiring water utilities to identify the most cost-effective alternatives for dealing with water service problems, including contamination. In 1986, it issued guidelines for water quality improvement projects. In 1990, it issued a risk and return report, addressing the development of drinking water quality standards, new testing procedures, and application of drinking water standards to large and small water utilities. In 1994, it issued a decision concluding that drinking water quality standards would require investment of $50 million to $200 million in water treatment facilities over the next several years. In 1996, it authorized water utilities to establish accounts to record and recover expenses incurred in complying with EPA drinking water regulations and paying DHS testing and regulatory fees. In addition, the commission issued a series of individual rate decisions analyzing health standards and individual communities' abilities to absorb the costs of varying treatment levels."

The PUC itself has stated: "[T]he Commission's cost setting and regulating role is inextricably bound to the quality of water provided by the regulated utilities." (Cal.P.U.C. Dec. No. 99-09-073, *supra*, 1999 Cal.P.U.C. Lexis 594 at p. 9.) "Most often, authorization for corrective or preventative water quality measures occurs in a rate case." (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 31.) In reviewing a water utility's rate increase application, the PUC must review the reasonableness of the utility's proposed investment, its compliance with health department regulations, its implementation of previous PUC decisions affecting water quality, and its compliance with general order No. 103.(Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at pp. 31-32.) Thus, in setting rates at affordable levels, the PUC must balance the quality and cost of water services.

In its final opinion, the PUC explained the basis for its concurrent jurisdiction with the DHS over water

quality safety: "A jurisdictional structure that preserves the authority of both DHS and the [PUC] over the quality of water provided to residents and businesses by private water companies is consistent with the original intent of the 1911 Act giving the [PUC] authority over water issues. It remains crucial to the effective regulation of public utilities. The expertise of the [PUC], however, has always centered around the creation of financial and regulatory incentives that foster and support socially desired behavior from firms that operate in a marketplace characterized by limited competition. Thus, it is clearly reasonable that the Legislature continue to marshal the expertise of the [PUC] as well as the health-science expertise of DHS to support a public interest as critical as the quality of drinking water." (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 722 at pp. 17-18.) As shown by the DHS's participation in the PUC's recent water quality investigation, the PUC and the DHS continue to work together to ensure that public water utilities provide safe and healthy water. *274

Plaintiffs argue that their lawsuits should not be preempted because the PUC has deferred to the DHS to set and enforce water quality standards, has no expertise in water quality issues, and has focused on ratemaking. Our decision in *Covalt* leads us to a different estimation of PUC's regulatory involvement. In *Covalt*, notwithstanding the PUC's deference to the DHS's expertise on health issues, we concluded that the PUC had preemptively exercised its authority to adopt a policy on powerline EMF's. (*Covalt, supra*, 13 Cal.4th at pp. 926-934, 946-947.)

The circumstances in that case involved a PUC investigation into the health effects of EMF emissions. The PUC had issued an interim opinion and order that summarized what had occurred during the investigation up to that point and the recommendations for further studies. In the interim opinion and order, the PUC recognized the DHS's expertise and concurrent jurisdiction in establishing EMF policy. (*Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities* (1993) 52 Cal.P.U.C.2d 1, 8, 14-15.)We noted that, for the investigation, the PUC had asked DHS to assess the scientific evidence concerning the potential dangers of EMF's and had relied on the DHS witness in developing a policy on the potential health risks of EMF's from utility facilities. (*Id.* at p. 8; *Covalt, supra*, 13 Cal.4th at p. 930.)In determining the need for further research and education programs, the PUC found that the DHS was the "appropriate agency" "to inform [it] as to the type of public health risk, if any, connected to EMF exposure and utility property or operations" and "to define the research needed to determine whether there is a clear cause and effect relationship between EMF from utility property and public health." (*Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities, supra*, 52 Cal.P.U.C.2d at pp. 27-28.)Accordingly, DHS was designated as the EMF education and research program manager. (*Id.* at pp. 15, 21, 30.)Its duties included implementing and coordinating statewide research and education programs, defining the needed research, developing educational information for distribution to utility customers, monitoring the quality of research and education, and providing an annual research report to PUC. (*Id.* at pp. 16, 22-23, 26, 28-30; see also *Covalt, supra*, 13 Cal.4th at pp. 932-933.)

It is true that the PUC's primary involvement with water quality has been in the context of ratemaking, determining which water quality improvements to authorize or mandate and their costs, and the necessary rate increases. However, in making those decisions, the PUC had to consider, as it did in *Covalt*, the health and safety of the service provided by the regulated utilities. Accordingly, we find that the PUC has exercised and continues to exercise its jurisdiction to regulate drinking water quality. *275

4. Some of Plaintiffs' Actions Would Interfere with the PUC's General Supervisory and Regulatory Policies, While Others Would Not

(2b) Under the third prong of *Covalt*, superior court lawsuits against public utilities are barred by section 1759 "not only when an award of damages would directly contravene a specific order or decision of the commission, i.e., when it would 'reverse, correct, or annul' that order or decision, but also when an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission, i.e., when it would 'hinder' or 'frustrate' or 'interfere with' or 'obstruct' that policy." (*Covalt, supra*, 13 Cal.4th at p. 918.) " 'The PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with,

or second-guessed by a concurrent superior court action addressing the same issue.' " (*Id.* at p. 918, fn. 20, italics omitted; see, e.g., *Waters, supra*, 12 Cal.3d at pp. 10-12 [damage action for negligence in providing telephone service conflicted with PUC-approved tariff limiting telephone customer to credit allowance for improper service].) In short, an award of damages is barred by section 1759 if it would be contrary to a policy adopted by the PUC and would interfere with its regulation of public utilities. (*Waters, supra*, 12 Cal.3d at pp. 4, 11.)

On the other hand, superior courts are not precluded from acting in aid of, rather than in derogation of, the PUC's jurisdiction. (*Vila v. Tahoe Southside Water Utility* (1965) 233 Cal.App.2d 469[43 Cal.Rptr. 654].) Thus, a court has jurisdiction to enforce a water utility's legal obligation to comply with PUC standards and policies and to award damages for violations. (See, e.g., *id.* at pp. 479-480 [office building owner permitted to seek damages for water utility's failure to provide single water service connection to multipletenant building as required by unambiguous tariff approved by the PUC].)

"When the bar raised against a private damages action has been a ruling of the commission on a single matter such as its approval of a tariff or a merger, the courts have tended to hold that the action would not 'hinder' a 'policy' of the commission within the meaning of *Waters* and hence may proceed. But when the relief sought would have interfered with a broad and continuing supervisory or regulatory program of the commission, the courts have found such a hindrance and barred the action under section 1759." (*Covalt, supra*, 13 Cal.4th at pp. 918-919.)

a. *Damages*

(1c) Plaintiffs alleged water contamination without regard to whether the water met drinking water standards (e.g., injury from "the toxic contamination of drinking water, with chemicals, including, but not limited to," three *276 chemicals with established maximum contaminant levels). They also alleged water contamination that exceeded and violated federal and state drinking water standards. In essence, plaintiffs challenged both the adequacy of the standards and compliance with those standards.

The first challenge, to the adequacy of the standards, is barred. An award of damages on the theory that the public utilities provided unhealthy water, even if that water actually met DHS and PUC standards, would interfere with a "broad and continuing supervisory or regulatory program" of the PUC. (*Covalt, supra*, 13 Cal.4th at p. 919.)In order to perform its regulatory functions, such as ratemaking, the PUC must have certain water quality benchmarks. For example, in determining whether to approve a rate increase, the PUC must consider whether a regulated water utility's existing revenues are adequate to finance any water treatment facility that may be needed. Whether a treatment facility is needed, and, if so, the expense thereof, cannot be determined except with reference to an applicable water quality standard. General order No. 103, promulgated by the PUC in 1956, formally adopted the DHS water quality standards as its own. Thus, the DHS standards serve as those benchmarks. A superior court determination of the inadequacy of a DHS water quality standard applied by the PUC would not only call DHS regulation into question, it would also undermine the propriety of a PUC ratemaking determination. Moreover, the DHS standards have been used by the PUC in its regulatory proceedings for many years as an integral part of its broad and continuing program or policy of regulating water utilities. As part of that regulatory program, the PUC has provided a safe harbor for public utilities if they comply with the DHS standards. An award of damages on the theory that the public utilities provided unhealthy water, even if the water met DHS standards, "would plainly undermine the commission's policy by holding the utility liable for not doing what the commission has repeatedly determined that it and all similarly situated utilities were not required to do." (*Covalt, supra*, 13 Cal.4th at p. 950.)Thus, such damage actions are barred.

On the other hand, damage claims based on the theory that the water failed to meet federal and state drinking water standards are not preempted by section 1759. A jury award based on a finding that a public water utility violated DHS standards would not interfere with the PUC regulatory policy requiring water utility compliance with those standards. We recognize that in PUC Decision No. 00-11-014, the final opinion on water quality, the PUC made a retrospective finding that the regulated utilities investigated, including the regulated defendants in this case, had substantially complied with DHS drinking water standards for the past 25

years. However, that factual finding was not part of an identifiable "broad and continuing supervisory or regulatory program of the commission" (*Covalt, supra,* 13 Cal.4th at p. 919),*277 related to such routine PUC proceedings as ratemaking (see *Citizens Utilities Co. v. Superior Court, supra,* 56 Cal.App.3d 399) or approval of water quality treatment facilities. Nor was that finding part of a broad and continuing program to regulate public utility water quality, a point the PUC itself implicitly recognized during its investigation when it stated: "This investigation is an inquiry into the safety of the drinking water supplied by Commission regulated water utilities. This is an information gathering process. This is not a rulemaking proceeding, although the information gathered here may result in our instituting a rulemaking proceeding to develop new operating practices for regulated water utilities to better ensure the health and safety of water service. This is also not an enforcement proceeding, although the information accumulated here regarding the compliance of regulated water utilities with the safe drinking water laws may result in our instituting formal enforcement investigations of individual water utilities where justified." (Cal.P.U.C. Dec. No. 99-06-054, *supra,* 1999 Cal.P.U.C. Lexis 312 at pp. 48-49, fn. omitted.)

Although a PUC factual finding of past compliance or noncompliance may be part of a future remedial program, a lawsuit for damages based on past violations of water quality standards would not interfere with such a prospective regulatory program. As noted, the PUC can redress violations of the law or its orders by suit (§ 2101), by mandamus or injunction (§§ 2102-2103), by actions to recover penalties (§§ 2104, 2107), and by contempt proceedings (§ 2113), but these remedies are essentially prospective in nature. They are designed to stop the utilities from engaging in current and ongoing violations and do not redress injuries for past wrongs. (See *Vila v. Tahoe Southside Water Utility, supra,* 233 Cal.App.2d at p. 479 [the PUC has no authority to award damages].) Here, plaintiffs alleged injuries caused by water that failed to meet state and federal drinking water standards "for many years." Because the PUC cannot provide for such relief for past violations, those damage actions would not interfere with the PUC in implementing its supervisory and regulatory policies to prevent future harm.

The regulated and nonregulated defendants argue that an award of damages against the regulated utility defendants for providing harmful or unhealthy water, would directly "contravene" a specific order or decision of the PUC, as stated in *Covalt.*(*Covalt, supra,* 13 Cal.4th at p. 918.)However, the *Covalt* language regarding the contravention of an order was simply a reference to the statutory language in subdivision (a) of section 1759 that "No court of this state, except the Supreme Court and the court of appeal ... shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission ...." (*Covalt, supra,* at p. 918.)Although a jury award supported by a finding that a public water utility violated DHS and PUC standards would be contrary to a single PUC decision, it would not *278 hinder or frustrate the PUC's declared supervisory and regulatory policies, for the reasons discussed earlier. Under the provisions of section 1759, it would also not constitute a direct review, reversal, correction, or annulment of the decision itself. Accordingly, such a jury verdict would not be barred by the statute.

b. *Injunctive Relief*

In addition to alleging damages, the Santamaria plaintiffs asked for injunctive relief for current water quality violations. However, a court injunction issued after a jury finding of DHS standards violations would "interfere with the commission in the performance of its official duties ...." (§ 1759.)As part of its water quality investigation, the PUC determined, not only whether the regulated utilities had complied with drinking water standards for the past 25 years, but also whether they were currently complying with existing water quality regulation. (Cal.P.U.C. Dec. No. 00-11-014, *supra,* 2000 Cal.P.U.C. Lexis 722 at pp. 5, 105-108.) In PUC Decision No. 00-11-014, the final opinion on water quality, the PUC found that the regulated utility defendants in this case were in compliance with DHS regulations and that "no further inquiry or evidentiary hearings" were required regarding compliance. (Cal.P.U.C. Dec. No. 00-11-014, *supra,* 2000 Cal.P.U.C. Lexis 722 at p. 6.) Based on that factual finding, the PUC impliedly determined it need not take any remedial action against those regulated utilities. A court injunction, predicated on a contrary finding of utility noncompliance, would clearly conflict with the PUC's decision and interfere with its

regulatory functions in determining the need to establish prospective remedial programs. In contrast, even if a jury award of damages on a finding of past violations would conflict with the PUC's factual finding of no past violations, the jurisdictional role of the PUC would not be affected. Under the regulatory framework at issue, here, the PUC's role is to ensure present and future compliance. [FN10]*279

FN10 Plaintiffs claim that PUC jurisdiction cannot preempt the private right of actions established by Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986; Health & Saf. Code, § 25249.5 et seq.) or the state SDWA, and that citizen enforcement is an essential part of the regulatory scheme. However, plaintiffs do not qualify as citizen enforcers of water quality standards under Proposition 65. Private enforcement under Proposition 65 supplements agency enforcement only if the Attorney General or other appropriate prosecutor has failed to act diligently against an alleged violator and notice of the alleged violation has been given to the appropriate prosecutor. (Health & Saf. Code, § 25249.7; see also 42 U.S.C. § 300j-8(b) [similar procedural requirements required for federal citizen enforcement proceedings].) The private enforcer may not seek damages, but may only obtain injunctive relief and statutory penalties. (Health & Saf. Code, § 25249.7, subds. (a), (b), (d).) Apart from failing to meet the procedural prerequisites, plaintiffs' damage claims clearly disqualify them as citizen enforcers. Moreover, preemption of private injunctive relief claims would not affect the enforcement provisions of either the state SDWA or Proposition 65. The state SDWA can be enforced by the DHS (Health & Saf. Code, §§ 116325, 116500, 116660) or the Attorney General (Code Civ. Proc., § 803; *Citizen Utilities Co. v. Superior Court, supra,* 56 Cal.App.3d at pp. 403-407), but there is no mandate for citizen enforcement actions under the state SDWA. Also, most, if not all, public water utilities are exempted from the coverage of Proposition 65. (Health & Saf. Code, §§ 25249.5, 25249.6, 25249.11, subd. (b), 116275, subd. (h).)

In summary, plaintiffs' damage claims, alleging water contamination irrespective of whether drinking water standards were met, and their injunctive relief claims, are preempted by section 1759. [FN11] On the other hand, plaintiffs' damage claims alleging water contamination that violated and exceeded federal and state drinking water standards are authorized under section 2106. [FN12]

FN11 The regulated utilites argue that, because plaintiffs who intervened in the PUC's water quality investigation failed to appeal the PUC's jurisdictional finding, they are collaterally estopped from challenging its conclusion that it has jurisdiction over the quality of water supplied by the regulated utilities. The PUC found that it possesses authority and has exercised its authority to regulate the quality of the service and the drinking water that the water utilities provide. The PUC expressly refused to decide the third *Covalt* prong: whether the lawsuits in this case interfered with its water quality investigation. (Cal.P.U.C. Dec. No. 99-06-054, *supra,* 1999 Cal.P.U.C. Lexis 312 at p. 65, fn. 37.) Because we agree that the PUC has jurisdiction and has exercised its jurisdiction over the water quality supplied by the regulated utilities, we need not address the collateral estoppel claim.

FN12 Plaintiffs request that we take judicial notice of what appear to be Internet articles found on a DHS Web site. These articles indicate, as of January 3, 2001, that chromium VI is an unregulated chemical that required monitoring. Plaintiffs seek judicial notice of those articles as proof that their allegations raise no conflict with PUC policy because neither the PUC nor DHS has set water quality standards that govern chromium VI, an "unregulated chemical." The regulated utilities and the industrial defendants oppose the motion for judicial notice. We deny plaintiffs' request. As stated by the industrial defendants, the articles contain unauthenticated statements with no indication of author, custodian, date of creation, purpose, reliability, or veracity. Also, the articles do not appear to be

relevant because the complaint did not specifically allege plaintiffs had been exposed to chromium VI and no evidence regarding this chemical had been presented to the trial court.

B. *Section 1759 Does Not Bar the Superior Court Actions Against Defendants Not Regulated by the PUC*

Advocating an "issue oriented analysis," the nonregulated water providers and the industrial defendants claim that, as with the regulated utilities, the superior court actions against them are preempted. Their claim is based on the following arguments: (1) the statutory language of section 1759 does not make any distinction between utility and nonutility parties to a lawsuit; (2) our opinion in *Covalt* affirms that preemption of court proceedings applies to issues or subject matter before the PUC, not just to actions against regulated companies, if "an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission"; and (3) the issues in the superior court actions and the PUC investigation involve the safety of the very same water supply. Thus, it is argued, a jury *280 award of damages against a nonregulated defendant, based on a determination that the water is unhealthy, would conflict with the PUC's conclusion that the water is safe and would undermine its drinking water policy.

Plaintiffs in the four lawsuits dispute that all of the water alleged to be contaminated is identical to the water provided by the regulated utilities. They claim that the liability of the nonregulated water providers and the industrial defendants are not "derivative" of the water supplied by the regulated utilities. They assert that: (1) although the nonregulated water providers sold wholesale water to some of the regulated utilities, they also supplied water to nonregulated water purveyors that may have supplied water to plaintiffs; and (2) the alleged contamination of the groundwater by the industrial defendants also contaminated the groundwater used and supplied by nonregulated water providers. Plaintiffs argue, therefore, that the water and the issues are not the same.

In rejecting the preemption argument advanced by the nonregulated water providers and the industrial defendants, the Court of Appeal below stated: "Section 1759 provides that no trial level court may 'review, reverse, correct, or annul' or 'enjoin, restrain, or interfere with' the PUC in its performance of its duties. By no stretch of language or logic does this mean that trial courts may not decide issues between parties not subject to PUC regulation simply because the same or similar issues are pending before the PUC or because the PUC regulates the same subject matter in its supervision over public utilities." (Fn. omitted.)

We agree. First, although section 1759 does not expressly restrict preemption to claims involving regulated utilities, it cannot be construed in isolation; rather, it must be viewed in context with "'" the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.'" " (*People v. Ledesma* (1997) 16 Cal.4th 90, 95[65 Cal.Rptr.2d 610, 939 P.2d 1310]; *County of Sacramento v. Workers' Comp. Appeals Bd.* (1999) 69 Cal.App.4th 726, 733[81 Cal.Rptr.2d 780].) The California Constitution authorizes the PUC to establish rules only for *utilities*. (Cal. Const., art. XII, § 6.) The powers granted to the PUC by the Legislature must be "cognate and germane to the regulation of public utilities ...." (*Morel v. Railroad Commission* (1938) 11 Cal.2d 488, 492[81 P.2d 144].) The Legislature specified the PUC's regulatory powers over public utilities in the Public Utilities Code, of which section 1759 is a part. Under section 1759, a superior court cannot "enjoin, restrain, or interfere with the [PUC] in the performance of its *official* duties ..." (Italics added.) Thus, when read in context with the entire regulatory scheme, section 1759 must be read to bar superior court jurisdiction that interferes with the PUC's performance of *281 its *regulatory* duties, duties which by constitutional mandate apply only to regulated utilities. Although a superior court jury may return findings on water safety issues that would conflict with those decided by the PUC on the same or similar issues, neither the nonregulated water providers nor the industrial defendants adequately explain how such conflicting findings, relating to them, would *interfere with* the PUC's *official regulatory duties*.

Second, the nonregulated defendants fail to cite case law to support their view that the jurisdictional bar of section 1759 applies to nonregulated parties. Instead, they rely on isolated statements in cases referring to

the preemptive effect of issues or cases pending before the PUC. They argue that those cases do not expressly confine their preemption language to actions against regulated parties. (See, e.g., *Covalt, supra,* 13 Cal.4th at p. 944 ["[t]he question is therefore whether section 1759 applies to this *case*" (italics added)]; *id.* at p. 918, fn. 20 [" 'once [the PUC] has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same *issue*' " (italics added, original italics omitted)]; *Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 681[187 Cal.Rptr. 219] [same].) Because those cases involved only regulated utilities, the references to the preemptive effect of "issues" or "cases" pending before the PUC must be read in context with the facts of the case, i.e., as barring only actions brought in trial courts against regulated utilities. (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2[39 Cal.Rptr. 377, 393 P.2d 689] ["Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered"].)

Indeed, in *Covalt, supra,* 13 Cal.4th 893, and *Waters, supra,* 12 Cal.3d 1, we sought to reconcile sections 1759 and 2106. Section 2106, by its terms, applies only to a "public utility" and does not authorize lawsuits against nonregulated entities. Therefore, the rationale expressed in both cases applies only to bar superior court jurisdiction over lawsuits otherwise authorized by section 2106, i.e., cases against regulated utilities.

Third, the regulatory scheme contained in the Public Utilities Code is rooted in the recognition that business enterprises "affected with a public interest" are subject to government regulation under the state's police power. (See *Munn v. Illinois* (1876) 94 U.S. 113, 125-130 [24 L.Ed. 77, 84-86];*Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 476[156 Cal.Rptr. 14, 595 P.2d 592].) Endowed by the state with a legally enforceable monopoly and authorized by the state to charge rates that guarantee it a reasonable rate of return (*Gay Law Students Assn., supra,* 24 Cal.3d at p. 476), a public utility, in turn, must comply with the comprehensive regulation of its rates, services, and facilities as specified in the Public Utilities *282 Code. (See *Pacific Gas & Elec. v. Energy Resources Comm'n* (1983) 461 U.S. 190, 205 [103 S.Ct. 1713, 1722-1723, 75 L.Ed.2d 752]; Sidak & Spulber, *Deregulatory Takings and Breach of the Regulatory Contract* (1996) 71 N.Y.U. L.Rev. 851, 907.)Thus, " 'a public utility, being strictly regulated in all operations with considerable curtailment of its rights and privileges, shall likewise be regulated and limited as to its liabilities. In consideration of its being peculiarly the subject of state control, "its liability is and should be defined and limited." [Citation.]' " (*Waters, supra,* 12 Cal.3d at p. 7; see also *Los Angeles Cellular Telephone Co. v. Superior Court* (1998) 65 Cal.App.4th 1013, 1018[76 Cal.Rptr.2d 894] ["As our courts have long recognized, it is an equitable trade-off-the power to regulate rates and to set them below the amount an unregulated provider might otherwise charge requires a concomitant limitation on liability"].)

Finally, unlike the regulated utilities, the PUC has no jurisdiction to hear complaints or claims against any nonregulated entities. If claims against nonregulated entities were preempted by section 1759, they could not be heard in any forum.

The Court of Appeal below correctly noted that, "the nonregulated defendants do not invite us to find that the PUC has de facto authority to regulate their conduct. Some seem to be claiming only a tangential benefit from PUC regulation-a stay or preemption of actions against them-unencumbered by the burdens of PUC regulation." We conclude that section 1759 does not preempt these lawsuits in superior court against the nonregulated water providers and the industrial defendants. [FN13]

FN13 The nonregulated water providers and the industrial defendants argue that, in the alternative, the Court of Appeal should have ordered the trial courts to stay the actions under the doctrine of primary jurisdiction, pending resolution of the PUC's water quality investigation. Because the PUC issued its final opinion in that investigation after the filing of the briefs, we need not address that claim.
In the final opinion on water quality, the PUC noticed its intention to initiate a future limited investigation into whether utilities complied with the PUC standards prior to the establishment of DHS standards. (Cal.P.U.C. Dec. No. 00-11-014, *supra,*

2000 Cal.P.U.C. Lexis 722 at pp. 16-17.) In their supplemental briefs, the industrial defendants urge us to order a stay as to claims for damages caused by water provided before the adoption of DHS standards, pending completion of the future PUC investigation. We decline to do so for obvious reasons. That claim was never made to the superior court or Court of Appeal and can be decided more appropriately by the superior court.

Conclusion

In the four actions, the damage claims alleging violations of federal and state drinking water standards against the regulated utilities are not preempted. Thus, we reverse the judgment of the Court of Appeal insofar as it found preemption as to those claims. Regarding the remaining claims against *283 the regulated utilities, we affirm the judgment of the Court of Appeal. We further affirm the judgment of the Court of Appeal insofar as it held that the causes of action against the nonregulated water providers and industrial defendants are not preempted. We remand the case to that court for further proceedings consistent with this opinion.

George, C. J., Kennard, J., Baxter, J., Brown, J., and Moreno, J., concurred. KLINE, J. [FN*]

FN* Presiding Justice of the Court of Appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

I concur and write separately to explain why I believe regulation of water quality is among the "official duties" of the Public Utilities Commission (PUC or commission). (Pub. Util. Code, § 1759.) [FN1] Some of my reasons go beyond those described by the majority and relate more specifically to the commission's authority to promulgate water quality standards stricter than those of the California Department of Health Services (DHS), an issue central to the jurisdictional dispute.

FN1 All statutory references are to the Public Utilities Code unless otherwise indicated.

Plaintiffs in these actions maintain that the 1976 amendment to section 770-which eliminated the prohibition on the PUC applying its water quality standards to regulated utilities and provided instead that any such standards it may apply shall not be "inconsistent" with DHS standards-means that PUC water quality standards may not differ *in any way* from those promulgated by DHS, which would bar the commission from imposing standards higher than those of DHS. Plaintiffs' construction of the amendment renders it meaningless. If, as plaintiffs argue, the amendment means the PUC cannot apply its own standards, but only those of DHS, the amendment would have no different effect than the language it replaced, and the Legislature would have performed an idle act. Given the context in which the Legislature acted, the only sensible interpretation is that "inconsistent" means less rigorous, so that the purpose of the amendment to section 770 is analogous to that of the federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.) (federal SDWA), which prohibits the states from enacting water quality standards less stringent than those established by the federal government, but permits them to impose more stringent requirements. (42 U.S.C. § 300g.)

Because, as the majority says, the Legislature established only that DHS water quality standards are "the *minimum* standards for the PUC to use in performing its regulatory function" (maj. opn., *ante*, at p. 271, italics added), the commission is free to subject regulated water utilities to stricter standards than are imposed by DHS. *284

The title of the PUC investigation in this case [FN2] reflects the commission's concern that the DHS standards it now applies may not adequately protect the public; and the PUC made clear during the proceedings that it was considering the promulgation of higher standards. As the commission stated, "we do not intend to reduce MCLs [maximum contaminant levels], Action Levels or similar standards which are terms of art in the lexicon of [Safe Drinking Water Act] law and regulation. Drinking water standards, including established MCLs, are minimum water quality requirements and we cannot and shall not tamper with those requirements. We do not intend to duplicate the processes employed by DHS and [the federal Environmental Protection Agency] to develop those standards. We do intend to employ the knowledge of

these agencies as we pursue this investigation. The evidence adduced in this proceeding may support the development of additional operating practices for regulated utilities. If so, we would expect that such new rules *either will fill an identifiable void, if any there is, in the DHS regulatory scheme or will be practices stricter than those of DHS and/or they will be practices particularly suited to the regulation of investor-owned water utilities.* In any event, before we can determine what actions, if any, might better promote safe drinking water service by regulated water utilities, we must have a clear understanding of the safety status of existing regulation. Therefore, we need to receive evidence on the questions posed in the OII [Order Instituting Investigation]." [FN3] (Cal.P.U.C. Interim Opinion Denying Motions Challenging Jurisdiction to Conduct Investigation 09-03-013 (June 10, 1999) Dec. No. 99-06-054 [1999 Cal.P.U.C. Lexis 312 at pp. 73-74]; italics added (Interim PUC Opinion).) As the majority has noted, in its final opinion on water *285 quality the PUC ordered a subsequent investigation and/or rulemaking proceeding to consider, among other things, whether DHS's "action levels," which are neither mandatory nor enforceable, should be mandatory for regulated utilities. (Maj. opn. *ante*, at p. 271, fn. 9.) Such a PUC rule would impose water quality standards higher than those imposed by DHS.

FN2 "Investigation on the Commission's own motion into whether existing standards and policies of the Commission regarding drinking water quality adequately protect the public health and safety with respect to contaminants such as Volatile Organic Compounds, Perchlorate, MTBEs, and whether those standards and policies are being uniformly complied with by Commission regulated utilities." (Cal.P.U.C. Order Instituting Investigation No. 98-03-013 (Mar. 12, 1998) [1998 Cal.P.U.C. Lexis 73].)

FN3 These statements appear to represent a substantial policy change for the PUC, as the commission has heretofore consistently and rather summarily rebuffed consumer complaints that the DHS standards it applies are inadequate. For example when, in 1966, the PUC was asked to order "optimum" fluoridation of drinking water, the commission held: "With respect to the purity and safety of drinking water, the Commission will not question the findings and recommendations of the California Department of Health, which is charged with such responsibility." (*City of San Jose v. San Jose Water District* (1966) 66 Cal.P.U.C. 694, 698.)Similarly, in 1972, the PUC again rejected complaints concerning the quality of a purveyor's water: "The State Board of Public Health [DHS] has the authority ... to suspend or revoke a utility's water permit at any time if it determines that the water is or may become unpure or unwholesome. Under [the Health and Safety Code], and in accordance with General Order 103, it is not appropriate for the Commission to determine this question. Petitioners should direct their allegations on this question to the [DHS]." (*Washington Water & Light Co.* (1972) 73 Cal.P.U.C. 284, 303; see also *Pool v. Mokelumne River Power & Water Co.* (1918) 15 C.R.C. 38, 39 ["[t]he question of the healthful quality of the water is one to be passed on by the State Board of Health."].)

The substance of the PUC proceedings demonstrates that the commission is discharging its responsibility under section 761 to inquire whether the "practices" of or "service[s]" provided by defendant regulated water utilities are "unsafe," and, if so, to fix the problem by "prescrib[ing] rules for the performance of any service or the furnishing of any commodity ... supplied by any public utility." In short, the PUC inquiry into the adequacy of DHS standards, and any higher standards it may impose, are or would be in the performance of its "official duties" (§ 1759) to protect the public health and safety.

Significantly, DHS, which actively participated in the commission proceedings, never suggested that the PUC's expressed interest in whether it needed to exercise its authority to subject regulated water utilities to water quality standards higher than those of DHS would, if acted upon, offend the federal SDWA or the state Safe Drinking Water Act (Health & Saf. Code, § 116275 et seq.) (state SDWA), and the DHS expressed no other objection to PUC assertion of authority to impose water quality standards higher than its own. On the contrary, DHS

explained why it might be appropriate for the PUC to subject the almost 200 water utilities it regulates to higher standards than does DHS. According to DHS, " 'the increase in population growth and demand for drinking water throughout the state has diminished the options utilities have to reserve and select high quality sources of drinking water. The impact of groundwater contamination from industrial and agricultural practices has been significant in some areas of the state. Public water systems are no longer able to forego the use of contaminated drinking water sources, including those associated with Superfund sites, since that water may be needed to meet increased demand.' " (Interim PUC Opinion, *supra*, 199 Cal.P.U.C. Lexis 312 at p. 76.) Moreover, as DHS specifically acknowledged, "[t]here are some contaminants that were known to exist in drinking water sources *but were never regulated*." (*Ibid.*, italics added.)

DHS's conduct in the PUC proceeding demonstrates that it does not believe the state SDWA (or the memorandum of understanding DHS originally entered into with the PUC in 1987) would prevent the PUC from imposing water quality standards higher than its own, or that such standards, including those pertaining to contaminants for which there now are no enforceable DHS standards, would be "inconsistent" with DHS standards. As the primary agency charged with implementing the state SDWA, DHS's ***286** view is entitled to judicial respect. The questions whether an administrative agency properly applies legislative standards and acts within authority conferred by the Legislature are, of course, ultimately decided by the courts (*Quackenbush v. Mission Ins. Co.* (1996) 46 Cal.App.4th 458, 466[54 Cal.Rptr.2d 112]), but an administrative agency's "interpretation of a statute it routinely enforces is entitled to great weight and will be accepted unless its application of legislative intent is clearly unauthorized or erroneous." (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1027[56 Cal.Rptr.2d 109, 920 P.2d 1314], citing *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 109[172 Cal.Rptr. 194, 624 P.2d 244].)

Neither does PUC's General Order 103 bar the PUC from imposing higher water quality standards in the future. While at present this order only requires compliance with federal and state water quality standards, the phrase "except as otherwise ordered by the Commission," must be interpreted as reserving the right to impose the higher standards the commission is allowed to impose under section 770. In any event, as the PUC had the authority to adopt General Order 103, so too does it retain power to repeal or amend it so that it is consistent with the imposition of PUC water quality standards higher than those promulgated by DHS.

For the foregoing reasons, as well as those set forth by Justice Chin for the majority, I agree that the PUC has independent regulatory authority to promulgate water quality standards applicable to the water utilities it regulates and that such standards may be the same as or stricter (but not less strict) than those promulgated by DHS under the state SDWA. There may be circumstances in which a superior court award of damages for injuries sustained by the provision of water standards or other rules applied by the PUC might interfere with the PUC's performance of its "official duties," and therefore violate section 1759, [FN4] but, as the majority has explained, they are not presented by this case. ***287**

FN4 For example, under section 735 the PUC has authority to receive and rule on claims for damages resulting from the violation of any of the provisions of sections 494 (relating to common carrier rates and fares) or 532 (relating to the rates, tolls, rentals and other charges imposed by public utilities), even though a suit seeking such damages could alternatively be instituted "in any court of competent jurisdiction." Section 1759 would clearly bar a superior court from entertaining a claim for damages for violation of section 494 or 532 that had previously been submitted to and rejected by the commission.

Hartwell Corp. v. Superior Court
27 Cal.4th 256, 38 P.3d 1098, 115 Cal.Rptr.2d 874, 32 Envtl. L. Rep. 20,477, 02 Cal. Daily Op. Serv. 1064, 2002 Daily Journal D.A.R. 1295

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BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, Petitioner,
v.
W. E. SIMPSON, as District Attorney, etc., Respondent.
L. A. No. 21704.

Supreme Court of California
Feb. 2, 1951.

HEADNOTES

(1) Disorderly Houses § 14--Abatement Under Statute.
It is the duty of the district attorney of Los Angeles County to abate, when directed by the board of supervisors, that which constitutes a public nuisance within the Red Light Abatement Act (Stats. 1913, p. 20, §§ 1-3), although the county charter invests county counsel with exclusive control of civil actions in which the county is concerned. (Gov. Code, § 26528; Code Civ. Proc., § 731.)
See 9 Cal.Jur. 577; 17 Am.Jur. 114.

(2) Counties § 49--Officers--County Counsel.
Powers and duties of county counsel appointed pursuant to a charter are not defined by Gov. Code, § 27642, which requires a county counsel appointed pursuant to Gov. Code, tit. 3, div. 1, pt. 3, ch. 12, to discharge all duties invested by law in the district attorney other than those of a public prosecutor, but such counsel, not being appointed pursuant to such code provisions, has only the powers and duties given him by the charter.

(3a, 3b) Disorderly Houses § 14--Abatement Under Statute.
Assuming that provisions of the Government Code requiring county counsel to discharge all duties vested by law in the district attorney other than those of a public prosecutor apply to county counsel of Los Angeles County appointed pursuant to its charter, still the duty to abate a nuisance within the Red Light Abatement Act is within those reserved to the district attorney by Gov. Code, § 27642, since proceedings under the Abatement Act are in the name of the People of the state, and are in the nature of actions to recover penalties or forfeitures. (See Gov. Code, §§ 26500, 26502, 26521.)

(4) Disorderly Houses § 13--Abatement Under Statute--Nature of Proceeding.
Although actions to abate nuisances are considered civil in nature, the abatement of houses of prostitution is in aid of, and auxiliary to, enforcement of the criminal law, and the Red Light Abatement Act is penal in nature.

(5) District Attorney § 7--Powers and Duties--Prosecuting Actions.
Where a mandatory duty to abate a nuisance is imposed upon a district attorney by a statute leaving him no discretion to exercise, mandamus is the proper remedy to compel him to institute abatement proceedings.
See 9 Cal.Jur. 601; 42 Am.Jur. 245.

SUMMARY

PROCEEDING in mandamus to compel the district attorney to institute proceedings for the abatement of a public nuisance. Writ granted.

COUNSEL
Harold W. Kennedy, County Counsel, Gerald G. Kelly, Assistant County Counsel, Milnor E. Gleaves and Arvo Van Alstyne, Deputy County Counsel, for Petitioner.
W. E. Simpson, District Attorney, in pro. per., and Jere J. Sullivan, Deputy District Attorney, for Respondent.

CARTER, J.
In this mandamus proceeding, petitioner, the Board of Supervisors of Los Angeles County, seeks to require respondent, district attorney of that county, to institute proceedings for the abatement of a certain public nuisance as directed by petitioner.

The undisputed petition shows that petitioner has been presented with facts and has determined that a certain building situated in Los Angeles County is being used for "lewdness, assignation and prostitution." It directed respondent to commence an action to abate the nuisance, but respondent refused to act asserting that the duty of bringing the action

rested on the county counsel rather than the district attorney. Places used as described are declared to be public nuisances and abatable by action by the district attorney in the name of the People (Stats. 1913, p. 20, §§ 1- 3), by the statute known as the Red Light Abatement Act.

(1) The Los Angeles County charter invests the county counsel with the duty of representing all county officers in all matters pertaining to their duties and with "exclusive charge and control of all civil actions and proceedings in which the county or any officer thereof, is concerned or is a party." (Los Angeles County Charter, § 21; Stats. 1913, p. 1484.) It has been held that an action or proceeding by a public authority to abate a public nuisance is civil in nature. (*People v. Macy,* 43 Cal.App. 479, 482 [184 P. 1008]; *People v. Arcega,* 49 Cal.App. 233 [193 P. 268]; see Code Civ. Proc., § 731; Stats., 1913, p. 20.) This lends some support to the view that it is the duty of the county counsel to prosecute actions to abate nuisances. There are, however, other factors of more persuasive significance which compel the conclusion that the duty rests upon the district attorney. *673

The charter provides that each county officer shall have the powers and perform the duties now or hereafter prescribed by general law and by the charter (§ 25). The district attorney and county counsel are named as county officers (§ 21). The statute (Red Light Abatement Act) expressly and particularly imposes upon district attorneys the duty of maintaining actions in equity to abate houses of prostitution. (Stats., 1913, p. 20, §§ 2, 3.) "A civil action may be brought in the name of the people of the State of California to abate a public nuisance ... by the *district attorney* of any county in which such nuisance exists ... and such district attorney ... of any county ... in which such nuisance exists *must* bring such action whenever directed by the board of supervisors of such county ..." (Emphasis added.) (Code Civ. Proc., § 731.)(See, also, Gov. Code, § 26528.) Thus the particular duty with respect to abatement of public nuisances is that of the district attorney. That is a factor with some significance as a particular statutory provision should prevail over a general one. (Civ. Code, § 3534; Code Civ. Proc., § 1859; *Division of Labor Law Enforcement v. Moroney,* 28 Cal.2d 344 [170 P.2d 3].)

(2) Under the general law, in any county with a population of over 60,000, the board of supervisors may, except in one with a charter providing that the district attorney is attorney for one or more county officers, appoint a county counsel. (Gov. Code, § 27640.)Los Angeles County does not fall within that exception as seen from its charter, *supra,* under which the county counsel represents county officers. When the board appoints a county counsel pursuant to *this chapter* (Gov. Code, title 3, div. 1, pt. 3, ch. 12) he "shall discharge all the duties vested by law in the district attorney other than those of a public prosecutor." (Gov. Code, § 27642.)That section and section 27640 were new in 1941, being then added as section 4041.12a to the Political Code. (Stats. 1941, ch. 618, § 2.) Another section provides that in counties having a county counsel appointed pursuant to the same chapter 12, he shall discharge all the civil duties vested in the district attorney. (Gov. Code, § 26529.)Apparently the county counsel of Los Angeles County is appointed pursuant to its charter which has provided for such office since its adoption in 1913, rather than the Political Code and its successor, the Government Code. That being true, the provisions *674 of the Government Code relating to county counsel would not apply to the situation where the office of county counsel is established by charter in the manner here appearing. It is true the charter gives to the county counsel the powers and duties provided by general law, but the provisions of the Government Code with reference to county counsel are not general in the sense that they apply to all county counsel however they hold office. They apply only to county counsel appointed thereunder. Thus it follows that the county counsel here does not have the powers and duties of a district attorney except as they are given by section 22 of the charter. On the other hand, the district attorney has all the powers and duties conferred by the laws of the state, except as limited by the provisions of the charter.

(3a) Even if it be assumed that the provisions of the Government Code on county counsel apply to the Los Angeles county counsel, still properly construed, the duty rests upon the district attorney. The abatement of places under the Red Light Abatement Act is more appropriately the duty of the district attorney since it is compatible with his duties as public prosecutor. It will be remembered that the proceeding is prosecuted in the name of the People of the state, as are criminal prosecutions, which indicates that the county as such is not as much concerned as the People of the state. The Government

Code, in speaking of the duties of the district attorney, states that he is "the public prosecutor and must conduct on behalf of the people all prosecutions for public offenses and prosecute actions for the recovery of fines, penalties, and forfeitures" accruing to the state or his county. (Gov. Code, §§ 26500-26502, 26521.)Proceedings under the Red Light Abatement Act are somewhat in the nature of actions to recover penalties or forfeitures, for thereunder the fixtures and paraphernalia in the place abated are partially forfeited and the place may be closed to use for any purpose for a year. (Stats. 1913, p. 20, § 7.) (4) It is penal in nature. (See *State ex rel. Whall v. Saenger Theatres Corp.*, 190 Miss. 391 [200 So. 442]; *Hofferman v. Simmons*, 177 Misc. 962 [32 N.Y.S.2d 244].) While actions to abate nuisances are considered civil in nature (cases cited *supra.*) the abatement of houses of prostitution is in aid of and auxiliary to the enforcement of the criminal law. Such places are declared public nuisances. (Stats. 1913, § 20.) Each and every day a public nuisance is maintained is a separate offense and is a misdemeanor which it is the duty of the district *675 attorney to prosecute by continuous prosecutions. (Pen. Code, § 373(a).) In general, any person maintaining a public nuisance is guilty of a misdemeanor. (Pen. Code, § 372.)It is aptly said in *People v. Barbiere*, 33 Cal.App. 770, 775 [166 P. 812]: "The general object of the legislation involved in the said act (Red Light Abatement Act) is, it is obvious, no different from that of certain penal statutes which have been upon the pages of our lawbooks for many years. Sections 315 and 316 of the Penal Code declare it to be a misdemeanor for any person to keep or reside in a house of ill fame in this state, resorted to for purposes of prostitution or lewdness, or to keep a disorderly house, or any house for the purpose of assignation or prostitution. And the last-named section further places a ban upon the act of letting or leasing property to another, where the owner of the property knows that the same is to be used for the purpose of assignation or prostitution, and makes such act a misdemeanor.

"The abatement act is only in furtherance of the policy of the state as established by the sections of the Penal Code above adverted to, and differs in a general sense from those sections only in that, unlike those sections, its design was to establish a summary method, through the civil processes of the law, for putting a stop to the maintenance of houses of ill fame, as that designation is commonly understood, and other like places, where acts of lewdness and prostitution are habitually practiced and carried on as a business. The act, in other words, represents only the concrete application of the state's power of police, and, preferably to the courts of criminal jurisdiction, invokes the aid of the civil courts as the most certain instrumentality for the suppression of an evil which has been by the legislature deemed of so pernicious a nature, in its effect upon society, as to have actuated that body in denouncing its practice as a public crime." (*People v. Barbiere*, 33 Cal.App. 770, 775 [166 P. 812].) (3b) Hence we think that section 27642 of the Government Code reserving to district attorneys the duties of public prosecutor should embrace the abatement of such nuisances.

It follows from the foregoing factors that it is the duty of the district attorney rather than the county counsel to prosecute actions for abatement of houses of prostitution.

(5) That mandamus is the proper remedy is clear. As pointed out above, the district attorney *must* or *shall* bring an action to abate a public nuisance when so directed by the board of supervisors. (Code Civ. Proc., § 731, *supra*;Gov.*676 Code, § 26528.) "Shall" is mandatory (Gov. Code, § 14), and certainly "must" is also. The writ of mandamus issues "... to compel the performance of an act which the law specially enjoins, as a duty resulting from an office ..." (Code Civ. Proc., § 1085.)The statutes (Code Civ. Proc., § 731; Gov. Code, § 26528) specifically "enjoin" upon the district attorney "as a duty resulting from (his) office" the bringing of actions to abate public nuisances when directed by the board of supervisors. It may well be that where he is not directed by the board he has some discretion in the matter (Code Civ. Proc., § 731; Stats., 1913, p. 20, § 3), but plainly there is none where he is so directed. Moreover, in this case he refuses to exercise any discretion he might have as his failure to act is based solely upon his claim that the duty rests upon the county counsel; thus mandamus would be proper. (See *Hollman v. Warren*, 32 Cal.2d 351 [196 P.2d 562].)

Ordinarily a district attorney cannot be compelled by mandamus to prosecute a criminal case (see *Boyne v. Ryan*, 100 Cal. 265 [34 P. 707]; 55 C.J.S., Mandamus, § 69(f)) but here the mandatory duty to prosecute is imposed upon him and the statute leaves

him no discretion to exercise. In *Boyne v. Ryan, supra,* the court seemed to feel that mandamus would not lie because the court could not supervise the many ramifications of the prosecution of the action. In the instant case, however, the district attorney is not refusing to prosecute the action for any reason other than his view that he has no authority under the law. Under these circumstances we may presume he will diligently prosecute once he has commenced the action. (See Code Civ. Proc., § 1963(15).)

It is ordered that a peremptory writ of mandamus issue as prayed.

Gibson, C. J., Shenk, J., Edmonds, J., Traynor, J., Schauer, J., and Spence, J., concurred. *677

Cal.
Board of Sup'rs of Los Angeles County v. Simpson
36 Cal.2d 671, 227 P.2d 14

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H

Court of Appeal, First District, Division 3, California.
DIABLO VALLEY COLLEGE FACULTY SENATE, Plaintiff and Appellant,
v.
CONTRA COSTA COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.
No. A108713.

March 21, 2007.
Rehearing Denied April 6, 2007.
Review Denied June 27, 2007.

Background: Faculty senate of community college filed petition for a writ of mandate against community college district, and a complaint for declaratory relief against Chancellor. Faculty senate alleged that district was required to engage in collegial consultation with senate before effecting an administrative reorganization. The Superior Court, Contra Costa County, No. N03-0005,Steven K. Austin, J., denied relief, and faculty senate appealed.

Holding: The Court of Appeal, McGuiness, P.J., held that community college district was not required to engage in collegial consultation with faculty senate before effecting an administrative reorganization.

Affirmed.

West Headnotes

[1] Declaratory Judgment 118A 393

118A Declaratory Judgment
118AIII Proceedings
118AIII(H) Appeal and Error
118Ak392 Appeal and Error
118Ak393 k. Scope and Extent of Review in General. Most Cited Cases

Mandamus 250 187.9(6)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(6) k. Questions of Fact. Most Cited Cases

In mandate and declaratory relief proceedings, the appellate court defers to the trial court's findings of fact if they are supported by substantial evidence.

[2] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases

Where the material facts are undisputed, the trial court's interpretation of a statute is subject to de novo review.

[3] Colleges and Universities 81 7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases

Community college district was not required by applicable regulations to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization, which consisted of hiring professional deans for managerial positions previously filled on a part-time basis by faculty members; district's administrative organization could not be construed as a "district or college governance structure" within the meaning of regulation, and, moreover, the management system was not "related to faculty roles." 5 CCR § 53200(c)(6).

[4] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction

15Ak413 k. Administrative Construction. Most Cited Cases

Statutes 361 ⚿219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement.
See 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 111 et seq.; Cal. Jur. 3d, Administrative Law, § 147 et seq.

[5] **Administrative Law and Procedure 15A ⚿751**

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak751 k. Limitation of Scope of Review in General. Most Cited Cases
Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum.

[6] **Colleges and Universities 81 ⚿7**

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases
Court of Appeals would accord some weight to the Chancellor's interpretation of state regulations requiring collegial consultation for policies relating to academic and professional matters; Chancellor's careful consideration of the issue was evinced by his having issued four legal opinions, and Chancellor had consistently interpreted the regulation so as not to require collegial consultation for management reorganizations. 5 CCR § 53200(c)(6).

[7] **Administrative Law and Procedure 15A ⚿796**

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Two broad categories of factors are relevant to a court's assessment of the weight due an agency's interpretation of a legal text: those indicating that the agency has a comparative interpretive advantage over the courts, and those indicating that the interpretation in question is probably correct.

[8] **Administrative Law and Procedure 15A ⚿796**

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.

[9] **Administrative Law and Procedure 15A ⚿413**

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.

[10] **Administrative Law and Procedure 15A**

⚿413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
With respect to whether an agency's decision is probably correct, factors suggesting such correctness include: (1) indications that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time.

[11] Administrative Law and Procedure 15A
⚿796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Whatever the force of administrative construction, final responsibility for the interpretation of the law rests with the courts; at most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.

[12] Administrative Law and Procedure 15A
⚿412.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases
Rules governing the interpretation of statutes also apply to interpretation of regulations.

[13] Administrative Law and Procedure 15A
⚿413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage.

**295 Law Offices of Robert J. Bezemek, Robert Bezemek, Oakland, and Patricia Lim, for Plaintiff and Appellant.
**296 Diepenbrock Harrison, Karen L. Diepenbrock, Gene K. Cheever, Sacramento, Lara M. O'Brien, Fair Oaks, as Amicus Curiae on behalf of Plaintiff and Appellant.
Shupe and Finkelstein, John A. Shupe, San Mateo, for Defendant and Respondent Contra Costa Community College District.
Bill Lockyer, Attorney General, Jacob A. Appelsmith, Senior Assistant Attorney General, Miguel A. Neri and Fiel Tigno, Supervising Deputy Attorneys General, Karen Donald, Deputy Attorney General for Defendant and Respondent Chancellor of the California Community Colleges.

McGUINESS, P.J.
*1027 This case concerns whether the Education Code or applicable regulations required a community college district to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization. In September 2001, the President of Diablo Valley College (DVC) announced that, as part of a district-wide reorganization, professional deans would be hired for managerial positions previously filled on a part-time basis by faculty members. The Diablo Valley College *1028 Faculty Senate (Faculty Senate) complained this change could not be undertaken without its consent, based on regulations requiring collegial consultation for policies relating to "academic and professional matters." (Cal.Code Regs., tit. 5, §§ 53200, 53203, subd. (a).) [FN1] After several unsuccessful complaints to the Chancellor of the California Community Colleges (Chancellor), which resulted in a series of legal opinions from the Chancellor concluding the reorganization did not impose a duty of collegial consultation, the Faculty

Senate filed a petition for writ of mandate against the Contra Costa Community College District (District) and its governing board (Board) and a complaint for declaratory relief against the Chancellor. The trial court agreed that the regulations did not require collegial consultation and denied relief. As the third neutral entity to evaluate the question, we reach the same conclusion and affirm the judgment.

FN1. All unspecified section references are to Title 5 of the California Code of Regulations.

BACKGROUND

I. History of DVC Division Chairs and the Change to Professional Deans

With an annual enrollment of approximately 35,000 students, DVC is one of the largest community colleges in northern California, and it is one of three colleges managed by the District. Beginning in approximately 1968, DVC employed faculty "division chairs" to manage the various academic divisions within the college.[FN2] Division chairs were nominated by a majority vote of full-time faculty members within each division and then appointed to the position by the university president. Selected faculty members served up to two consecutive three-year terms as division chair and continued to teach part-time during this period. At the end of his or her service, a division chair generally resumed full-time teaching responsibilities. Division chairs acted as first-line managers for their divisions. They facilitated communications between faculty and administrators and managed most aspects of the faculty's involvement in college administration.

FN2. "Division" refers to an aggregate of related academic disciplines.

The division chair management system at DVC was first memorialized in writing in June 1977, when it was added to the District's Administrative Procedures Manual as AP 4111.07. The District moved this provision into different manuals over **297 the years, but the description of division chair selection procedures and responsibilities remained substantively unchanged. The parties dispute whether any of these acts were accompanied by collegial consultation and whether the Board ever formally adopted AP 4111.07 or its successors.

In addition, in 1982 or 1983, a description of the procedure for selecting division chairs was added to the collective bargaining agreement (CBA) between the District and United Faculty, the union representing faculty *1029 members in District colleges. The CBA identifies division chairs as "management positions." The significance of this description's appearance in the CBA is another subject of dispute between the parties.

In the spring of 2001, the chancellor of the District (Charles Spence) determined it would be advantageous for colleges in the District to switch from the division chair system, which all three were using, to full-time management by professional administrators. In accordance with this decision, on September 14, 2001, DVC president Mark Edelstein sent a memorandum to all faculty and staff advising them of the upcoming change. Because of the school's high enrollment and almost year-round instructional calendar, Edelstein explained it had become increasingly difficult for the college to manage its affairs effectively using part-time faculty division chairs, who worked for only nine months of the year and served relatively brief terms.

II. Opinions of the State Chancellor and Legal Proceedings

Although the change from division chairs to professional deans was accepted at other colleges in the District, it was controversial at DVC. On September 28, 2001, the Faculty Senate filed a formal complaint with statewide Chancellor Thomas J. Nussbaum arguing state regulations required the District to consult collegially with DVC faculty before implementing the proposed reorganization.[FN3]

Specifically, the Faculty Senate maintained that the reorganization was an "academic or professional matter[ ]" requiring consultation (§ 53203, subd. (a)) because it would alter faculty roles in governance (§ 53200, subd. (c)(6)). For such matters, Board policy required the District to reach "mutual agreement" with faculty before they could legally make the change.

FN3. Mr. Nussbaum served as Chancellor of the California Community Colleges from May 1996 to January 17, 2004. The current

statewide Chancellor is Marshall Drummond.

The Chancellor has statutory responsibility for establishing "minimum conditions" and ensuring these conditions are met at state community colleges as a prerequisite of their receipt of state funding. (Ed.Code, § 70901, subd. (b)(6).) One "minimum condition" is the requirement of collegial consultation with academic senates under certain defined circumstances. (§§ 51023, 53200, 53203.) The Chancellor treated the Faculty Senate's September 2001 letter (and subsequent letters) as a minimum conditions complaint triggering the office's duty to investigate, and on October 23, 2001, he issued the first of several legal opinions addressing the proposal to replace division chairs with full-time deans.

Legal opinion L 01-26 reported that the Board had tabled the proposed change for 90 days to allow for continuing informal discussions between the *1030 DVC faculty and administration. Because the Board had taken no action to implement the reorganization, the Chancellor observed a formal complaint about the lack of collegial consultation was "technically premature." Nevertheless, in order to provide guidance, the Chancellor identified specific changes **298 that might require collegial consultation if they were implicated by the District's actions, but he also repeated the general rule-set forth in his September 1997 advisory opinion on shared governance (legal opinion M 97-20)-that mere changes to a District's administrative organization do not require collegial consultation. The Chancellor issued a second opinion almost a month later. Legal opinion L 01-31 (November 15, 2001) repeated the prior opinion's conclusion that changes in the District's management structure "might" require collegial consultation if they could be construed as affecting faculty roles in governance. However, consultation would not be required if the change was merely to a past practice rather than to a policy. In addition, because the division chair practice was outlined in the CBA with United Faculty, the Chancellor believed collegial consultation would be inconsistent with a regulation exempting the provisions of collective bargaining agreements from such consultation obligations (§ 53204).

The Board formally approved the replacement of DVC's division chairs with full-time deans in December 2001, and the Faculty Senate renewed its complaint with Chancellor Nussbaum. On July 22, 2002, the Chancellor issued an exhaustive opinion (legal opinion O 02-19) reviewing all aspects of the District's reorganization, including the change from division chairs to deans. He concluded the regulations require collegial consultation only for "matters that go to the heart of faculty expertise," based on "their expertise as teachers and subject matter specialists and their professional status." Consistent with this understanding, the Chancellor's office had developed a general rule that management reorganizations do not require collegial consultation, and the Chancellor discerned no reason to depart from this rule with regard to the District's reorganization. Specifically, because the reorganization concerned only management of the colleges, it did not affect "governance structures ... related to faculty roles" (§ 53200, subd. (c)(6)). The Chancellor also found that the faculty's role in selecting division chairs was established through the collective bargaining process, and collegial consultation on the matter was therefore precluded.

On January 8, 2003, the Faculty Senate filed a petition for writ of mandate (Code Civ. Proc., § 1085) against the District and the Board and a complaint for declaratory relief against the Chancellor. Later in January 2003, counsel for the Faculty Senate sent a letter to Chancellor Nussbaum advising him that the Senate had just discovered the existence of a District policy for the selection of division chairs. This policy, which counsel represented had been in effect for many years, was contained in the District's Curriculum and Instruction Procedure Manual. The Chancellor responded with a fourth *1031 opinion. In legal opinion O 03-13 (May 2, 2003), the Chancellor observed that, just like AP 4111.07, there was no evidence the provision in question was ever adopted by the Board.[FN4] The Chancellor therefore continued to maintain collegial consultation was not required, and he reiterated his additional conclusions that the division chair procedure was not an "academic or professional matter" requiring consultation (§ 53200, subd. (c)) and that the parties' CBA precluded such consultation.

FN4. Indeed, the Curriculum and Instruction provision was simply one of several

successive versions of the procedure originally described in AP 4111.07.

After a hearing, on October 13, 2004, the trial court entered an order denying the petition for writ of mandate and denying "all relief requested in the complaint for declaratory relief." The court rejected the **299 respondents' arguments about the absence of a Board policy, interpreting the collegial consultation regulations as "applying to established practices, as well as to formally approved policies." Further, the court found the District and Board were estopped from denying that the division chair structure was an approved policy by their knowledge and approval of this job description over the years, through various policy and procedure manuals. The court also rejected the respondents' assertion that the CBA precluded collegial consultation, based on a finding that neither side intended the CBA to be binding on the subject of the division chair management structure.[FN5] However, the trial court agreed with the respondents that the regulations did not require collegial consultation because the switch from division chairs to deans did not implicate "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6).) The court interpreted the regulations as requiring collegial consultation only when a change in a college's governing structure diminishes the faculty's ability to perform their unique "faculty roles," as opposed to roles they might serve in management.

FN5. The court also observed this provision could not have been a negotiable term in the CBA because modification of a management structure was exclusively a management prerogative.

DISCUSSION

[1][2] In mandate and declaratory relief proceedings, we defer to the trial court's findings of fact if they are supported by substantial evidence. (*Franzosi v. Santa Monica Community College Dist.* (2004) 118 Cal.App.4th 442, 447, 13 Cal.Rptr.3d 25; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 974, 97 Cal.Rptr.2d 280.) Where, as here, the material facts are undisputed, the trial court's interpretation of the Education Code is subject to de novo review. (*Franzosi v. Santa Monica Community College Dist., supra,* 118 Cal.App.4th at p. 447, 13 Cal.Rptr.3d 25.)

[3] The District and the Chancellor, respondents herein, both adopt the trial court's interpretation of the applicable regulations. In addition, both liken *1032 the Chancellor's office to a state agency and argue the Chancellor's interpretation of the regulations must be accorded deference unless it is clearly erroneous. The District repeats several alternative arguments that the trial court rejected (concerning the Faculty Senate's standing, lack of a Board-approved policy, and the provision regarding division chairs in the CBA) and adds a new claim that the collegial consultation regulations are invalid because they exceed the shared governance authority granted to academic senates by the Legislature. We do not address these alternative arguments because we agree with the trial court's conclusion that the regulations did not require collegial consultation for the specific management reorganization implemented at DVC.

I. Legislative and Regulatory Framework

In 1988, the Legislature enacted Assembly Bill No. 1725 (AB 1725), which provided for substantial changes in the administration and governance of the state's community colleges.[FN6] (Stats.1988, ch. 973, §§ 1-72, pp. 3087-3144.) AB **300 1725 established a statewide board of governors and charged this body with establishing minimum standards to govern academic matters, hiring, administration and governance. (Stats.1988, ch. 973, § 8, pp. 3102-3105.) Among several other additions and amendments to the Education Code, newly added Education Code section 70901, subdivision (b)(1)(E) required the statewide board of governors to establish: "Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards." (Stats.1988, ch. 973, § 8, p. 3103.)

FN6. We grant the Chancellor's request for

judicial notice of legislative history concerning AB 1725. Other requests for judicial notice, filed by the Faculty Senate and amicus curiae Academic Senate for California Community Colleges, are denied because they concern arguments not addressed in this opinion.

With input from the statewide academic senate, the state Chancellor's office and others, the statewide board of governors promulgated regulations to implement this "minimum standards" directive for shared governance. The regulations direct the governing boards of local community college districts to adopt policies for delegating authority to academic senates. Such a policy must provide, at a minimum, "that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters."(§ 53203, subd. (a).) *1033 "Academic and professional matters" are defined exclusively as: "(1) curriculum, including establishing prerequisites and placing courses within disciplines; [¶] (2) degree and certificate requirements; [¶] (3) grading policies; [¶] (4) educational program development; [¶] (5) standards or policies regarding student preparation and success; [¶] (6) district and college governance structures, as related to faculty roles; [¶] (7) faculty roles and involvement in accreditation processes, including self-study and annual reports; [¶] (8) policies for faculty professional development activities; [¶] (9) processes for program review; [¶] [and] (10) processes for institutional planning and budget development ...." (§ 53200, subd. (c).) Beyond these 10 subjects, collegial consultation may also be required for "other academic and professional matters ... mutually agreed upon between the governing board and the academic senate."(§ 53200, subd. (c)(11).)

Collegial consultation may take either of two forms, as decided by each local district. With respect to a particular subject, the district may decide to "rely primarily upon the advice and judgment of the academic senate," in which case, absent exceptional circumstances, "the recommendations of the senate will normally be accepted."(§ 53203, subd. (d)(1).) Or, the district may elect to require "mutual agreement" with the academic senate for certain subjects. In such cases, when an agreement is not reached, "existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship."(§ 53203, subd. (d)(2).)

In accordance with these regulations, the District's Governing Board adopted Board Policy 1009, which stated that the Governing Board would consult collegially with the District's academic senate "when adopting policies and procedures on academic and professional matters as defined in Title 5, Section 53200(c)." Board Policy 1009 sets forth the same categories of "academic and professional matters" defined in section 53200, subdivision (c), and it provides that the Board will "rely primarily upon the advice and judgment" of **301 the academic senate with respect to curriculum, degree requirements and grading, and will "reach mutual agreement" with the academic senate with respect to all other categories.

II. Collegial Consultation Not Required for Administrative Reorganization

As discussed, local community college districts must consult collegially with faculty senates only with regard to specific "academic and professional matters." (§ 53203.) No one has suggested the parties here had a preexisting agreement to consult collegially about the administrative reorganization that occurred at DVC; thus, the question comes down to whether the reorganization comes within one of the categories enumerated in section 53200, subdivision (c). The only potentially relevant category in section 53200, as all *1034 parties recognize, is subdivision (c)(6), which identifies "district and college governance structures, as related to faculty roles," as an academic and professional matter requiring collegial consultation.

A. Weight to be Accorded the Chancellor's Opinions

[4][5] Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 756-757, 151 P.2d 233; *Spanish Speaking Citizens' Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1214, 103 Cal.Rptr.2d 75 (*Spanish Speaking Citizens*

).) " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

[6] The parties dispute how much weight, if any, we should accord the Chancellor's interpretation of section 53200, subdivision (c)(6). When he was general counsel for the statewide board of governors, Chancellor Nussbaum personally participated in drafting the regulations at issue in this case. Then, as Chancellor of the California Community Colleges, he assumed responsibility for enforcing these regulations, including the statutory requirement that colleges satisfy certain "minimum conditions" as a condition of receiving state aid.[FN7] Respondents analogize the Chancellor's office to an administrative agency and cite case law holding an agency's interpretation of its own regulations is controlling unless it is plainly erroneous or unauthorized. (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 613, 52 Cal.Rptr.2d 846; *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.* (1991) 1 Cal.App.4th 639, 645, 2 Cal.Rptr.2d 297.) While no precedent directly addresses this situation, a rule affording such great deference to legal opinions issued by the Chancellor's office appears to be precluded by *Yamaha Corp. of America v. State Bd. of Equalization***302* (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031(*Yamaha*).

> FN7. This authority was delegated to the Chancellor by the statewide board of governors pursuant to Education Code section 70901, subdivision (d).

[7] In *Yamaha*, the Supreme Court distinguished between the level of judicial deference to be accorded to quasi-legislative acts, in which an agency *1035 exercises its delegated lawmaking power, as compared with interpretive acts, in which an agency interprets the meaning or legal effect of a statute or regulation. (*Yamaha, supra,* 19 Cal.4th at pp. 7, 10-11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Whereas courts are bound by an agency's rulemaking, so long as it is authorized by the enabling legislation, "the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)Here, we are considering the Chancellor's interpretation of a regulation, as opposed to his quasi-legislative act in drafting the regulation itself. "The level of deference due to an agency's regulatory interpretation turns on a legally informed, commonsense assessment of its merit in the context presented. . .[Citation.]" (*State Farm Mutual Automobile Ins. Co. v. Quackenbush* (1999) 77 Cal.App.4th 65, 71, 91 Cal.Rptr.2d 381.) More specifically, the Supreme Court has proffered "two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: Those 'indicating that the agency has a comparative interpretive advantage over the courts,' and those 'indicating that the interpretation in question is probably correct.' [Citations.]" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Both of these factors weigh in favor of according the Chancellor's decision some deference.

[8][9] An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, " 'especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.'" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Although the specific regulations at issue are not highly technical, they are part of a complex regulatory system of shared governance that is very familiar to the Chancellor's office but essentially foreign to the courts. " 'A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' [Citation.]" (*Ibid.*)As is apparent from declarations and other opinions in the record, the Chancellor's office routinely issues opinions advising colleges and academic senates about whether collegial consultation is required for specific changes in policy or procedure. Because the Chancellor is thus

" 'immersed in administering' " the collegial consultation regulations, he can be expected to have " 'an intimate knowledge of the problems dealt with in the [regulations] and the various administrative consequences arising from particular interpretations. In contrast, a generalist court that visits a particular regulatory statute only infrequently lacks the advantage arising out of specialization.' " (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75, quoting Asimow, *The Scope of Judicial Review of Decisions of Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1195-1196.)

[10] *1036 With respect to whether an agency's decision is "probably correct" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031), factors suggesting such correctness include: (1) indications**303 that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time. (*Id.* at pp. 12-13, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75.) The Chancellor issued four legal opinions addressing the issues in this case. These opinions, especially the final two, contain exhaustive analyses of the Faculty Senate's complaints, and they were drafted by the Chancellor's chief legal counsel. It is hard to envision evidence of a more careful consideration than occurred here.

The record also demonstrates that the Chancellor has maintained a consistent interpretation of the phrase "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6)). In 1997, the Chancellor issued an advisory opinion addressing several questions about the shared governance regulations. One question asked, "Must the district consult collegially on the administrative organization chart of the college?" The Chancellor answered, "No. Neither the governing board nor its designee(s) are required to 'consult collegially' with the academic senate regarding organization of the district administration, but the board would certainly have the discretion to do so if it wished." [FN8] The following year, the Chancellor applied this interpretation to a specific set of facts when he addressed a reorganization proposed by the Los Angeles Community College District. In response to the Los Angeles district's claim that collegial consultation was not required, the Chancellor's July 2, 1998 opinion explained: "A particular change in the administrative organization of a district may or may not affect academic and professional matters; but if it does, the governing board would have an obligation to consult with the academic senate before approving the change in administrative structure. In other words, a district is free to revise its administrative organization chart without consulting the academic senate, but if the changes in administrative structure also implicate academic and professional matters then there is an obligation to consult collegially before the policy is adopted." The Chancellor concluded the Los Angeles reorganization went "well beyond merely changing the administrative organization" of the district. In addition to changing fiscal planning and budgeting processes, the reorganization affected "faculty roles in governance" because it altered the local district's procedures for determining curriculum. Here, because the *1037 District's switch from division chairs to deans is a much narrower reorganization and does not affect curriculum or other academic matters, the Chancellor's current interpretation of section 53200, subdivision (c)(6) is consistent with his opinion in the Los Angeles case that collegial consultation is required only when an administrative reorganization affects academic and professional matters.

> FN8. The Chancellor added that, although collegial consultation was not required, it would "probably be a good practice" for the district to inform faculty, staff and students and solicit their views before finalizing a reorganization. The record indicates the District took part in extended informal discussions with DVC faculty before it implemented the reorganization.

[11] Accordingly, we conclude some weight should be afforded to the Chancellor's consistent interpretation that section 53200, subdivision (c)(6) does not require collegial consultation for management reorganizations, and to his carefully considered opinion that the District was not required to consult collegially before implementing the reorganization **304 at issue in this case. However, this conclusion does not relieve us of the obligation to interpret the meaning of the regulation ourselves. "Whatever the force of administrative construction,

however, final responsibility for the interpretation of the law rests with the courts. 'At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.... While we are of course bound to weigh seriously such rulings, they are never conclusive.' [Citation.]" (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra,* 24 Cal.2d at p. 757, 151 P.2d 233.)

B. De Novo Review Supports Chancellor's Interpretation

[12][13] Rules governing the interpretation of statutes also apply to interpretation of regulations. (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75.) "In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage. [Citation.]" (*Modern Paint & Body Supply, Inc. v. State Bd. of Equalization* (2001) 87 Cal.App.4th 703, 708, 104 Cal.Rptr.2d 784.)

The Chancellor determined the reorganization at issue in this case did not require collegial consultation because the District's administrative organization could not be construed as a "district or college governance structure" (§ 53200, subd. (c)(6)). Unlike curriculum committees or budget committees, which clearly function in college governance, the Chancellor concluded the process of choosing managers of various college divisions is administrative in nature. This conclusion is reasonable, and it is consistent with the preexisting rule that collegial consultation is not required for administrative reorganizations that do not impact academic matters, such as curriculum.

Moreover, without regard to whether management by division chairs or deans constitutes a "district or college governance structure," it seems *1038 clear that this management system is not "related to faculty roles." As the trial court observed, the phrase "as related to faculty roles" in section 53200, subdivision (c)(6) acts as a limitation imposed on the general subject of "district and college governance structures." Thus, only when a district seeks to change aspects of such governance structures that are related to "faculty roles"-such as, for example, curriculum or faculty hiring committees-must it consult collegially with the faculty. The regulations do not define "faculty roles." However, all other "academic and professional matters" defined in section 53200, subdivision (c) concern subjects that are within the unique expertise of faculty members, as opposed to administrators or any other specialists. These matters concern the development of academic programs and curriculum (§ 53200, subds. (c)(1), (2), (4), (9)), assessment of students and their progress toward degrees (§ 53200, subds. (c)(2), (3), (5)), professional development for faculty (§ 53200, subd. (c)(8)), and institutional development with respect to accreditation, review of existing academic programs, future planning and budgeting (§ 53200, subds. (c)(7), (9), (10)). Consistent with these other defined "academic and professional matters," we construe the term "faculty roles" in subdivision (c)(6) as referring to the traditionally understood roles faculty members play in a college. Faculty members are uniquely qualified to instruct students and assess their work, to design and implement curriculum, to develop the college's educational offerings, and to address broader institutional issues such as **305 accreditation and budgeting to the extent these issues depend upon or impact student instruction. No evidence in the record, however, suggests faculty members at DVC are uniquely qualified to manage their peers or to decide which management structure the college should use.

The Faculty Senate advances two arguments against this construction. First, the Senate argues the District's management structure is related to faculty roles because DVC faculty members previously had a "role"-i.e., a function they performed-in selecting their managers and occasionally serving as managers themselves. In other words, because, through long-standing practice, the DVC faculty once played a role in college management, no change in management affecting this role could be accomplished without collegial consultation. This interpretation renders the definition of "faculty roles" in section 53200, subdivision (c)(6) entirely contextual, dependent in any given case on the faculty's history of involvement in a particular area. Such a broad construction would undermine the independent statutory authority of local governing boards to manage the colleges in their districts. (Ed.Code, § 70902.) In addition, it could prove unworkable in practice if districts were required to engage in the formal process of collegial consultation for every administrative practice that

marginally involved faculty. (See *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75 [court should consider consequences that might flow from a particular construction *1039 in interpreting a statute or regulation].) In short, the faculty's past participation does not convert the District's reorganization of purely managerial positions into an "academic or professional matter" requiring collegial consultation.

Second, reaching back to legislative history, the Faculty Senate argues section 53200 must be interpreted broadly consistent with the purpose of AB 1725, which was to expand the role of faculty in shared governance. However, the Senate's characterization of AB 1725 is far too narrow. This bill enacted comprehensive reforms of all aspects of the state's community college system, and we find no indication in the legislative history to support the Senate's view that a primary purpose of the statute was to increase faculty's ability to participate in purely administrative decisions concerning their colleges. On the contrary, among numerous other declarations, AB 1725 stated: "It is the intent of the Legislature that the California Community Colleges be governed under an efficient and flexible system.... The Legislature recognizes that the California Community Colleges is a statewide system with common standards and practices governing local initiative and control. The Legislature therefore finds and declares that clarifying and strengthening the respective roles of the Board of Governors and the Chancellor of the California Community Colleges will enhance the efficiency and flexibility of the system." (Stats.1988, ch. 973, § 3, p. 3093.) Thus, the Legislature envisioned clearly defined and enhanced powers for these administrators. With respect to shared governance, AB 1725 stated: "It is a general purpose of this act to improve *academic quality,* and to that end the Legislature specifically intends to authorize more responsibility for faculty members in duties that are *incidental to their primary professional duties.*" (Stats.1988, ch. 973, § 4(n), p. 3096, italics added.) This purpose of enhancing faculty responsibility "incidental to their primary professional duties" is consistent with the interpretation of section 53200, subdivision (c)(6) we reach here-i.e., districts must consult collegially with faculty for changes in college governance when such changes **306 are related to the faculty's acknowledged areas of expertise. Although the Legislature clearly intended to expand the participation of faculty (and students) in college governance, the language of AB 1725 does not indicate a legislative intent to encourage faculty involvement in purely administrative matters.[FN9]

FN9. In its reply brief and at oral argument, the Faculty Senate urged us to rely on *Irvine Valley College Academic Senate v. South Orange County Community College Dist.* (2005) 129 Cal.App.4th 1482, 29 Cal.Rptr.3d 336(*Irvine Valley*) as a "mirror image" of this case. The *Irvine Valley* decision construed a specific statute, Education Code section 87360, which expressly requires a governing board to reach joint agreement with the academic senate in developing faculty hiring procedures. Based on this statute's language and legislative history, *Irvine Valley* concluded the Legislature intended academic senates to have a role in developing hiring procedures. (*Irvine Valley, supra,* 129 Cal.App.4th at pp. 1491-1492, 29 Cal.Rptr.3d 336.) The court never considered the regulation before us, or whether, for purposes of this regulation, faculty have an acknowledged "role" in choosing their managers. *Irvine Valley* is also notable for its rejection of the community college district's argument that requiring a joint agreement with faculty would give academic senates an unfair "veto" in the process of creating hiring policies. (*Id.* at p. 1492, 29 Cal.Rptr.3d 336.) Because we do not reach the District's argument that the collegial consultation regulations here give greater power to academic senates than is statutorily permitted, we have no occasion to consider the validity of *Irvine Valley's* observations on this point.

***1040 DISPOSITION**

The judgment is affirmed. Appellant shall bear costs on appeal.

PARRILLI and POLLAK, JJ., concur.
Cal.App. 1 Dist.,2007.
Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.

148 Cal.App.4th 1023, 56 Cal.Rptr.3d 294, 217 Ed. Law Rep. 877, 07 Cal. Daily Op. Serv. 2998, 2007 Daily Journal D.A.R. 3801

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a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the opening of the semester, quarter or term, or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes should also be provided.

54033. Member of Military. A student claiming application of Section 22854 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

54033.5. Students in Advanced Degree Programs. Students attending a Community College under an advanced degree completion program for which the district contracted with the federal government on or before May 1, 1973, shall be classified as a resident until he has resided in this state the minimum time necessary to become a resident. This section shall have no force or effect after May 1, 1975, and is, as of that date, repealed.

NOTE: Authority cited: Sections 22830, 22841 and 22865, Education Code. Reference: Chapter 7 (commencing with Section 22800) of Division 16.5, Education Code, as amended by Stats. 1973, Chap. 206.

History: 1. New section filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).

54034. Adult Aliens. An adult alien lawfully admitted to the United States for permanent residence and having residence in this state for more than one year and claiming residence immediately prior to the residence determination date and claiming residence for tuition purposes shall show his or her immigrant visa to the admissions officer at the time of classification.

54035. Minor Aliens. A minor alien claiming residence for tuition purposes shall be required at the time of classification to show his or her immigrant visa, his or her parents' immigrant visa and evidence that the parent has had permanent residence in the state for more than one year after admission to permanent residence prior to the residence determination date.

54036. Public School Employee Holding Valid Credential. A student claiming residence status pursuant to Section 22857 of the Education Code should provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a provisional credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 13125 of the Education Code and is enrolled in courses necessary to

fulfill credential requirements, or is enrolled in courses necessary to fulfill credential requirements of the fifth year of education prescribed by subdivision (b) of Section 13130 of the Education Code.

History: 1. Amendment filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).

54037. **Apprentices.** A student claiming resident status pursuant to Section 22858.5 of the Education Code shall provide evidence such as a card or certification from the Joint Apprenticeship Committee or the student's employer, evidencing such apprenticeship status.

54038. **Student Under Custody of Resident Adult.** A student claiming residence under provisions of 22852.5 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 22839, 22841, 22865, Education Code. Reference: Chapter 7 (commencing with Section 22800) of Division 16.5, Education Code as amended by Stats. 1973, Chapter 206.

History: 1. New section filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).

54040. **Exceptions from the One-Year Waiting Period.** Those exceptions from payment of nonresident tuition provided by Education Code Sections 22850 (certain minors), 22853 (military dependents), and 22854 (military members) apply only so long as the student has not been in California long enough to have one year of California residence.

SUBCHAPTER 3. APPEAL

54060. **Appeal Procedure.** Any student, following a final decision on residence classification by the college, may make written appeal to the superintendent of the district or his designee within 30 calendar days of notification of final decision by the campus regarding classification. The superintendent, on the basis of the Statement of Legal Residence, pertinent information contained in the registrar's file, and information contained in the student's appeal, will make his determination and notify the student by United States mail, postage prepaid.

SUBCHAPTER 4. REFUNDS

54070. **Refunds.** The governing board of each Community College district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the Community College for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or his withdrawal from an education program at the Community College for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

HRegents of University of California v. Superior Court (Bradford)
Cal.App.2.Dist.
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; DAVID PAUL BRADFORD, Real Party in Interest.
No. B051229.

Court of Appeal, Second District, Division 2, California.
Nov. 28, 1990.

SUMMARY

An employee of a campus of the University of California brought an action against the university after he was asked to resign when he proved unwilling to comply with a superior court ruling in a previous action enjoining the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes. The employee filed a motion requesting a summary ruling that Ed. Code, § 68062, subd. (h) (alien can be resident student for tuition purposes unless precluded by Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) from establishing domicile in the United States), precludes undocumented alien students from qualifying as residents of California for tuition purposes, and that the subdivision, as so interpreted, is constitutional. The trial court ruled in favor of the employee, and the university petitioned for writ relief. (Superior Court of Los Angeles County, No. C 607748, David P. Yaffe, Judge.)

The Court of Appeal denied the petition. It held that the trial court did not abuse its discretion in denying the university's motion to transfer the case to the county in which the superior court injunction was granted. It also held that Ed. Code, § 68062, subd. (h), precludes undocumented alien students from qualifying as residents of California for tuition purposes, and that the subdivision, as so construed, does not deprive such aliens of equal protection of the laws. (Opinion by Klein (B.), J., [FN†] with Gates, Acting P. J., and Fukuto, J., concurring.)

FN† Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 28--Constitutionality of Legislation--Effect of Finding of Unconstitutionality--Finding by Trial Court.
A trial court declaration that a state statute is unconstitutional does not bind state agencies or officials, since, under Cal. Const., art. III, § 3.5, a state agency is forbidden to refuse to enforce a statute thought to be unconstitutional unless an appellate court has so determined.
[See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 57.]
(2) Courts § 25--Exclusive and Concurrent Jurisdiction--Priority and Retention of Jurisdiction--Denial of Motion to Transfer.
In an action against the University of California by a university employee who was asked to resign after he proved unwilling to comply with the ruling of a superior court, in an earlier action, permanently enjoining the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes, the trial court did not err in declining the university's request to transfer the action to the county of the previous action. One court of the state may not interfere with another court's exercise of its own jurisdiction, and where several courts have concurrent jurisdiction over a certain type of proceeding, the first one to assume and exercise such jurisdiction in a particular case acquires an exclusive jurisdiction. However, under the circumstances, there was no absolute bar to the trial court's jurisdiction and no abuse of discretion in its denial of the motion to transfer: the employee was not a party to the prior action; he was terminated in the county where he brought his action and the witnesses were located there; the university was content to submit the case to the trial court twice for adjudication on the merits; and the action was already several years old when the university moved to

transfer it. Further, the employee could participate in the prior action only by the bizarre procedure of requesting leave to intervene in order to petition to vacate the judgment.

(3) Aliens' Rights § 8--Classification of Undocumented Alien as Resident for University Tuition Purposes.
Ed. Code, § 68062, subd. (h) (alien can be resident student for tuition purposes unless precluded by Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) from establishing domicile in the United States), precludes undocumented alien students from qualifying as residents of California for tuition purposes, even though the federal immigration statute omits to mention undocumented persons in its classification scheme for immigrant and nonimmigrant aliens, and thus undocumented aliens do not fall into any class of nonimmigrant aliens required by the federal statute to maintain a residence abroad. Congress reserved no classification for such aliens, since in entering the country without applying for admission they have broken the law and are subject to arrest and deportation. Ed. Code, § 68062, subd. (h), was intended to permit only legally admitted alien students to qualify as residents for tuition purposes.
[See **Cal.Jur.3d,** Universities and Colleges, §§ 125, 126.]
(4) Aliens' Rights § 8--Classification of Undocumented Alien as Resident for University Tuition Purposes--Constitutionality of Statutory Prohibition.
In an action against the University of California by a university employee who was asked to resign after he proved unwilling to comply with the ruling of a superior court, in an earlier action, permanently enjoining the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes, the trial court properly granted the employee's motion for a summary ruling that Ed. Code, § 68062, subd. (h), as construed to preclude undocumented alien students from qualifying as residents of California for tuition purposes, was constitutional. There is no authority forbidding a state, on equal protection grounds, to provide services to its lawful residents that it denies to others. In comparison with the fundamental rights and privileges that are denied undocumented aliens by state and federal laws, the privilege to receive subsidized public university education is considerably less significant. Further, California also denies this subsidy to citizens of neighboring states and to aliens holding student visas; yet the state has substantial and legitimate reasons to favor both these groups over undocumented aliens, rather than the reverse.
[Validity of state laws denying aliens living in United States, rights enjoyed by citizens-Supreme Court cases, note, 47 **L.Ed.2d** 876.]

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Robert Rubin, Peter Roos and Susan E. Brown as Amici Curiae on behalf of Petitioners.
No appearance for Respondent.
Knickerbocker & Reed and Richard L. Knickerbocker for Real Party in Interest.
KLEIN (B.), J. [FN*]

FN* Assigned by the Chairperson of the Judicial Council.

By law, California's public colleges and universities charge lower tuition for California residents than for nonresidents. (See Ed. Code, §§ 68050-68051.) At one time, students who were not United States citizens were classified by statute as nonresidents unless they were "lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States." (Former Ed. Code, §§ 68076-68077, repealed 1983.)

In 1982, however, in a suit by alien University of Maryland students whose parents were admitted to this country as employees of official international organizations, the Supreme Court of the United States ruled that when federal immigration law authorizes a particular classification of nonimmigrant aliens to establish domicile in the United States, a state university is precluded, under the supremacy clause, from refusing to regard them as residents. (*Toll v. Moreno* (1982) 458 U.S. 1 [73 L.Ed.2d 563, 102 S.Ct. 2977].)

Accordingly, in 1983 our Legislature amended the Education Code to eliminate the requirement that alien students seeking the benefits of resident tuition must show they were lawfully admitted for

permanent residence. (Stats. 1983, ch. 680, § 1, p. 2636.) A new rule was substituted: an alien student may be classified as a resident for tuition purposes "unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States." (Ed. Code, § 68062, subd. (h).)

The Chancellor of the California State University asked the Attorney General whether, under this new statute, "undocumented aliens"-i.e., noncitizens who lack valid visas, having entered or remained in the United States in violation of federal immigration law-are precluded from *976 qualifying as California residents for tuition purposes. In June 1984 the Attorney General published his formal opinion that undocumented aliens are, under the statute, considered nonresidents. (67 Ops.Cal.Atty.Gen. 241 (1984).)

Two months later several undocumented alien students filed an action in the Superior Court of Alameda County seeking to establish that Education Code section 68062, subdivision (h), as interpreted by the Attorney General, violated article I, section 7 of the California Constitution, which guarantees every person equal protection of the laws. In June 1985, after trial, the court ruled in the students' favor and permanently enjoined the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes. [FN1]

FN1 The residency statutes, including section 68062, are applicable to the University of California only to the extent its Regents adopt them. (See Ed. Code, § 68134.) On September 21, 1984, the Regents adopted section 68062, subdivision (h), with the immaterial exception of the redundant phrase, "including an unmarried minor alien."

(1) A trial court declaration that a state statute is unconstitutional does not bind state agencies or officials. To the contrary, a state agency is forbidden to refuse to enforce a statute thought to be unconstitutional unless an appellate court has so determined. (Cal. Const., art. III, § 3.5.)Nonetheless, the university defendants elected to comply with the Alameda County injunction without testing its validity by taking an appeal.

Subsequently, the action which is the subject of the present petition was commenced, in the Superior Court of Los Angeles County, by David Paul Bradford. Bradford, an employee of the University of California at Los Angeles assigned to determine the residency status of students, was invited to resign after he evinced unwillingness to comply with the ruling of the Alameda County court. In his lawsuit, Bradford asked that the University of California be required to comply with Education Code section 68062, subdivision (h), as interpreted by the Attorney General.

The university moved for summary judgment or for summary adjudication of the dispositive issues. The trial court denied these motions on January 10, 1990. The university renewed its motions, again asking the trial court to rule summarily that Education Code section 68062 (hereafter section 68062) does not require the university to consider alien students' immigration status in determining whether they are residents. Bradford filed his own motion requesting a summary ruling that section 68062 was correctly interpreted by the Attorney General and is constitutionally valid. *977

On May 30, 1990, the trial court ruled against the university and in favor of Bradford.

The university immediately altered its tactics and filed a motion to dismiss the action or, in the alternative, to transfer it to the Superior Court of Alameda County for consolidation with the earlier litigation, in which final judgment had been entered five years earlier.

The trial court denied this motion on June 22, 1990. In the course of argument on the motion, the court summarized its view as follows: "You have this action pending in this court. You litigate it through to a decision against you, and then, at that point, you claim that the court should yield its jurisdiction because there's another action that is still pending, in essence, up in Alameda County .... It doesn't seem to me that there is any sound rule of judicial policy that would permit a litigant to do that."

The university then filed the present petition for a writ of mandate or prohibition to overturn the trial

court's May 30 or June 22 rulings, or both. At the Supreme Court's direction, we issued an alternative writ.

1. The trial court did not abuse its discretion in declining the university's request to transfer the action to Alameda County.

(2) In urging that the trial court is powerless to entertain this action because the Alameda County action dealt with the same subject matter, the university relies on the well-established principle that one court of the state may not interfere with another court's exercise of its own jurisdiction. (E.g., *Anthony v. Dunlap* (1857) 8 Cal. 26 [District Court of the Fifth Judicial District has no power to enjoin enforcement of a judgment entered in the Sixth Judicial District].) The university further invokes the rule of priority of jurisdiction: where several courts have concurrent jurisdiction over a certain type of proceeding, the first one to assume and exercise such jurisdiction in a particular case acquires an exclusive jurisdiction. (E.g., *Browne v. Superior Court* (1940) 16 Cal.2d 593 [107 P.2d 1, 131 A.L.R. 276] [guardian administering the affairs of a conservatee under instructions of the Superior Court of Santa Barbara County should not be subjected to instructions on the same subject by the Superior Court of the City and County of San Francisco],)

Whether an action would work a true interference with another court's jurisdiction, and whether one court should yield priority of jurisdiction to another, are, of course, questions which can be determined only from an examination of the particular case. Here, myriad reasons supported the trial *978 court in its decision not to dismiss the action or transfer it to the Superior Court of Alameda County. Bradford was not a party to the Alameda County action; Bradford and his counsel are located in Los Angeles; Bradford's employment was terminated in Los Angeles, and the witnesses are there; the university was content to submit the case to the Los Angeles court twice for adjudication on the merits; the university filed its motion to dismiss or transfer only after the Los Angeles court twice rejected its position on the merits and sustained Bradford's position (see *California Fed. Sav. & Loan Assn. v. Superior Court* (1987) 189 Cal.App.3d 267 [234 Cal.Rptr. 413]); the action was already several years old when the university moved to dismiss or transfer it; the Los Angeles action cannot affect the Alameda County injunction against the California State University, which is not a party to Bradford's action; the theoretical danger that either trial court might hold the university in contempt for obeying the other trial court's injunction, and that the appellate courts would permit such an absurdity, is realistically nonexistent; the Alameda action came to final judgment five years ago (see *Browne v. Superior Court, supra,* 16 Cal.2d at p. 597); Bradford could participate in the Alameda case only by the bizarre procedure of requesting leave to intervene in order to petition to vacate the judgment; the university did not appeal the Alameda County injunction; the Alameda court's decision is of little legal significance because only an appellate court can make a binding ruling; the issue raised should be settled by an appellate court; and it makes no discernible difference whether it is decided in the First or the Second Appellate District. In addition, at oral argument on this writ petition, the university expressed its wish that this court decide the merits of the tuition issue.

Under these circumstances, we find no absolute bar to the trial court's jurisdiction, and no abuse of discretion in its denial of the university's motion to dismiss or transfer the case.

2. Section 68062 precludes undocumented alien students from being classified as residents for tuition purposes.

Section 68062, subdivision (h), provides that an alien can be a resident student for tuition purposes "unless precluded by the Immigration and Nationality Act ... from establishing domicile in the United States."

(3) The university advances a clever formal proof that this statute does not classify undocumented aliens as nonresidents. Federal immigration law classifies all noncitizens into two groups: immigrant aliens and nonimmigrant aliens. (8 U.S.C. § 1101(a)(3), (15).) All aliens are immigrants except those who fall into one of 14 classes of nonimmigrants. (*Id.,**979 § 1101(a)(15)(A)-(J).) Examples of the 14 classes of nonimmigrant aliens are diplomats, tourists, business travelers, students, foreign press correspondents, passengers in transit, and ships' crews. In certain of these classifications (e.g., tourists, business travelers, and students) the nonimmigrant is required to maintain a residence in a

foreign country with no intention of abandoning it. (*Id.*, § 1101(a)(15)(B), (F).) Other classes of nonimmigrants are not required to maintain a residence abroad. For example, foreign residence is not required for officers and employees of recognized international organizations or members of their immediate families, as in *Toll v. Moreno, supra*; there the students' parents were employed by the Inter-American Development Bank and the International Bank for Reconstruction and Development. (See 8 U.S.C. § 1101(a)(15)(G)(iv).) Aliens who maintain a foreign residence they do not intend to abandon cannot also be residents of California, for a person can have only one residence. (Ed. Code, § 68062, subd. (a); Gov. Code, § 244, subd. (b).)

The immigration statute omits to mention undocumented persons in this classification scheme. Hence, the university contends, undocumented aliens do not fall into any class of nonimmigrant aliens required by the federal statute to maintain a residence abroad. Not being required to maintain a residence abroad, the argument continues, undocumented aliens are free to establish their residence in California. Therefore undocumented aliens are not "precluded by the Immigration and Nationality Act from establishing domicile in the United States." *Quod erat demonstrandum.*

This reasoning is Daedalian but unpersuasive. Federal law forbids aliens to enter the United States without applying for admission. (8 U.S.C. §§ 1101(a)(4), 1181(a), 1201.)Those who nonetheless succeed in doing so, or in overstaying their visas, are subject to arrest and deportation. (*Id.*, §§ 1251, 1252, 1357.) Similar sanctions await those who procure admission by fraud. (*Id.*, §§ 1182(a)(19), 1251.) It is unremarkable that Congress, in organizing various classifications of lawfully admitted nonimmigrant aliens, reserved no classification for aliens who have entered or remained in this country unlawfully. We do not interpret the federal immigration statutes, therefore, as authorizing, or not precluding, the establishment of domicile here by those whose very presence is unlawful. It would be senseless so to interpret section 68062, subdivision (h).

We find distinguishable a 1980 decision holding an undocumented alien qualified to receive benefits under a statute that provides compensation for crime victims who are "residents of California." (*Cabral v. State Bd. of Control* (1980) 112 Cal.App.3d 1012 [169 Cal.Rptr. 604].) That case, unlike *980 the present one, arose under a statute which contains no definition of the term "resident."

The legislative history of subdivision (h) firmly supports our interpretation of section 68062. The pertinent legislative documents are surveyed in the Attorney General's published opinion, which is attached as an appendix to this opinion. These committee summaries, staff analyses, and official digests demonstrate that subdivision (h) was intended to permit only legally admitted alien students to qualify as residents for tuition purposes.

Accordingly, we hold that section 68062, subdivision (h), precludes undocumented alien students from qualifying as residents of California for tuition purposes.

3. So construed, subdivision (h) is constitutional.

(4) The university contends the statute, as construed by the Attorney General and by this court deprives undocumented alien students of the equal protection of the laws. The university and amici curiae argue the law discriminates against the poor, senselessly deprives good students of a postsecondary education, and furthers no substantial state interest.

It would serve no purpose to recite in detail the familiar principles governing an equal protection analysis. (See, e.g., *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 798-799 [187 Cal.Rptr. 398, 654 P.2d 168]; *Curtis v. Board of Supervisors* (1972) 7 Cal.3d 942, 951-952 [104 Cal.Rptr. 297, 501 P.2d 537]; *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578-579 [79 Cal.Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194]; see *Plyler v. Doe* (1982) 457 U.S. 202, 216-218 [72 L.Ed.2d 786, 798-800, 102 S.Ct. 2382].) We are unaware of any authority forbidding a state, on equal protection grounds, to provide services to its lawful residents that it denies to others. California law withholds from undocumented aliens fundamental political, economic, and social privileges. They cannot vote, cannot work, and are ineligible for public assistance, free medical care, and unemployment compensation. (See Cal. Const., art. II, § 2; *De Canas v. Bica* (1976) 424 U.S. 351 [47 L.Ed.2d 43, 96 S.Ct. 933]; Welf. &

Inst. Code, §§ 11104, 14007.5; Unemp. Ins. Code, § 1264; Cal. Code Regs., tit. 22, §§ 50301, 50302

Federal law, too, discriminates against undocumented aliens in the most basic way: it forbids their entry into the country and authorizes their arrest and deportation. Even undocumented aliens given preferred status under federal law-those authorized under the Immigration Reform and Control *981 Act of 1986 to become lawful temporary residents and thereafter permanent residents-are disqualified for five years from most federal programs of financial assistance to the needy. (8 U.S.C.§ 1255a(h).) If federal financial assistance may be withheld from newly legalized aliens who, under the 1986 amnesty law, " 'are to be welcomed as full and productive members of our nation' " (*California Rural Legal Assistance, Inc. v. Legal Services Corporation* (9th Cir. 1990) 917 F.2d 1171, 1178), surely the state is not constitutionally required to subsidize the university education of other aliens who have never legalized their status.

In comparison with these fundamental rights and privileges denied undocumented aliens by state and federal laws, the privilege withheld here-subsidized public university education-is considerably less significant. Further, California also denies this subsidy to citizens of neighboring states and to aliens holding student visas; yet the state has substantial and legitimate reason to favor both these groups over undocumented aliens, rather than the reverse.

The state's legitimate interests in denying resident tuition to undocumented aliens are manifest and important. We will name just a few: the state's interests in not subsidizing violations of law; in preferring to educate its own lawful residents; in avoiding enhancing the employment prospects of those to whom employment is forbidden by law; in conserving its fiscal resources for the benefit of its lawful residents; in avoiding accusations that it unlawfully harbors illegal aliens in its classrooms and dormitories; in not subsidizing the university education of those who may be deported; in avoiding discrimination against citizens of sister states and aliens lawfully present; in maintaining respect for government by not subsidizing those who break the law; and in not subsidizing the university education of students whose parents, because of the risk of deportation if detected, are less likely to pay taxes.

Plyler v. Doe, supra, 457 U.S. 202, relied on by the university, is distinguishable. That decision invalidated a Texas statute that authorized local school districts to exclude undocumented aliens from public elementary and secondary schools. The court found undocumented aliens are not, under federal equal protection analysis, a suspect class, nor is education a fundamental right. (457 U.S. at p. 223 [72 L.Ed.2d at p. 803].) It concluded, however, that Texas had failed to show that denial of free public education to young children furthered any substantial state interest. (*Id.*, at p. 230 [72 L.Ed.2d at pp. 807-808].) The heart of the opinion is found in the following passage: "[The statute] imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy *982 will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." (*Id.*, at p. 223 [72 L.Ed.2d at p. 803].) There is, of course, a significant difference between an elementary education and a university education.

In reaching our decision, we interpret California's statutes and Constitution. We are not empowered to pass on the wisdom of legislation. Accordingly, we do not evaluate the contention of amici curiae that charging undocumented aliens nonresident tuition is shortsighted and cruel. Nor do we adjudge Bradford's response that a university education is also beyond the financial means of many hardworking, deserving citizens.

The alternative writ is discharged, and the petition for writ of mandate or prohibition is denied.

Gates, Acting P. J., and Fukuto J., concurred.

Petitioners' application for review by the Supreme Court was denied March 28, 1991. Mosk, J., and Broussard, J., were of the opinion that the application should be granted.*983

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Opinion No. 84-101--June 1, 1984

SUBJECT:EDUCATION CODE SECTION 68062(h) AND UNDOCUMENTED ALIENS--Educ. C § 68062(h) does not permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education.

Requested by: CHANCELLOR, CALIFORNIA STATE UNIVERSITY

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Clayton P. Roche, Deputy

The Honorable Ann Reynolds, Chancellor of the California State University, has requested an opinion on the following question:

Does section 68062, subdivision (h) of the Education Code permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education?

CONCLUSION

The legislative history of Education Code section 68062, subdivision (h), demonstrates that the Legislature did not intend to, and the subdivision does not, permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education.

ANALYSIS

Section 68000 *et. seq.* of the Education Code [FN1] set forth "uniform student residency requirements." The Legislature enacted these provisions with the intent that California's "public institutions of higher education shall apply uniform rules, as set *984 242 ATTORNEY GENERAL'S OPINIONS [VOLUME 67 forth... [therein] in determining whether a student shall be classified as a resident or nonresident." (§ 68000.) [FN2] The significance of these rules is that a student who is classified as a "nonresident" must pay nonresident tuition in addition to other required fees. (§ 68050.) To be classified as a "resident," a student must have been a resident "in the state for more than one year immediately preceding the residency determination date" established for the institution. (§§ 68017, 68023.) The rules set forth for the determination of residence are generally those set forth in sections 243-245 of the Government Code for the determination of legal residence or domicile. (See §§ 68060-68062.) Some exceptions to residency requirements are also set forth. (See §§ 68070-68082.)

FN1 All section references are to the Education Code unless otherwise indicated.

FN2 These rules are applicable to the University of California only to the extent adopted by the Regents. (§ 68134.)

The question presented herein is whether section 68062, subdivision (h), permits undocumented aliens to establish residence for tuition purposes so they may avoid the payment of the nonresident tuition. That subdivision provides:

"(h) An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, *et. seq.*) from establishing domicile in the United States." [FN3]

FN3 Subdivision (i) then states:
"The residence of an unmarried minor shall be derived from his or her parents pursuant to the provisions of subdivisions (f) and (g)."

For our purposes herein we understand the term "undocumented alien" to mean an alien who cannot prove that he or she is in the United States legally. (See, e.g., Plyler v. Doe (1981) 457 U.S. 202, 206, fn. 2.) Accordingly, "undocumented alien" usually refers to illegal aliens.

Subdivisions (h) and (i) were added to section 68062 by chapter 680, Statutes of 1983. That chapter also repealed section 68076, which had been the provision of law for determining the ability of alien students to establish residency status for tuition purposes. Section 68076 provided:

"A student who is an adult alien shall be entitled to resident classification *if he has been lawfully admitted to the United States for permanent*

residence in accordance with all applicable laws of the United States; provided, that he has had residence in the state for more than one year after such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution." (Emphasis added.)

It is thus seen that prior to January 1, 1984, the effective date of section 68062, subdivision (h), an adult alien [FN4] could establish residence only if he or she was "lawfully admitted to the United States" and such lawful admission was "for permanent residence" in accordance with all laws of the United States, viz, the Immigration and Nationality Act, 8 U.S.C.A. § 1101, *et seq.* Consequently, under prior law, there was clearly no provision for an undocumented alien or an illegal alien to establish residence *985 JUNE 1984] ATTORNEY GENERAL'S OPINIONS 243 for tuition purposes. The wording of the prior law had its roots in the Immigration and Nationality Act. As succinctly set forth in a relatively recent law review note:

"Under the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503 (1976), an 'alien' is defined as 'any person not a citizen or national of the United States.' *Id.* § 1101(a)(3). Two classes of aliens exist under the Act: immigrant or resident aliens, and nonimmigrant aliens. Immigrant aliens are those admitted to permanent residence. *Id.* § 1151(a). Nonimmigrant aliens are generally admitted only for temporary periods and include students, tourists, diplomats, and temporary workers. *Id.* § 1101(a)(15). Aliens may also be admitted under the parole power of the Attorney General. *Id.* § 1182(d)(5)." (Note: Equal Treatment of Aliens, 31 Stan. L. Rev. 1069, fn. 2.)

FN4 The statute appears to have been silent with respect to unmarried minor aliens.

Consequently, the thrust of section 68076 was that immigrant aliens could establish residence but nonimmigrant aliens, *although lawfully admitted,* could not. The latter category of aliens were here for temporary or presumptively not permanent residence. And, as already noted, undocumented aliens clearly were excluded under the statutory language.

With this background we now undertake the task of construing the 1983 legislation. Two basic approaches have been suggested. In support of the conclusion that undocumented or illegal aliens may establish residence under subdivision (h) of section 68062, it is urged that the subdivision is clear on its face. It is pointed out that the law no longer provides that an alien must have been "lawfully admitted"; that it merely uses the unmodified noun "alien" in conjunction with the proviso that the alien must not be "precluded by the Immigration and Nationality Act... from establishing domicile in the United States." It is further pointed out that nothing in the Immigration and Nationality Act expressly precludes an illegal alien from establishing a domicile. (See Cabral v. State Bd. of Control (1980) 112 Cal. App. 3d 1012, 1016-1017, fn. 5.) Finally, it is pointed out that under the case law, aliens, both legal (if not in nonimmigrant categories specifically requiring an intent to retain a foreign domicile) and illegal or undocumented, may establish a domicile of choice. (See Toll v. Moreno (1982) 458 U.S. 1, nonimmigrant alien holding G-4 VISA may establish domicile in United States; Plyler v. Doe, *supra,* 457 U.S. 202, 227, fn. 22, "illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within a State"; Cabral v. State Bd. of Control, *supra,* 112 Cal. App. 3d 1012, illegal aliens could establish residence (domicile) for purposes of Victims of Violent Crimes Act; Rzeszotarski v. Rzeszotarski (D.C.App. 1972) 296 A.2d 431, 435, husband's "lack of status" under immigration laws irrelevant to issue of domicile for purposes of obtaining divorce; Seren v. Douglas (Colo.App. 1971) 489 P.2d 601, student could establish intent to be domiciliary of state for tuition purposes as soon as student visa expired.)

In support of the conclusion that subdivision (h) of section 68062 does not permit an illegal or undocumented alien to establish residence for tuition purposes, it is urged that the sole reason for the repeal of section 68076 and the enactment of subdivision (h) of section 68062, was to conform California law to the recent decision of the United States Supreme Court in Toll v. Moreno, *supra,* 458 U.S. 1.*986 244 ATTORNEY GENERAL'S OPINIONS [VOLUME 67

That case held that nonimmigrant aliens (i.e., those not admitted for permanent residence) holding a G-4 visa (officers or employees of certain international organizations and their families) were not precluded

by the Immigration and Nationality Act from establishing a domicile in the United States. Accordingly, the Supreme Court held that under the Supremency Clause (U.S. Const., art. VI, cl. 2), the State of Maryland, which predicated in-state status for tuition purposes at the University of Maryland on domicile, could not bar "G-4 [FN5] aliens (and their dependents) from acquiring in- state status." (*Id.*, at p. 17.)

> FN5 G-4 visas are issued to nonimmigrant aliens who are officers or employees of certain international organizations and to members of their immediate families. (8 U.S.C. § 1101(a)(15)(G)(iv).)

In reaching its decision with respect to the ability of G-4 visa holders and their dependents to establish domicile in the United States, the Court relied upon its prior decision in the same litigation to that effect, Elkins v. Moreno (1978) 435 U.S. 647.In that case the Court noted that, with respect to some nonimmigrant categories, Congress had specifically provided that such aliens were admitted on the condition that they did not intend to abandon their foreign residence, e.g., visitors to the United States, students, aliens in "immediate and continuous transit," vessel crewman "who intends to land temporarily," and temporary workers having a residence in a foreign country; that, accordingly, such nonimmigrants could not establish a domicile in the United States, absent an adjustment of status. From such specific provisions, the court implied an ability of other nonimmigrant aliens, such as G-4 VISA holders, to be capable of becoming domiciliaries of Maryland. (*Id.*, at pp. 665-668.)Thus in Toll v. Moreno, *supra*, the Court stated:

"The Immigration and Nationality Act of 1952, 66 Stat. 163, as amended, 8 U.S.C. § 1101*et. seq.* (1976 ed. and Supp. IV), represents 'a comprehensive and complete code covering all aspect of admission of aliens to this country, whether for business or pleasure, or as immigrants seeking to become permanent residents.' Elkins v. Moreno, 435 U.S., at 664.*The Act recognizes two basic classes of aliens, immigrant and nonimmigrant.* 19With respect to the nonimmigrant class, the Act establishes various categories, the G-4 category among them. For many of these nonimmigrant categories, Congress has precluded the covered alien from establishing domicile in the United States. *Id.*, at 665.20But significantly, Congress has allowed G-4 aliens -- employees of various international organizations, and their immediate families -- to enter the country on terms permitting the establishment of domicile in the United States. *Id.*, at 666.In light of Congress' explicit decision not to bar G-4 aliens from acquiring domicile, the State's decision to deny 'in-state' status to G-4 aliens, solely on account of the G-4 alien's federal immigration status, surely amounts to an ancillary 'burden not contemplated by Congress' in admitting these aliens to the United States. ..." (*Id.*, at pp. 13-14, emphasis added. Fns. omitted.)

The argument in support of the second position, that is, that section 68062, subdivision (h), does *not* permit undocumented aliens to establish residence for tuition *987 JUNE 1984] ATTORNEY GENERAL'S OPINIONS 245 purposes, points out the underscored language above as being the source of the language contained in subdivision (h) that an alien may establish residence "unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101*et. seq.*) from establishing domicile in the United States." The argument then urges that such fact fortifies the basic contention that subdivision (h) was enacted merely to conform California law with the Supreme Court's decision in Toll v. Moreno. Accepting this as true, the argument proceeds to point out that the terminology of both Toll v. Moreno and subdivision (h) refers to the establishment of domicile *in the United States*, not domicile in the state. Accordingly, as we understand the argument, subdivision (h) requires a determination of domicile under federal law, viz., the Immigration and Nationality Act. The argument urges that that act contemplates the establishment of "lawful domicile" when domicile is a relevant consideration under the act. (See, e.g., Lok v. I.N.S. (2d Cir. 1982) 681 F.2d 107, 109-110.)Therefore, the argument concludes, an undocumented or illegal alien is precluded under the federal act from establishing a domicile *in the United States*.[FN6]

FN6 An alternate conclusion to be drawn from the wording of subdivision (h) which occurs to us is that the Immigration and Nationality Act, as construed by the Supreme Court, insofar as it either precludes or permits the establishment of a domicile, does so *only with respect to nonimmigrant,*

or legal, documented aliens. Accordingly, the language of section 68062, subdivision (h), was intended to refer solely to documented aliens. In short, the federal act does not purport to deal with the question of the establishment of a domicile on the part of undocumented aliens. See Cabral v. State Bd. of Control, *supra*, 112 Cal. App. 3d 1012, 1017, at fn. 5. This approach is more consistent with the argument that the 1983 legislation was merely intended to conform California law with Toll v. Moreno.

Without any further evidence of legislative intent, both arguments for and against construing section 68062, subdivision (h), as permitting undocumented aliens to qualify as residents for tuition purposes in California colleges and universities are fairly evenly balanced. The literal wording of the statute arguably permits the construction that they may qualify. However, taking into consideration (1) the prior laws in California, and (2) the timing of the 1983 amendments with the decision in Toll v. Moreno, *supra*, 458 U.S. 1, such arguably evinces an intent on the part of the Legislature to deal only with the problem of nonimmigrant, and hence legal, aliens such as G-4 visa holders and their dependents.

In construing a statute, the primary consideration is to attempt to ascertain the intent of the Legislature in order to effectuate the purpose of the law. Although normally a statute which is clear and unambiguous is to be construed according to its plain meaning, this is not the case if to do so will lead to absurd results or will be contrary to the manifest intent of the Legislature. Accordingly, we need not concern ourselves herein with whether section 68062, subdivision (h), is or is not ambiguous. We may construe the enactment in accordance with the discernible intent of the Legislature even if the statute is unambiguous. [FN7] In so doing, we can consider the *988 246 ATTORNEY GENERAL'S OPINIONS [VOLUME 67 historical circumstance of the statute and its legislative history, including legislative committees' analyses of the legislation as it went through the enactment process. [FN8]

FN7
As stated by our Supreme Court in County of Sacramento v. Hickman (1967) 66 Cal. 2d 841, 849, fn. 6:

"6 We disagree, however, with respondent's sweeping assertion that in all cases 'ambiguity is a condition precedent to interpretation.' Although this proposition is generally true, 'The literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole.' (Silver v. Brown (1966) 63 Cal. 2d 841, 845 [48 Cal.Rptr. 609, 409 P.2d 689], and cases cited.)"

FN8 With respect to the foregoing general and specific rules of construction, see, e.g., Sand v. Superior Court (1983) 34 Cal. 3d 567, 570-571; People v. Black (1982) 32 Cal. 3d 1, 5; California Teachers Assn. v. San Diego Community College Dist. (1981) 28 Cal. 3d 692; Southern Cal. Gas Co. v. Public Utilities Com. (1979) 24 Cal. 3d 653, 658-659 (statements in legislative committee analyses); Southland Mechanical Constructors Corp. v. Nixen (1981) 119 Cal. App. 3d 417, 427-428 (statements in legislative committee analysis).

We have reviewed available records concerning Assembly Bill 2015 for the 1983 legislative session, which became chapter 680, Statutes of 1983. These include the Staff Analysis of the Senate Committee on Education (7/13/83); the Ways and Means Committee Summary prepared for the June 9, 1983, hearing; the Legislative Analyst's analyses, dated June 6 and August 19, 1983; the Staff Analysis of the Assembly Education Committee; the analysis of the Senate Democratic Caucus, dated 8/23/83; and the Enrolled Bill Report, dated 9/2/83.

A review of all these documents demonstrates unequivocally that the purpose of the bill was to bring California law in conformity with federal law, specifically the United States Supreme Court decision in Toll v. Moreno, *supra*, 458 U.S. 1, as to residence requirements for attendance at public colleges and universities, and also the Court's decision in Nyquist v. Mauclet (1977) 432 U.S. 1 as to student aid. [FN9] The documents are replete with statements to that effect. Thus, with respect to the "historical circumstances" of the enactment of

chapter 680, Statutes of 1983, this confirms what has been urged in the arguments presented to us as to Toll v. Moreno.

FN9 Nyquist v. Mauclet, *supra*, 432 U.S. 1, held a New York law to be unconstitutional as a denial of equal protection which required "resident aliens" to have applied for citizenship in order to qualify for state financial assistance for higher education. The aliens involved in the suit were legally within the United States. Accordingly, the suit did not involve nor rule upon undocumented or illegal aliens.
Chapter 680, Statutes of 1983 also amended section 69535 with respect to eligibility for student aid, requiring that "[a]ll Cal Grant recipients shall be residents of California, as determined... pursuant to the provisions of Part 41 (commencing with Section 68000)." Accordingly, as to aliens, the student aid provision now incorporates by reference section 68062.

More importantly, the foregoing documents and analyses demonstrate an intent on the part of the Legislature to *exclude* from the scope of section 68062*illegal* aliens. Thus, the Staff Analysis of the Assembly Education Committee stated, inter alia:

"DIGEST: This bill provides that the determination of residency for *legally admitted* alien students be the same for purposes of:

"attendance of [sic] a public postsecondary institution. ..." (Emphasis added.)

And, similarly the Ways and Means Committee Summary stated inter alia:

"*This bill* provides that the determination of residency for *legally admitted* alien students and out of state students be the same for purposes of:

"a. attendance at a public postsecondary institution. ..." (Second emphasis added.) *989 JUNE 1984] ATTORNEY GENERAL'S OPINIONS 247

And finally, the Legislative Analyst's Digests of the bill (AB 2015) stated inter alia both on June 6, 1983 and August 19, 1983: [FN10]

"This bill deletes the requirements that aliens be U.S. citizens or legally admitted as permanent residents in order to be classified as a California resident for purposes of tuition or financial aid. The bill places aliens under the same residency requirements as other out-of-state students, except for alien students who are specifically precluded from establishing U.S. residency under federal immigration law. Alien students who would not be eligible for California residency under this bill include illegal aliens and students on temporary student visas." (Emphasis added.)

FN10 The bill was enacted on August 29, 1983 and sent to enrollment on such date.

Accordingly, the legislative history of section 68062, subdivision (h), demonstrates that it was intended only to implement federal law as declared by the United States Supreme Court in Toll v. Moreno, *supra*, 458 U.S. 1, and was not intended to encompass undocumented or illegal aliens. Thus, insofar as the arguments pro and con with reference to the question considered herein may have been said to have been evenly balanced before an examination of the legislative history of Assembly Bill 2015, 1983 Legislative Session, this history clearly tips the scales in favor of the conclusion that section 68062, subdivision (h), does not permit undocumented or illegal aliens to acquire residency for tuition purposes. [FN11]

FN11 It is possible that this interpretation of the statute raises constitutional issues of equal protection. (See Plyler v. Doe, *supra*, 457 U.S. 202.)We have not been asked and have not considered such questions.

We so conclude. *990

Cal.App.2.Dist.
Regents of University of California v. Superior Court
225 Cal.App.3d 972, 276 Cal.Rptr. 197, 64 Ed. Law Rep. 427

END OF DOCUMENT

California Community Colleges

REVISED 2004-2005 Board Of Governors Fee Waiver Application

This is an application to have your enrollment fees waived. This FEE WAIVER is for California residents only. If you need money to help with books, supplies, food, rent, transportation and other costs, please complete a FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA) right away. Contact the Financial Aid Office for more information. The FAFSA is available at www.fafsa.ed.gov or at the Financial Aid Office.

Name: _____ SSN# _____
Last First Middle Initial

Email (If available): _____ Telephone Number: (_____)_____

Home Address: _____ Date of Birth: _____/_____/_____
Street City Zip Code

Has the Admissions or the Registrar's Office determined that you are a California resident? ☐ Yes ☐ No

Note: Students who are exempted from paying nonresident tuition under Education Code Section 68130.5 (AB 540) are not California residents. If you are not a California resident you are not eligible for this fee waiver. Do not complete this application.

IMPLEMENTATION OF THE CALIFORNIA DOMESTIC PARTNER RIGHTS AND RESPONSIBILITIES ACT

Recent legislation (Assembly Bill 205) extends new rights, benefits, responsibilities and obligations to individuals in domestic partnerships registered with the California Secretary of State under Section 297 of the Family Code. If you are in a Registered Domestic Partnership (RDP), you will be treated as an independent married student to determine eligibility for this Fee Waiver and will need to provide income and household information for your domestic partner. If you are a dependent student and your parent is in a Registered Domestic Partnership, you will be treated the same as a student with married parents and income and household information will be required for the parent's domestic partner.

****These new provisions apply to state funded student financial aid ONLY, and not to federal student financial aid.**

Are you or your parent in a Registered Domestic Partnership with the California Secretary of State under Section 297 of the Family Code? *(Answer "Yes" if you or your parent are separated from a Registered Domestic Partner but have NOT FILED a Notice of Termination of Domestic Partnership with the California Secretary of State's Office.)* ☐ Yes ☐ No

If you answered "Yes" to the question above treat the Registered Domestic Partner as a spouse. You are required to include your domestic partner's income and household information or your parent's domestic partner's income and household information in Questions 3, 6, 7, 8, 9, 10, 11, 12.

Student Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Separated ☐ Widowed ☐ Registered Domestic Partnership

DEPENDENCY STATUS

1. Were you born before January 1, 1981? ☐ Yes ☐ No
2. As of today, are you married or in a Registered Domestic Partnership? (Answer "Yes" if you are separated but not divorced or have not filed a termination notice to dissolve partnership.) ☐ Yes ☐ No
3. Do you have children who receive more than half of their support from you, or other dependents who live with you (other than your children and spouse) who receive more than half of their support from you, now and through June 30, 2005? ☐ Yes ☐ No
4. Are you an orphan or a ward of the court, or were you a ward of the court until your 18th birthday? ☐ Yes ☐ No
5. Are you a veteran of the U.S. Armed Forces? ☐ Yes ☐ No

- **If you answered "Yes" to any of the questions 1 - 5, you are considered an INDEPENDENT student and must provide income and household information about yourself (and your spouse or RDP if applicable). Skip to Question #8.**
- **If you answered "No" to all questions 1 - 5, complete the following questions:**

6. If your parent(s) or his/her RDP filed or will file a 2003 U.S. Income Tax Return, were you, or will you be claimed on their tax return as an exemption by either or both of your parents? ☐ Won't File ☐ Yes ☐ No
7. Do you live with one or both of your parent(s) and/or his/her RDP? ☐ Yes ☐ No

- **If you answered "No" to questions 1 - 5 and "Yes" to either question 6 or 7, you must provide income and household information about your PARENT(S)/RDP. Please answer questions for a DEPENDENT student in the sections that follow.**
- **If you answered "No" or "Parent(s) won't file" to question 6, and "No" to question 7, <u>you are a dependent student for all student aid except this fee waiver.</u> You may answer questions as an INDEPENDENT student on the rest of this application, but please try to get your PARENT information and file a FAFSA so you may be considered for other student aid. You cannot get other student aid without your parent(s) information.**

METHOD A

8. Are you (the student ONLY) currently receiving monthly cash assistance from:
   TANF/CalWORKs? ☐ Yes ☐ No
   SSI/SSP (Supplemental Security Income/State Supplemental Program)? ☐ Yes ☐ No
   General Assistance? ☐ Yes ☐ No
9. If you are a dependent student, are your parent(s)/RDP receiving monthly cash assistance from TANF/CalWORKs or SSI/SSP as a primary source of income? ☐ Yes ☐ No

- **If you answered "Yes" to question 8 or 9 you are eligible for a FEE WAIVER. Sign the Certification at the end of this form. You are required to show current proof of benefits. Ask the Financial Aid Office for the FAFSA to be eligible for other financial aid opportunities.**

METHOD B

10. DEPENDENT STUDENT: How many persons are in your parent(s) household? (Include yourself, your parent(s), and anyone who lives with your parent(s) and receives more than 50% of their support from your parents, now and through June 30, 2005.) _____

11. INDEPENDENT STUDENT: How many persons are in your household? (Include yourself, your spouse, and anyone who lives with you and receives more than 50% of their support from you, now and through June 30, 2005.) _____

12. 2003 Income Information

	DEPENDENT STUDENT: PARENT(S)/ RDP INCOME	INDEPENDENT STUDENT: STUDENT (& SPOUSE'S/ RDP) INCOME
a. Adjusted Gross Income (If 2003 U.S. Income Tax Return was filed, enter the amount from Form 1040, line 34; 1040A, line 21; 1040EZ, line 4 or Telefile, line I).	$_____	$_____
b. All other income (Include **ALL money** earned in 2003 that is not included in line (a) above. Include TANF benefits, disability, Social Security, child support. Include Earned Income Credit (Form 1040 Line 63, 1040A Line 65 or 1040EZ Line 8) and Additional Child Tax Credit (Form 1040 Line 65 or 1040A Line 42) if applicable.	$_____	$_____
TOTAL Income for 2003 (Sum of a + b)	$_____	$_____

The Financial Aid Office will review your income and let you know if you qualify for a FEE WAIVER under Method B. If you do not qualify using this simple method, you should file a FAFSA.

SPECIAL CLASSIFICATIONS

13. Do you have certification from the California Department of Veterans Affairs or the National Guard Adjutant General that you are eligible for a dependent's fee waiver? Submit certification. ☐ Yes ☐ No

14. Are you eligible as a recipient of the Congressional Medal of Honor or as a child of a recipient, or a dependent of a victim of the September 11, 2001 terrorist attack? Submit documentation from the Department of Veterans Affairs or the CA Victim Compensation and Government Claims Board. ☐ Yes ☐ No

15. Are you eligible as a dependent of a deceased law enforcement/fire suppression personnel killed in the line of duty? Submit documentation from the public agency employer of record and income information. ☐ Yes ☐ No

- If you answered "Yes" to question 13, 14, or 15, you are eligible for a FEE WAIVER. Sign the Certification at the end of this form.

CERTIFICATION FOR ALL APPLICANTS: READ THIS STATEMENT AND SIGN BELOW

I hereby swear or affirm, under penalty of perjury, that all information on this form is true and complete to the best of my knowledge. **If asked by an authorized official, I agree to provide proof of this information, which may include a copy of my and my spouse/registered domestic partner and/or my parent's/registered domestic partner's 2003 U.S. Income Tax Return(s).** I also realize that any false statement or failure to give proof when asked may be cause for the denial, reduction, withdrawal, and/or repayment of my waiver. I authorize release of information regarding this application between the college, the college district, and the Chancellor's Office of the California Community Colleges.

_____ _____ _____ _____

Applicant's Signature *Date* *Parent Signature (Dependent Students Only)* *Date*

FOR OFFICE USE ONLY

☐ BOGFW-A ☐ TANF/CalWORKs ☐ GA ☐ SSI/SSP

☐ BOGFW-B ☐ BOGFW-C

☐ Special Classification ☐ Vet/National Guard Dep. ☐ Medal of Honor or S/D dependent ☐ Dep't of deceased law enforcement/fire personnel

RDP ☐ Student ☐ Parent

☐ Student is not eligible

Notes:

Certified by: Date:

(Revised 2/4/05)

C
67 Ops. Cal. Atty. Gen. 241, 1984 WL 162066 (Cal.A.G.)

Office of the
Attorney

General
State of
California

Opinion
No. 84-101

June 1, 1984

THE HONORABLE ANN REYNOLDS
CHANCELLOR OF THE CALIFORNIA STATE UNIVERSITY

THE HONORABLE ANN REYNOLDS, CHANCELLOR OF THE CALIFORNIA STATE UNIVERSITY, has requested an opinion on the following question:

Does section 68062, subdivision (h) of the Education Code permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education?

CONCLUSION

The legislative history of Education Code section 68062, subdivision (h), demonstrates that the Legislature did not intend to, and the subdivision does not, permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education.

ANALYSIS

Section 68000 et seq. of the Education Code [FN1] set forth "uniform student residency requirements." The Legislature enacted these provisions with the intent that California's "public institutions of higher education shall apply uniform rules, as set forth ... therein in determining whether a student shall be classified as a resident or nonresident." (§ 68000.) [FN2] The significance of these rules is that a student who is classified as a "nonresident" must pay nonresident tuition in addition to other required fees. (§ 68050.) To be classified as a "resident," a student must have been a resident "in the state for more than one year immediately preceding the residency determination date" established for the institution. (§§ 68017, 68023.) The rules set forth for the determination of residence are generally those set forth in sections 243-245 of the Government Code for the determination of legal residence or domicile. (See §§

68060-68062.) Some exceptions to residency requirements are also set forth. (See §§ 68070-68082.)

The question presented herein is whether section 68062, subdivision (h), permits undocumented aliens to establish residence for tuition purposes so they may avoid the payment of the nonresident tuition. That subdivision provides:

"(h) An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.) from establishing domicile in the United States. [FN3]

For our purposes herein we understand the term "undocumented alien" to mean an alien who cannot prove that he or she is in the United States legally. (See, e.g., Plyler v. Doe (1981) 457 U.S. 202, 206, fn. 2.) Accordingly, "undocumented alien" usually refers to illegal aliens.

Subdivisions (h) and (i) were added to section 68062 by chapter 680, Statutes of 1983. That chapter also repealed section 68076, which had been the provision of law for determining the ability of alien students to establish residency status for tuition purposes. Section 68076 provided:

"A student who is an adult alien shall be entitled to resident classification if he has been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States; provided, that he has had residence in the state for more than one year after such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution." (Emphasis added.)

*2 It is thus seen that prior to January 1, 1984, the effective date of section 68062, subdivision (h), an adult alien [FN4] could establish residence only if he or she was "lawfully admitted to the United States" and such lawful admission was "for permanent residence" in accordance with all laws of the United States, viz, the Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq. Consequently, under prior law, there was clearly no provision for an undocumented alien or an illegal alien to establish residence for tuition purposes.

The wording of the prior law had its roots in the Immigration and Nationality Act. As succinctly set forth in a relatively recent law review note:

"Under the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503 (1976), an 'alien' is defined as 'any person not a citizen or national of the United States.' Id. § 1101(a)(3). Two classes of aliens exist under the Act: immigrant or resident aliens, and nonimmigrant aliens. Immigrant aliens are those admitted to permanent residence. Id. § 1151(a). Nonimmigrant aliens are generally admitted only for temporary periods and include students, tourists, diplomats, and temporary workers. Id. § 1101(a)(15). Aliens may also be admitted under the parole power of the Attorney General. Id. § 1182(d)(5)." (Note: Equal Treatment of Aliens, 31 Stan.L.Rev. 1069, fn. 2.)

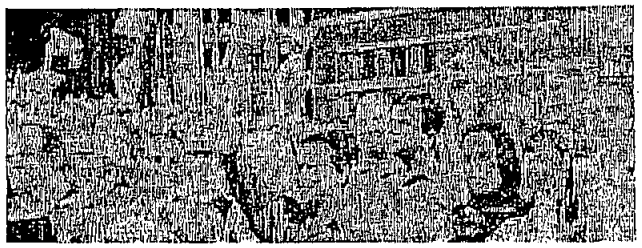
Consequently, the thrust of section 68076 was that immigrant aliens could establish residence but nonimmigrant aliens, although lawfully admitted, could not. The latter category of aliens were here for temporary or presumptively not permanent residence. And, as already noted, undocumented aliens clearly were excluded under the statutory language.

With this background we now undertake the task of construing the 1983 legislation. Two basic approaches have been suggested. In support of the conclusion that undocumented or illegal aliens may establish residence under subdivision (h) of

New to U.S. Immigration?

Learn about visiting the U.S. temporarily as a visitor (tourist, student, or worker) or permanently.

→ Learn about U.S. Citizenship



Have you filed with USCIS?

Yes

My case is pending

My case has been approved

My case has been denied

Not Yet Filed

MORE INFORMATION:

Permanent Residence (green card)

Processing Times

Processing Delay Frequently Asked Questions

Case Status Online

Change Your Address with USCIS

For Employers

Careers at USCIS

INFOPASS

E-FILE ONLINE

E-Verify

Sign up for USCIS e-mail updates

WHAT'S NEW:

USCIS Issues Revised Guidance on Child Status Protection Act (CSPA)
Policy changes toward aliens who had aged out prior to enactment of the CSPA

USCIS Announces a Proposal to Increase Periods of Stay for TN Professional Workers From Canada or Mexico
Period of Admission for TN Workers to Increase From One to Three Years

USCIS Announces Enhancements to E-Verify Program
Improvements Will Focus on Decreasing Mismatch Rates for Naturalized Citizens

More News

Important Alerts

To Report Suspected Criminal Violations by USCIS Employees

Naturalization Interviews to be Conducted on Saturdays, Sundays and After Normal Business Hours on Weekdays
USCIS is expanding work hours and adding staff to complete Naturalization applications within our processing time goals.

Help with:

Check Case Status
Enter Case Number Here

Schedule an appointment

File Online

H

Court of Appeal, Third District, California.
Robert MARTINEZ et al., Plaintiffs and Appellants,
v.
REGENTS OF the UNIVERSITY OF CALIFORNIA et al., Defendants and Respondents.
No. C054124.

Sept. 15, 2008.
Certified for Partial Publication.[FN*]

FN* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts II and III of the DISCUSSION.

As Modified on Denial of Rehearing Oct. 7, 2008.

Background: United States citizens paying nonresident tuition at state colleges and universities brought action challenging state statute allowing certain illegal aliens to pay less-expensive resident tuition. The Superior Court, Yolo County, No. CV052064,Thomas Edward Warriner, J., entered judgment of dismissal. Citizens appealed.

Holdings: The Court of Appeal, Sims, Acting P.J., held that:
(1) state statute making illegal aliens eligible for less-expensive resident tuition was preempted by federal statute precluding illegal aliens from preferential treatment on the basis of residence for postsecondary education benefits, and
(2) state statute was preempted by federal statute precluding illegal aliens from eligibility for State benefits unless State law affirmatively provides for such eligibility.

Reversed.

West Headnotes

[1] Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases
Term "nonimmigrant aliens" in statute governing nonresident tuition at state colleges and universities does not refer to out-of-state United States citizens. West's Ann.Cal.Educ.Code § 68130.5.

[2] Appeal and Error 30 ⚿917(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k915 Pleading
30k917 Demurrers
30k917(1) k. In General. Most Cited Cases
In reviewing a demurrer, appellate court does not accept as true allegations of legal conclusions.

[3] Appeal and Error 30 ⚿917(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k915 Pleading
30k917 Demurrers
30k917(1) k. In General. Most Cited Cases
On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded; the court does not, however, assume the truth of contentions, deductions or conclusions of law.

[4] Appeal and Error 30 ⚿856(2)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k851 Theory and Grounds of Decision of Lower Court
30k856 Grounds for Sustaining Decision Not Considered
30k856(2) k. Rulings as to Pleadings

and Evidence. Most Cited Cases
Judgment dismissing an action after sustaining a demurrer without leave to amend must be affirmed if any one of the several grounds of demurrer is well taken.

[5] **Pleading 302 ⚿193(5)**

302 Pleading
302V Demurrer or Exception
302k193 Grounds for Demurrer to Declaration, Complaint, Petition, or Statement
302k193(5) k. Insufficiency of Facts to Constitute Cause of Action. Most Cited Cases
It is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory.

[6] **Pleading 302 ⚿225(2)**

302 Pleading
302V Demurrer or Exception
302k219 Operation and Effect of Decision on Demurrer
302k225 Amendment or Further Pleading After Demurrer Sustained
302k225(2) k. Authority and Discretion of Court. Most Cited Cases
It is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.

[7] **Statutes 361 ⚿181(1)**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases
Court's primary function in construing federal statutes is to give effect to legislative intent.

[8] **Statutes 361 ⚿161(1)**

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k160 Implied Repeal by Act Relating to Same Subject
361k161 In General
361k161(1) k. In General. Most Cited Cases
When two state statutes are so inconsistent that there is no possibility of concurrent operation, the doctrine of implied repeal provides that the most recently enacted statute expresses the will of the Legislature.

[9] **Aliens, Immigration, and Citizenship 24 ⚿103**

24 Aliens, Immigration, and Citizenship
24I Aliens in General
24k103 k. Preemption. Most Cited Cases

States 360 ⚿18.43

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.43 k. International Relations; Aliens. Most Cited Cases
In determining whether a state statute related to immigration is preempted by federal law, the court must determine whether the state statute is a "regulation of immigration," i.e., a determination of who should or should not be admitted into the country and the conditions under which a legal entrant may remain; if the state statute regulates immigration, it is preempted because the power to regulate immigration is exclusively a federal power.

[10] **Aliens, Immigration, and Citizenship 24 ⚿103**

24 Aliens, Immigration, and Citizenship
24I Aliens in General
24k103 k. Preemption. Most Cited Cases

States 360 ⚿18.43

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.43 k. International Relations; Aliens. Most Cited Cases
That aliens are subjects of a state statute does not necessarily constitute a regulation of immigration for

purposes of federal preemption.

[11] States 360 ⚿18.7

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.7 k. Occupation of Field. Most Cited Cases
A state statute is preempted by federal law if Congress manifested a clear purpose to effect a complete ouster of state power, including state power to promulgate laws not in conflict with federal laws, with respect to the subject matter which the statute attempts to regulate; an intent to preclude state action may be inferred where the system of federal regulation is so pervasive that no opportunity for state activity remains.

[12] States 360 ⚿18.5

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.5 k. Conflicting or Conforming Laws or Regulations. Most Cited Cases
A state law is preempted by federal law if it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress; statute is preempted if it conflicts with federal law, making compliance with both state and federal law impossible.

[13] Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases

States 360 ⚿18.25

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.25 k. Education. Most Cited Cases
State statute making illegal aliens eligible for less-expensive resident tuition at state colleges and universities, if they attend a California high school for three years, graduate or attain the equivalent, and promise to seek legal status if they ever become eligible for legalization, was preempted by federal statute precluding illegal aliens from preferential treatment on the basis of residence for postsecondary education benefits. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 505, 8 U.S.C.A. § 1623; West's Ann.Cal.Educ.Code § 68130.5.

[14] Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases

States 360 ⚿18.25

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.25 k. Education. Most Cited Cases
Eligibility for less-expensive resident tuition is a "benefit" for purposes of federal statute precluding illegal aliens from preferential treatment on the basis of residence for postsecondary education benefits. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 411, 8 U.S.C.A. § 1621; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 505, 8 U.S.C.A. § 1623.

[15] Statutes 361 ⚿217.3

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.3 k. Legislative Hearings, Reports, Etc. Most Cited Cases
Conference committee report is an authoritative source of Congressional intent.

[16] Courts 106 ⚿97(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents

106k97 Decisions of United States Courts as Authority in State Courts
106k97(1) k. In General. Most Cited Cases
State domicile is a matter of state law.

[17] Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases

States 360 ⚿18.25

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.25 k. Education. Most Cited Cases
Illegal aliens are barred from establishing California residency for university in-state tuition purposes if they are precluded by federal law from establishing domicile in the United States. Immigration and Nationality Act, § 101, 8 U.S.C.A. § 1101; West's Ann.Cal.Educ.Code § 68062.

[18] Constitutional Law 92 ⚿2457

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)1 In General
92k2457 k. Interpretation of Statutes. Most Cited Cases

Statutes 361 ⚿220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative Construction. Most Cited Cases
Legislature's interpretation of a statute is not dispositive; ultimately, statutory interpretation is a judicial function.

[19] Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases

States 360 ⚿18.25

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.25 k. Education. Most Cited Cases
State statute making illegal aliens eligible for less-expensive resident tuition at state colleges and universities, if they attend a California high school for three years, graduate or attain the equivalent, and promise to seek legal status if they ever become eligible for legalization, was preempted by federal statute precluding illegal aliens from eligibility for State benefits unless State law affirmatively provides for such eligibility; State statute did not expressly refer to the federal law, and state statute sought to conceal the provision of benefits to illegal aliens through convoluted language, and did not clearly put the public on notice that tax dollars would be used to benefit illegal aliens. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 411, 8 U.S.C.A. § 1621; West's Ann.Cal.Educ.Code § 68130.5.
See 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 729; Cal. Jur. 3d, Universities and Colleges, §§ 113, 114.

[20] States 360 ⚿18.5

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.5 k. Conflicting or Conforming Laws or Regulations. Most Cited Cases
The existence of a savings clause in federal legislation does not necessarily preclude a conclusion of conflict preemption.

[21] Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases
A State has a legitimate interest in protecting and preserving the right of its own bona fide residents to attend its colleges and universities on a preferential

tuition basis.

[22] **Constitutional Law 92 ⚿3361**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)10 Residency or Duration Thereof
92k3359 Education
92k3361 k. Students in General. Most Cited Cases

A bona fide residence requirement with respect to attendance in public free schools, appropriately defined and uniformly applied, does not violate the Equal Protection Clause of the Fourteenth Amendment. U.S.C.A. Const.Amend. 14.

[23] **Pleading 302 ⚿216(1)**

302 Pleading
302V Demurrer or Exception
302k216 Scope of Inquiry and Matters Considered on Demurrer in General
302k216(1) k. In General. Most Cited Cases

At the demurrer stage, plaintiffs are not required to prove their allegations.

[24] **Colleges and Universities 81 ⚿2**

81 Colleges and Universities
81k2 k. Constitutional and Statutory Provisions. Most Cited Cases

Constitutional Law 92 ⚿2920

92 Constitutional Law
92XXIV Privileges or Immunities; Emoluments
92XXIV(B) Privileges and Immunities of Citizens of the United States (Fourteenth Amendment)
92XXIV(B)2 Particular Issues and Applications
92k2920 k. In General. Most Cited Cases

United States citizens paying nonresident tuition at state colleges and universities stated a viable claim that statute allowing certain illegal aliens to pay less-expensive resident tuition violated Privileges and Immunities Clause of the Fourteenth Amendment, even though resident tuition was conferred by state rather than federal law, where citizens alleged a violation of their rights under federal statute making illegal aliens ineligible to receive postsecondary education benefits on basis of state residence if such benefits are not available to all citizens regardless of residence. U.S.C.A. Const.Amend. 14; 8 U.S.C.A. § 1623; West's Ann.Cal.Educ.Code § 68130.5.

[25] **Colleges and Universities 81 ⚿9.20(2)**

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees
81k9.20(2) k. Residence. Most Cited Cases

Constitutional Law 92 ⚿4224(3)

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)8 Education
92k4218 Post-Secondary Education
92k4224 Students
92k4224(3) k. Tuition and Fees; Scholarships, Grants, and Loans. Most Cited Cases

United States citizens paying nonresident tuition at state colleges and universities failed to establish that statute allowing certain illegal aliens to pay less-expensive resident tuition constituted a taking of property without due process of law. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Educ.Code § 68130.5.

[26] **Civil Rights 78 ⚿1070**

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1070 k. Other Particular Cases and Contexts. Most Cited Cases

Colleges and Universities 81 ⚿9.20(2)

81 Colleges and Universities
81k9 Students
81k9.20 Tuition and Fees

81k9.20(2) k. Residence. Most Cited Cases
State statute making illegal aliens eligible for less-expensive resident tuition at state colleges and universities, if they attend a California high school for three years and graduate or attain the equivalent, did not discriminate against nonresident United States citizens on the basis of national origin in violation of the Unruh Civil Rights Act. West's Ann.Cal.Civ.Code § 51 et seq.; West's Ann.Cal.Educ.Code § 68130.5.

[27] Civil Rights 78 ⚿1049

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1043 Public Accommodations
78k1049 k. Place of Business or Public Resort. Most Cited Cases
The Unruh Civil Rights Act must be construed liberally to carry out its purpose of compelling recognition of the equality of all persons receiving services offered by business establishments. West's Ann.Cal.Civ.Code § 51 et seq.

[28] Courts 106 ⚿89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In General. Most Cited Cases
Cases are not authority for propositions not decided.

[29] Civil Rights 78 ⚿1009

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1007 Bases of Discrimination and Classes Protected
78k1009 k. Race, Color, Ethnicity, or National Origin. Most Cited Cases

Civil Rights 78 ⚿1015

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1007 Bases of Discrimination and Classes Protected
78k1015 k. Other Particular Bases or Classes. Most Cited Cases
State constitutional provision precluding discrimination on the basis of national origin does not include claims of discrimination on the basis of citizenship or alienage. West's Ann.Cal. Const. Art. 1, § 31.

West Codenotes
PreemptedWest's Ann.Cal.Educ. Code § 68130.5
**521 Immigration Reform Law Institute and Kris W. Kobach; Ropers, Majeski, Kohn & Bentley and Michael J. Brady, Redwood City, for Plaintiffs and Appellants.
Sharon L. Browne and Ralph W. Kasarda, Sacramento, for Pacific Legal Foundation, as Amicus Curiae on behalf of Plaintiffs and Appellants.
Charles F. Robinson and Christopher M. Patti, Oakland; Howard Rice Nemerovski Canady Falk & Rabkin, Ethan P. Schulman and Robert D. Hallman, San Francisco, for Defendants and Respondents.
Munger, Tolles & Olson, Bradley S. Phillips, Fred A. Rowley, Jr., Gabriel P. Sanchez, Mark R. Yohalem, Los Angeles; Lawyers' Committee for Civil Rights, Robert Rubin, San Francisco; Mexican American Legal Defense and Educational Fund, Cynthia Valenzquela, Nicholas Espiritu and Kristina Campbell, for Alicia A., Gloria A., Marcos A., Mildred A., Enrique Boca, Nicole Doe, Collin Campbell, Alex Ortiz, Linda Lin Qian, Cesar Rivadeneyra, Jennifer Seidenberg, Improving Dreams, Equality, Access and Success at U.C. Davis, Improving Dreams, Equality, Access and Success of UCLA and National Immigration Law Center as Amici Curiae on behalf of Defendants and Respondents.

SIMS, Acting P.J.
*1127 United States citizens who pay *nonresident* tuition for enrollment at California's public universities/colleges brought a lawsuit attacking a state statute (Ed.Code, § 68130.5 [FN1]) which allows certain illegal **522 aliens [FN2] to pay the less-expensive *resident* tuition to attend these *1128 universities/colleges. Plaintiffs [FN3] FILED A CLASS ACTION lawsuit against defendants regents (regents) oF the University of California (UC), Trustees (Trustees) of the California State University System (CSU), Board of Governors (Board) of the

California Community Colleges (CCC), UC President Robert C. Dynes (Dynes), CSU Chancellor Charles B. Reed (Reed), and CCC Chancellor Marshall Drummond (Drummond). Plaintiffs label their pleading as a class action complaint for damages; injunctive relief; declaratory relief; federal preemption; and violation of the U.S. Constitution (14th Amend.), California Constitution (art. I, § 7), federal statute (8 U.S.C. §§ 1621, 1623; 42 U.S.C. § 1983), and the Unruh Civil Rights Act (Civ.Code, § 51). Plaintiffs appeal from a judgment of dismissal following the trial court's sustaining of defendants' demurrers without leave to amend.

FN1. Undesignated statutory references are to the Education Code.

Section 68130.5 provides: "Notwithstanding any other provision of law: [¶] (a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges: [¶] (1) High school attendance in California for three or more years. [¶] (2) Graduation from a California high school or attainment of the equivalent thereof. [¶] (3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year. [¶] (4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

"(b) A student 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."

FN2. Defendants prefer the term "undocumented immigrants." However, defendants do not cite any authoritative definition of the term and do not support their assertion that the terms "undocumented immigrant" and "illegal alien" are interchangeable. We consider the term "illegal alien" less ambiguous. Thus, under federal law, an "alien" is "any person not a citizen or national of the United States." (8 U.S.C. § 1101(a)(3).) A "national of the United States" means a U.S. citizen or a noncitizen who owes permanent allegiance to the United States. (8 U.S.C. § 1101(a)(22).) Under federal law, "immigrant" means every alien except those classified by federal law as nonimmigrant aliens. (8 U.S.C. § 1101(a)(15).) "Nonimmigrant aliens" are, in general, temporary visitors to the United States, such as diplomats and students who have no intention of abandoning their residence in a foreign country. (8 U.S.C. § 1101(a)(15)(F), (G); *Elkins v. Moreno* (1978) 435 U.S. 647, 664-665, 98 S.Ct. 1338, 1349, 55 L.Ed.2d 614, 627-628 [under pre-1996 law, held the question whether nonimmigrant aliens could become domiciliaries of Maryland for purposes of in-state college tuition was a matter of state law].) The federal statutes at issue in this appeal refer to "alien[s] who [are] not lawfully present in the United States." (8 U.S.C. §§ 1621(d), 1623.) In place of the cumbersome phrase "alien[s] who [are] not lawfully present," we shall use the term "illegal aliens."

FN3. The named plaintiffs are Robert Martinez, Cory McMahon, Onson Luong, Scott Nass, Justin Rabie, Mark Hammes,

Steven Hammes, David Hammes, Ash Caloustian, Aaron Dallek, Soleil Teubner, Mara McDermott, Adam Anderson, Demyan Drury, Casey Meguro, Chaning Jang, Kyle Dozeman, Kellan Didier, James Deutsch, Patrick Bilbray, Briana Bilbray, Brian Bilbray, Corey Robertson, Daniel Alameda, Dan Goldberg, Tim Kozono, Joseph Konrad, David Taylor, Suzanne Kattija-Ari, Justine Smith, Amanda Hildebrand, Aaron Malone-Stratton, Pamela Stratton, Michal [*sic*] Bulmash, Jimmy Davault, III, Matt Bittner, Antwann Davis, Arrington Dennison, Kathryn Jelsma, Emily Grant, Peter Shea, and Adam Thomson.

Numerous legal issues are addressed in this case. However, the most significant issue is whether California's authorization of in-state tuition to illegal aliens violates a federal law, title 8 of the United States Code (U.S.C.) section 1623, which provides as pertinent:

"Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

The respondents argue the federal statute is not violated for two reasons:

***523** 1. Respondents say in-state tuition is not a "benefit" within the meaning of the federal law. For reasons we shall explain, we conclude in-state tuition, which is some $17,000 per year cheaper than out-of-state tuition at UC, is a "benefit" conferred on illegal aliens within the meaning of the federal law.

*1129 2. Respondents argue in-state tuition is not granted "on the basis of residence within a state" as required by federal law. Respondents point to the fact that in-state tuition for illegal aliens is based on a student's having attended a California high school for three or more years and on the student's having graduated from a California high school or having attained "the equivalent thereof." (§ 68130.5, fn. 1 *ante*.) As we shall explain, the three-year attendance requirement at a California high school is a surrogate residence requirement. The vast majority of students who attend a California high school for three years are residents of the state of California. Section 68130.5 thwarts the will of Congress manifest in title 8 U.S.C. section 1623.

We shall conclude the trial court erred in determining the complaint failed as a matter of law. We shall reverse the judgment of dismissal and allow the case to proceed in the trial court.[FN4]

FN4. Pacific Legal Foundation filed an amicus curiae brief in favor of plaintiffs. An amicus curiae brief in favor of defendants was filed by Alicia A., Gloria A., Marcos A., Mildred A., Enrique Boca, Nichole Doe, Collin Campbell, Alex Ortiz, Linda Lin Qian, Cesar Rivadeneyra, Jennifer Seidenberg; Improving Dreams, Equality, Access and Success at U.C. Davis; Improving Dreams, Equality, Access and Success of UCLA; and National Immigration Law Center.

We deny as unnecessary Pacific Legal Foundation's requests for judicial notice (made in their amicus curiae brief) of records of the California Postsecondary Education Commission as assertedly showing that taxpayers, some of whom cannot afford to send their own children to college, subsidize the college education of students who pay in-state tuition. "The higher tuition charged nonresident students tends to distribute more evenly the cost of operating and supporting the University of California between residents and nonresidents attending the university [and] appears to be a reasonable attempt to achieve a partial cost equalization by collecting lower tuition fees from those persons who, directly or indirectly, have made some contribution to the economy of the state...."(*Kirk v. Regents of University of California* (1969) 273 Cal.App.2d 430, 444, 78 Cal.Rptr. 260.)

BACKGROUND

The complaint, filed December 14, 2005, alleged as

follows:

[1][2] Plaintiffs are U.S. citizens from states other than California and are students, or tuition-paying parents of students, enrolled after January 1, 2002, in a course of study for an undergraduate or graduate degree at a California public university or college, who allege they have been illegally denied exemption from nonresident tuition under section 68130.5,[FN5]**524 which gives the benefit of resident tuition to illegal aliens.

FN5. The complaint alleges plaintiffs are U.S. citizens who have been classified under California law as "nonimmigrant aliens." This allegation does not make sense. U.S. citizens are not "aliens" at all. (8 U.S.C. § 1101(a)(3) ["The term 'alien' means any person not a citizen or national of the United States"].) Nothing in California law defines "alien" differently. Plaintiffs contend they were illegally denied exemption from nonresident tuition under section 68130.5. Section 68130.5 states that a student, other than a "nonimmigrant alien" within the meaning of title 8 U.S.C section 1101(a)(15), is exempt from paying nonresident tuition if he or she meets the requirements, e.g., high school attendance in California for three years, graduation from a California high school, etc. Plaintiffs allege this statute characterizes out-of-state U.S. citizens as "nonimmigrant aliens." In reviewing a demurrer, we do not accept as true allegations of legal conclusions. Section 68130.5 defines "nonimmigrant alien" with reference to federal law. Under the federal law, "nonimmigrant aliens" are generally aliens admitted to this country for temporary periods, including students, diplomats and their servants, etc., who intend to return to their homeland. (8 U.S.C. § 1101(a)(15).) Thus, given the allegation that plaintiffs are U.S. citizens, plaintiffs are not nonimmigrant aliens. We assume for purposes of this appeal that plaintiffs were denied an exemption from nonresident tuition not because they were considered nonimmigrant aliens, but because they did not attend a California high school for three years and attain a California high school diploma or equivalent.

*1130 Plaintiffs do not claim they attended a California high school, as required to qualify for the section 68130.5 benefit. Rather, plaintiffs claim the attendance requirement is a de facto residence requirement, preempted by federal immigration law, which illegally discriminates against plaintiffs by denying them a benefit provided to illegal aliens.

The complaint alleged defendants engaged in an "Illegal Alien Tuition Scheme," granting illegal aliens a tuition exemption denied to nonresident U.S. citizens in violation of federal law. The complaint alleged defendants knew section 68130.5 violated and was preempted by federal law.

The complaint alleged upon information and belief that, during the Fall 2005 term, undergraduate tuition and fees were:

-For UC, $6,769 for a resident undergraduate, and $24,589 for nonresident undergraduates ($17,304 tuition plus other fees);

-For CSU, a campus average of $3,164 for resident undergraduates, and $13,334 for nonresident undergraduates;

-For CCC, $26 per unit for residents and $135 per unit for nonresidents, with the average student taking 15 units per semester.

Although section 68130.5 states it does not apply to UC unless the Regents make it applicable (§ 68134 ["No provision of this part shall be applicable to the University of California unless the Regents of the University of California, by resolution, make such provision applicable"]), plaintiffs' complaint alleged the Regents adopted section 68130.5 in Standing Order 110.2-after lobbying for legislation (§ 68130.7 [FN6]) limiting their legal exposure (as well as the exposure of the other defendants) in the event of lawsuits.

FN6. Section 68130.7 provides: "If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the

> administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief."

*1131 The complaint also set forth legislative history and plaintiffs' legal conclusions regarding statutory interpretation, which we address in our discussion.

The complaint set forth 10 counts, as follows:

1. *Violation of Title 8 U.S.C. section 1623.*[FN7] Plaintiffs alleged it is an illegal **525 alien's residence in California that entitles him or her to attend a California high school, and therefore section 68130.5 imposes a *de facto* durational residency requirement. Because section 68130.5 does not give the same benefit to U.S. citizens without regard to residence, the California statute violates and is preempted by title 8 U.S.C. section 1623 (fn. 7, *ante*) under the Supremacy Clause of the United States Constitution. (U.S. Const., art. VI, § 2.) Plaintiffs alleged under this and all counts that they "have been injured by having paid nonresident tuition while illegal aliens have been unlawfully exempt...."

> FN7. Title 8 U.S.C. section 1623 provides: "(a) In general. Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. [¶] (b) Effective date. This section shall apply to benefits provided on or after July 1, 1998."

2. *Violation of Title 8 U.S.C. section 1621.*[FN8] Exemption from nonresident tuition confers a benefit in violation of title 8 U.S.C. section 1621 (fn. 8, **1132 ante*), and the California Legislature failed to provide affirmatively for such eligibility as specified in title 8 U.S.C. section 1621(d).

> FN8. Title 8 U.S.C. section 1621 provides: "(a) In general. Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not-[¶] (1) a qualified alien (as defined in section 1641 of this title), [¶] (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.] or [¶] (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for less than one year, [¶] is not eligible for any State or local public benefit (as defined in subsection (c) of this section).
>
> "(b) [Exceptions for specified health care, emergency disaster relief, health assistance, and program services necessary for protection of life or safety].
>
> "(c)(1) [¶] State or local public benefit definition. Except as provided in paragraphs (2) and (3), for purposes of this subtitle the term 'State or local public benefit' means.... [¶] (B) any retirement, welfare, health, disability, public or assisted housing, *postsecondary education*, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
>
> "[¶] ... [¶]
>
> "(d) State authority to provide for eligibility of illegal aliens for state and local public benefits. A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such

> alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after [August 22, 1996], which affirmatively provides for such eligibility." (Italics added.)

3. *Title 42 U.S.C. Section 1983:* Defendants Dynes, Reed, and Drummond, in their capacities as President or Chancellors, acting under color of state law, deprived out-of-state U.S. citizens the exemption from nonresident tuition granted to illegal aliens, in violation of the Fourteenth Amendment and title 8 U.S.C. section 1623.

4. *Equal Protection (U.S. Const.):* Plaintiffs are similarly situated with illegal alien beneficiaries of section 68130.5, because neither class is lawfully domiciled in California, yet plaintiffs are discriminated against in tuition rates.

5. *Privileges and Immunities Clause (U.S. Const.):* Section 68130.5 violates the privileges and immunities clause of the Fourteenth Amendment, denigrating U.S. citizens by treating them worse than illegal aliens.

6. *Field Preemption:* In addition to express preemption under title 8 U.S.C. section 1623, section 68130.5 is preempted by "field preemption," in that Congress occupies the field of immigration law, and section 68130.5 stands as an obstacle to Congress's objective.

**526 7. *Equal Protection (Cal. Const.):* Section 68130.5 violates California's equal protection clause (Cal. Const., art. I, § 7), by denying out-of-state U.S. citizens an exemption from nonresident tuition that is granted to illegal aliens.

8. *Unruh Civil Rights Act:* Defendants violated section 68062 [FN9] (which precludes illegal aliens from establishing residence in California) and discriminated against plaintiffs based on geographic origin as out-of-state U.S. citizens, in violation of Civil Code section 51.[FN10] Plaintiffs sought *1133 actual damages or statutory damages (Civ.Code, § 52) of $4,000 for each class member for each offense (each offense consisting of each unlawful tuition bill paid by each class member) plus $25,000 for each class member.

FN9. Section 68062 provides: "In determining the place of residence the following rules are to be observed: [¶] (a) There can only be one residence. [¶] (b) A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose. [¶] ... [¶] (f) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child. [¶] ... [¶] (h) *An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.) from establishing domicile in the United States.*" (Italics added.)

FN10. Civil Code section 51, subdivision (b), provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

9. *Injunctive Relief:* Plaintiffs sought a preliminary and permanent injunction, enjoining defendants from denying to plaintiffs the exemption from nonresident tuition to which they are entitled by title 8 U.S.C. section 1623 (fn. 7, *ante*), enjoining defendants from enforcing section 68130.5 with respect to exempting illegal aliens from nonresident tuition, and enjoining defendants from discriminating against plaintiffs in favor of illegal aliens.

10. *Declaratory Relief:* Plaintiffs sought a judicial declaration that the illegal alien tuition scheme is preempted by federal law and violates the federal statutes, equal protection, the privileges and immunities clause, and the Unruh Act.

In addition to injunctive and declaratory relief, the complaint's prayer sought tuition reimbursement.

Defendants filed demurrers.

The demurrer of the Trustees, Reed, the Board, and Drummond (collectively Trustees/Board) argued (1) plaintiffs lacked standing to challenge section 68130.5 because they do not qualify for an exemption from nonresident tuition and cannot establish any compensable injury; (2) the federal laws do not create a private right of action in plaintiffs; (3) any damage claims should be dismissed because plaintiffs failed to submit a claim in compliance with the Government Claims Act (Gov.Code, § 900 et seq.); and (4) the Board and Drummond were improper parties.

The demurrer of the Regents and Dynes (collectively Regents) argued:

(1) The exemption from nonresident tuition is not a "benefit" within the meaning of the federal law; section 68130.5 does not confer the exemption on the basis of residence; to the extent the state statute confers a benefit on illegal aliens it is expressly authorized by title 8 U.S.C. section 1621(d), which allows a state affirmatively to provide for such eligibility; and **527 Congress did not intend a complete ouster of state power.

(2) The title 42 U.S.C. section 1983 claim failed because the complaint did not allege deprivation of any right protected by the Constitution or laws of the United States.

*1134 (3) The equal protection claim failed because section 68130.5 does not discriminate on the basis of alienage and is rationally related to a legitimate government purpose.

(4) The privileges and immunities claim failed because section 68130.5 does not discriminate on the basis of citizenship, and resident tuition is not a privilege.

(5) The Unruh Act claim failed because the Unruh Act does not prohibit discrimination based on geographic origin, and a state may charge higher tuition for out-of-state students than to state residents and others.

(6) The ninth count for injunctive relief failed because a request for injunctive relief is not a cause of action.

(7) The tenth count for declaratory relief failed because a cause of action for declaratory relief may not simply restate other causes of action.

In addition to the two demurrers, the Regents and Dynes filed a motion to strike from the complaint the request for tuition reimbursement; plaintiffs filed requests for judicial notice; and various persons (some of whom sought to proceed under fictitious names) filed a motion for leave to intervene.

After a hearing, the trial court took judicial notice of some but not all of plaintiffs' materials, sustained defendants' demurrers without leave to amend, denied as moot the motion to strike, denied the intervention motion, and denied as moot the motion to proceed under fictitious names. The trial court sustained the Regents' demurrer without leave to amend on all counts, except the third count alleging a federal civil rights violation (42 U.S.C. § 1983), as to which the court overruled the demurrer on the ground the count was based not on federal preemption (as asserted in the Regents' demurrer), but on alleged violation of title 8 U.S.C. sections 1621 and 1623. However, the court dismissed the third count (federal civil rights violation) as to all defendants on the ground stated in the demurrer of the Trustees/Board that the federal immigration statutes (8 U.S.C. §§ 1621, 1623) conferred no private right of action in plaintiffs and therefore could not support a federal civil rights claim. As to other grounds for demurrer asserted by the Trustees/Board, the trial court rejected defendants' argument that plaintiffs lacked standing (a ruling not challenged by defendants in their response to this appeal), sustained the demurrer without leave to amend as to the first three counts, and concluded it *1135 was unnecessary to rule on other grounds given the court's sustaining of the Regents' demurrer without leave to amend.

Plaintiffs objected to the proposed judgment on the ground the third count (42 U.S.C. § 1983) remained outstanding. The trial court overruled the objection and entered a judgment of dismissal, from which plaintiffs appeal.

DISCUSSION

I. *Standard of Review*

[3][4][5][6] "On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, ... [t]he reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of **528 law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citation.]' However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]" (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317.)

[7] The rules of federal statutory interpretation are much the same as those used when construing California statutes; our primary function is to give effect to legislative intent. (*Johnson v. United States* (2000) 529 U.S. 694, 710, fn. 10, 120 S.Ct. 1795, 146 L.Ed.2d 727; *Black v. Dept. of Mental Health* (2000) 83 Cal.App.4th 739, 747, 100 Cal.Rptr.2d 39.)

II.-III.[FN**]

FN** See footnote *, *ante*.

IV. *Claimed Conflict between State Statutes*

Although not pleaded as a cause of action, plaintiffs argue defendants, by giving illegal aliens resident tuition under section 68130.5, violated section 68062 (fn. 9, *ante*), which bars illegal aliens from establishing residency for tuition purposes. Plaintiffs characterize this claim as one of illegal and unconstitutional discrimination because *Regents of University of California v. *1136 Superior Court* (1990) 225 Cal.App.3d 972 at page 981, 276 Cal.Rptr. 197(*Bradford*), supposedly said a violation of section 68062 would constitute discrimination against citizens of sister states. However, this contention is really a claimed conflict between state statutes, which does not help plaintiffs, because section 68130.5, as the later-enacted statute, would prevail. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1038, 56 Cal.Rptr.3d 814, 155 P.3d 226.)

Bradford, supra, 225 Cal.App.3d at pages 980 through 981, 276 Cal.Rptr. 197, held section 68062, subdivision (h), precludes illegal aliens from qualifying as California residents for college tuition purposes, and as so construed, did not violate equal protection. *Bradford, supra,* 225 Cal.App.3d at pages 981 through 982, 276 Cal.Rptr. 197, observed a state cannot exclude illegal aliens from free public elementary and secondary schools (*Plyler v. Doe* (1982) 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786), but said the heart of *Plyler v. Doe* was that the "stigma of illiteracy" would mark these children for the rest of their lives. (In contrast, it was said in *Lister v. Hoover* (7th Cir.1983) 706 F.2d 796, 797, 805, a due process case, that the interest in lower *college* tuition is slight.)

Plaintiffs read too much into *Bradford, supra,* 225 Cal.App.3d 972, 276 Cal.Rptr. 197, which said, in upholding the constitutionality of section 68062, that the state's legitimate interests in denying resident tuition to illegal aliens (i.e., policy matters for legislative determination) included the interest in avoiding discrimination against citizens of sister states. (*Id.* at p. 981, 276 Cal.Rptr. 197.)

Bradford does not invalidate section 68130.5.

[8] To the extent that section 68130.5, as a de facto residence statute, could be said to conflict with section 68062, the result would be, at most, an implied repeal of section 68062 as the earlier-enacted statute-a result which does not advance **529 plaintiffs' case. Thus, when two state statutes are so inconsistent that there is no possibility of concurrent operation, the doctrine of implied repeal provides that the most recently enacted statute expresses the will of the Legislature. (*Professional Engineers in California Government v. Kempton, supra,* 40 Cal.4th at p. 1038, 56 Cal.Rptr.3d 814, 155 P.3d 226.) That defendants do not claim an implied repeal does not, as urged by plaintiffs, determine the matter.

We conclude plaintiffs fail to show they could amend the complaint to allege a viable claim that section 68130.5 constitutes discrimination in violation of section 68062.

*1137 V. *Federal Preemption*

A. *General Principles*

Preemption has been explained in various ways. The United States Supreme Court has said:

"[S]tate law is pre-empted under the Supremacy Clause, U.S. Const, Art. VI, cl 2,[FN14] in three circumstances. First, Congress can define explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.

FN14. The Supremacy Clause provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." (U.S. Const., art. VI, cl.2.)

"Second, in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively. Such an intent may be inferred from a 'scheme of federal regulation ... so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' or where an Act of Congress 'touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.' [Citation.] Although [the United States Supreme Court] has not hesitated to draw an inference of field pre-emption where it is supported by the federal statutory and regulatory schemes, it has emphasized: 'Where ... the field which Congress is said to have preempted' includes areas that have 'been traditionally occupied by the States,' congressional intent to supersede state laws must be ' "clear and manifest." ' [Citations.]

"Finally, state law is pre-empted to the extent that it actually conflicts with federal law. Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements [citation], or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' [Citations.]" (*English v. General Electric Co.* (1990) 496 U.S. 72, 78-79, 110 S.Ct. 2270, 2275, 110 L.Ed.2d 65, 74.)

[9] The United States Supreme Court in *De Canas v. Bica* (1976) 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43 held that a California statute (Labor Code, § 2805), prohibiting an employer from knowingly employing illegal aliens at *1138 the expense of lawful resident workers, was not unconstitutional as a regulation of immigration and was not preempted by the Immigration and Nationality Act. *De Canas* articulated three tests to be used in determining whether a state statute related to immigration is preempted.

**530 [10] First, the court must determine whether the state statute is a "regulation of immigration" (i.e., a determination of who should or should not be admitted into the country and the conditions under which a legal entrant may remain). (*De Canas v. Bica, supra,* 424 U.S. at p. 356, 96 S.Ct. 933.) If the state statute regulates immigration, it is preempted because the power to regulate immigration is exclusively a federal power. (*Ibid.*) That aliens are subjects of a state statute does not necessarily constitute a "regulation of immigration." (*Ibid.; People v. Salazar-Merino* (2001) 89 Cal.App.4th 590, 598-599, 107 Cal.Rptr.2d 313 [Pen.Code, § 114, imposing criminal penalties for using a false document to conceal true citizenship or resident alien status, was not preempted by federal immigration law].)

[11][12] Second, even if the state statute does not regulate immigration, it is preempted if Congress manifested a clear purpose to effect a complete ouster of state power, including state power to promulgate laws not in conflict with federal laws, with respect to the subject matter which the statute attempts to regulate. (*De Canas v. Bica, supra,* 424 U.S. at p. 357, 96 S.Ct. 933.) An intent to preclude state action may be inferred where the system of federal regulation is so pervasive that no opportunity for state activity remains. (*Ibid.*) Third, a state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Id.* at p. 363, 96 S.Ct.

933.) A statute is preempted under this third test if it conflicts with federal law, making compliance with both state and federal law impossible. (*Ibid.*; *Toll v. Moreno* (1982) 458 U.S. 1, 102 S.Ct. 2977, 73 L.Ed.2d 563 [state university's policy of denying in-state status to domiciled nonimmigrant aliens holding G-4 visas, violated supremacy clause]; *League of United Latin American Citizens v. Wilson* (C.D.Cal.1997) 997 F.Supp. 1244, 1253, 1256(*LULAC II*) [held that Congress in federal legislation enacted in 1996 occupied the field of regulation of public postsecondary education benefits to aliens, thereby preempting portions of California initiative measure Proposition 187, including a provision denying public postsecondary education to illegal aliens]; *League of United Latin American Citizens v. Wilson* (C.D.Cal.1995) 908 F.Supp. 755(*LULAC I*) [other federal immigration law preempted portions of Proposition 187].)

*1139 B. *Preemption by Title 8 U.S.C. Section 1623*

[13] Plaintiffs' principal argument is that title 8 U.S.C. section 1623 preempts section 68130.5. We agree they have stated a cause of action. The demurrer should have been overruled.

As indicated, title 8 U.S.C. section 1623 (fn. 7, *ante*) provides, "Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

Title 8 U.S.C. section 1623 was enacted in September 1996, as part of the IIRIRA.[FN15] (Pub.L. No. 104-208, Div. C (Sept. 30, 1996) § 505, 110 Stat. 3009-672.)

FN15. This was shortly after enactment of title 8 U.S.C. section 1621 (fn. 8, *ante*), which we discuss *post*. Defendants agree title 8 U.S.C. section 1623 narrowed the authorization previously conferred on states by the earlier statute to make exceptions to the federal restrictions.

**531 Section 68130.5 (enacted by Stats.2001, ch. 814, § 2) makes illegal aliens eligible for in-state tuition without affording in-state tuition to out-of-state U.S. citizens without regard to California residence.

Defendants argue there is no preemption problem, because section 68130.5 does not confer a "benefit" based on "residence" within the meaning of title 8 U.S.C. section 1623. We disagree.

1. *Section 68130.5 Confers a "Benefit"*

[14] Defendants argue the term "benefit" in title 8 U.S.C. section 1623 is limited, because the federal statute refers to "amount," which means monetary payments, and in-state tuition does not involve the payment of any money to students. However, defendants cite no authority supporting their illogical assumption that "amount" must mean monetary payment to the beneficiary. The complaint alleges the benefit of in-state tuition is a calculable amount, and it would certainly appear to be so. We therefore reject defendants' argument that "benefit" in title 8 U.S.C. section 1623 means only the payment of money to the person being benefited.

[15] *1140 Even assuming for the sake of argument that title 8 U.S.C. section 1623 could be considered ambiguous as to the meaning of " benefit," the conference committee report, which is an authoritative source of Congressional intent (*Eldred v. Ashcroft* (2003) 537 U.S. 186, 210, fn. 16, 123 S.Ct. 769, 154 L.Ed.2d 683), stated, "This section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education." (Conf. Report 104-828, H.R. 2202, § 507 (Sept. 24, 1996).) Thus, "benefit" in title 8 U.S.C. section 1623 includes in-state tuition.

Defendants also argue "benefit" in title 8 U.S.C. section 1623 should be given the same meaning as "benefit" in title 8 U.S.C. section 1621, which defendants interpret as being limited to money paid to students. Again, we disagree.

Thus, title 8 U.S.C. section 1621 defines "benefit" in part as "any retirement, welfare, health, disability, public or assisted housing, *postsecondary education*, food assistance, unemployment benefit, *or* any other similar benefit for which payments or assistance are

provided to an individual, household, or family eligibility unit by an agency of a State or local government *or* by appropriated funds of a State or local government." (8 U.S.C. § 1621(c)(1)(B), italics added.)

Defendants maintain the term "postsecondary education" in title 8 U.S.C. section 1621 is modified by the language "for which payments or assistance are provided," such that Congress proscribes spending public funds for an illegal alien's college education but has not proscribed eligibility for an exemption from nonresident tuition, which involves no payment or direct financial assistance.

However, since the terms in title 8 U.S.C. section 1621 are separated by the word "or" (postsecondary education benefit "or" other similar benefit for which payments or assistance are provided by an agency or by appropriated funds), defendant's modification theory is implausible. Even assuming for the sake of argument that "postsecondary education" is modified by the language "for which payments or assistance are provided," in-state tuition constitutes assistance, and defendants fail to show otherwise.

Defendants apply their own gloss to the word "assistance," asserting it must be "direct financial assistance." To the extent**532 this position considers the term "assistance" to be limited to direct financial aid, we observe the exclusion of illegal aliens from student financial aid is already covered in 20 U.S.C. section 1091, which states, "In order to receive any grant, loan, or work assistance under [provisions concerning student financial aid], a student *1141 must ... [¶] be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, [or] a citizen of any one of the Freely Associated States." (20 U.S.C. § 1091(1)(5).) In California, illegal aliens are barred from receiving financial assistance in the form of, e.g., Cal. Grant awards. (§§ 69433.9, 69535.)

Moreover, one of the cases cited by defendants defeats their position. Thus, *California Rural Legal Assistance v. Legal Services Corp.* (9th Cir.1990) 917 F.2d 1171, said that the provision of legal services did not constitute "financial assistance" within the meaning of a federal statute (8 U.S.C. § 1255a) imposing a five-year ban on "financial assistance" to amnesty aliens (aliens who were allowed to legalize their status under the amnesty provisions of the Immigration Reform and Control Act of 1986). (*Id.* at pp. 1172, 1175-1176.) *CRLA* expressly reached its conclusion because the federal statute used the more narrow language "financial assistance" rather than the broader term "assistance." (*Id.* at p. 1176.) Thus, *CRLA* does not help defendants here, where the federal statute (8 U.S.C. § 1621) uses the broader term "assistance."

Defendants' other cited authorities do not support their position. Defendants quote from *Equal Access Education v. Merten* (E.D.Va.2004) 305 F.Supp.2d 585(*Merten*), which said the federal law (of which title 8 U.S.C. sections 1621 and 1623 are a part) addressed "only post-secondary monetary assistance paid to students or their households...."(*Id.* at p. 605.) However, defendants take the quote out of context. *Merten* was not deciding the meaning of assistance in title 8 U.S.C. section 1621; it was rejecting the plaintiffs' argument that Virginia's policy of denying college admission to illegal aliens was preempted by a different federal statute (8 U.S.C. § 1642). *Merten* said, "the scheme PRWORA [title 8 U.S.C. § 1601 et seq.] creates pertains to benefits not at issue here. In the area of post-secondary education, PRWORA addresses only post-secondary monetary assistance paid to students or their households, not admissions to college or university." (*Merten, supra,* at p. 605.) *Merten* went on to make a point (cited to us in plaintiffs' reply brief) that the reasonable inference to draw from title 8 U.S.C. section 1623 is that public colleges need not admit illegal aliens at all, but if they do, the aliens cannot receive in-state tuition unless out-of-state U.S. citizens receive in-state tuition. (*Merten, supra,* 305 F.Supp.2d at p. 606.) Again, however, *Merten* was deciding an issue about preemption concerning admissions, not tuition. Thus, *Merten* has no bearing on the case before us.

*1142 Defendants cite *Doe v. Wilson* (1997) 57 Cal.App.4th 296 at page 299, 67 Cal.Rptr.2d 187, which said newly-enacted title 8 U.S.C. section 1621 prohibited California from expending public funds to provide prenatal care to illegal aliens, and the state could enforce emergency regulations adopted to comply with the federal legislation. Nothing in *Doe*

v. Wilson limits the scope of the federal law.

Defendants cite a law review article construing the federal law as excluding in-state tuition. (Ruge & Iza, *Higher Education**533 For Undocumented Students: The Case for Open Admission and In-State Tuition Rates for Students Without Lawful Immigration Status* (2005) 15 Ind. Int'l. & Comp. L.Rev. 257, 267.) The law review article reflects nonauthoritative opinion, and we do not agree with it on this point.

We conclude section 68130.5 confers a "benefit" within the meaning of title 8 U.S.C. sections 1621 and 1623.

2. *Section 68130.5 is Based on Residence*

Defendants argue section 68130.5 does not condition eligibility for in-state tuition "on the basis of residence within a State" as stated in title 8 U.S.C. section 1623. We disagree.

[16] The meaning of "residence" may vary according to the context, but "residence" generally requires both physical presence and an intention to remain. (*Martinez v. Bynum* (1983) 461 U.S. 321, 330-331, 103 S.Ct. 1838, 1844, 75 L.Ed.2d 879, 888 [state residency requirement for admission to tuition-free public schools did not violate federal equal protection clause]; 27B Cal.Jur.3d (2004) Domicile, §§ 2-3, pp. 617-619.) State domicile is a matter of state law. (*Elkins v. Moreno, supra,* 435 U.S. 647, 662, fn. 16, 98 S.Ct. 1338, 1347, 55 L.Ed.2d 614, 626.)

[17] Under section 68062 (fn. 9, *ante*), illegal aliens are barred from establishing California residency for college/university in-state tuition purposes if they are precluded by federal law (8 U.S.C. § 1101) from establishing domicile in the United States. (*Bradford, supra,* 225 Cal.App.3d at p. 980, 276 Cal.Rptr. 197 ["section 68062, subdivision (h), precludes undocumented alien students from qualifying as residents of California for tuition purposes"]; *American Assn. of Women v. Board of Trustees* (1995) 31 Cal.App.4th 702, 706, 38 Cal.Rptr.2d 15 [*Bradford* is binding on both UC and CSU].) *Bradford, supra,* 225 Cal.App.3d at page 981, 276 Cal.Rptr. 197, recognized legitimate state interests in denying resident tuition to illegal aliens, including "the state's interests in not *1143 subsidizing violations of law; in preferring to educate its own lawful residents; in avoiding enhancing the employment prospects of those to whom employment is forbidden by law; in conserving its fiscal resources for the benefit of its lawful residents; in avoiding accusations that it unlawfully harbors illegal aliens in its classrooms and dormitories; in not subsidizing the university education of those who may be deported; in avoiding discrimination against citizens of sister states and aliens lawfully present; in maintaining respect for government by not subsidizing those who break the law; and in not subsidizing the university education of students whose parents, because of the risk of deportation if detected, are less likely to pay taxes." (*Ibid.*)

Bradford predated the enactment of section 68130.5, which on its face allows illegal aliens to qualify for resident tuition, purportedly without establishing residence.

"Residence" within the meaning of the California tuition statutes means, "the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose."(§ 68062, subd. (b), fn. 9, *ante.*) The student must couple physical presence in California with objective evidence of intent to make California the home for other than a temporary purpose. (Cal.Code Regs., tit. 5, § 54020 [community colleges].) The residence of an unmarried minor child is generally the residence of the parent with whom the child maintains his or her place of abode. (§ 68062, subds. (f)-(i).) This **534 includes an unmarried minor alien, unless the child or parent is precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.) from establishing United States domicile. (§ 68062, subds. (h)-(i).)

A "resident" is "a student who has residence, pursuant to [section 68062] in the state for more than one year immediately preceding the residence determination date."(§ 68017.) A "nonresident" is a student who does not have residence in the state for more than one year preceding the determination date. (§ 68018.)

"A student classified as a nonresident shall be required, except as otherwise provided in this part, to pay, in addition to other fees required by the institution, nonresident tuition."(§ 68050.) The

governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, unless otherwise provided by law. (§ 68051.) Section 68052 (which does not apply to community colleges) states that, under no circumstance shall the level of nonresident tuition plus required fees fall below the marginal cost of instruction, unless state revenues and expenditures are substantially imbalanced due to unforeseen factors. (§ 68052.) At CSU, "Except as otherwise specially provided, an admission fee and rate of tuition *1144 fixed by the trustees shall be required of each nonresident student. The rate of tuition to be paid by each nonresident student ... shall not be less that three hundred sixty dollars ($360) per year. The rate of tuition paid by each nonresident student who is a citizen and resident of a foreign country and not a citizen of the United States, except as otherwise specifically provided, shall be fixed by the trustees and shall not be less than ... ($360) per year." (§ 89705.) The trustees may waive or reduce the fees of foreign citizens subject to limitations. (§§ 89705-89707.) Community college districts may exempt from nonresident tuition: Students taking six or fewer units, a limited number of citizen-residents of foreign countries with financial need, and students displaced by Hurricane Katrina. (§ 76140.)

Numerous exceptions to nonresident status exist-e.g., a student who remains in California after the parent has moved elsewhere (§ 68070); a self-supporting student actually present in California for more than a year with intention of acquiring residence (§ 68071); a student under the care of adults domiciled in California (§ 68073); a member of or a dependent of a member of the armed forces of the United States stationed in California on active duty (§§ 68074-68075); a graduate of a California school operated by the United States Bureau of Indian Affairs (§§ 68077, 68082); and amateur student athletes training in Chula Vista for the Olympics (§ 68083). Some exceptions to residence determinations are left to the discretion of the school's governing board, e.g., a state employee or child of such employee "may be entitled to resident classification, as determined by the governing boards, until he or she has resided in the state the minimum time necessary to become a resident" (§ 68079), and agricultural laborers and their dependent children may be classified as residents for community college purposes if labor was performed in California for at least two months per year in the preceding two years (§ 68100). Additionally, tuition and fees are excused at particular institutions for various persons, including the surviving spouse or child of a law enforcement officer or firefighter killed in the line of duty while a California resident (§ 68120), surviving dependents of California residents killed in the September 11, 2001, terrorist attacks (§ 68121).

**535 Defendants argue the plain language of section 68130.5, on its face, does not condition the exemption from nonresident tuition on the basis of residence. However, the question is whether the statute confers a benefit on the basis of residence, not whether the statute admits such a benefit is being conferred.

Section 68130.5, footnote 1, *ante*, allows illegal aliens to pay resident tuition for college (beginning with the 2001-2002 academic year) if they attended a California high school for three years and either graduated from a California high school or attained "the equivalent thereof." (Arguably, *1145 a high school diploma from a state other than California would be "equivalent" to graduation from a California high school, but for purposes of this appeal, it does not matter.)

The statute purports to impose other conditions, i.e., (1) an affidavit promising to apply for legalized status if the student ever becomes eligible for such status, and (2) enrollment at an accredited institution of higher education not earlier than the fall of 2001. However, these supposed conditions add nothing. Enrollment is necessarily a prerequisite to having to pay tuition at all. And, despite defendants' assertion that section 68130.5 requires students to take steps to legalize their status, the statute does not do so. It merely requires students to promise to take steps to legalize their status if they ever become eligible for legalization. This is an empty, unenforceable promise contingent upon some future eligibility that may or may not ever occur.

Indeed, the "condition" of attaining a California high school diploma or its equivalent does not add much, because it would seem such diploma or equivalent would generally precede admission to a California college or university regular program. (See e.g., § 76000 [CCC]; Cal.Code Regs., tit. 5, § 40751 et seq. [CSU].) Nevertheless, we will consider the diploma/equivalency a condition of in-state tuition

under section 68130.5.

Thus, the only real conditions imposed by section 68130.5 are that the student (1) attend a California high school for three years, and (2) graduate or attain the equivalent.

A reasonable person would assume that a person attending a California high school for three years also lives in California. Such an assumption would be reasonable, given that a school district is generally linked to residence. Thus, section 48200 states, "Each person between the ages of 6 and 18 years not exempted ... is subject to compulsory full-time education. Each person subject to compulsory full-time education [and not exempted].... shall attend the public full-time day school or continuation school or classes ... of the school district in which the residency of either the parent or legal guardian is located...." This statute "embodies the general rule that parental residence dictates a pupil's proper school district." (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57, 11 Cal.Rptr.3d 546 [under § 48200, which tied school district enrollment to parental residence, district was required to enroll pupils residing at property, even though property was located only partly within the district's geographic boundaries].)

*1146 We therefore consider the language of section 68130.5 ambiguous as to whether it affords a benefit to illegal aliens based on residence.

Defendants argue section 68130.5 is not based on residence, because other statutes allow non-California residents (children from adjoining states or an adjoining country) to attend school in California. (§§ 48050-48051.) However, those statutes**536 require the parents or the other state to reimburse the California school district for the total cost of educating the pupil. Thus, section 48050 [FN16] authorizes a school district to admit as pupils to an elementary school or a high school, children living in an adjoining state, as long as an agreement is reached for the school district of the other state to reimburse the California school district for the entire cost of educating the pupil. Section 48051 [FN17] authorizes residents of an adjoining foreign country (i.e., Mexico) to attend school in California, as long as they return home to Mexico every day, and as long as their parents or guardians reimburse the district for the cost of educating the person as provided in section 48052. [FN18]

FN16. Section 48050 provides: "The governing board of any school district may, with the approval of the county superintendent of schools, admit to the elementary and high schools of the district pupils living in an adjoining state which is contiguous to the school district. An agreement shall be entered into between the governing board and the governing board or authority of the school district in which the pupils reside providing for the payment by the latter of an amount sufficient to reimburse the district of attendance for the total cost of educating the pupil, including the total of the amounts expended per pupil for the current expenses of education, the use of buildings and equipment, the repayment of local bonds and interest payments and state building loan funds, capital outlay, and transportation to and from school.... The attendance of the pupils shall not be included in computing the average daily attendance of the class or school for the purpose of obtaining apportionment of state funds. In lieu of entering an agreement with the governing board or authority of the school district in which the pupil from the adjoining state resides, the governing board of the school district in this state may enter an agreement with the parent or guardian of the pupil on the same terms as is provided in this section."

FN17. Section 48051 provides: "Any person, otherwise eligible for admission to any class or school of a school district of this state, whose parents are or are not citizens of the United States, whose actual and legal residence is in a foreign country adjacent to this state, and who regularly returns within a 24-hour period to said foreign country may be admitted to the class or school of the district by the governing board of the district."

FN18. Section 48052 provides: "The governing board of the district shall, as a

> condition precedent to the admission of any person, under Section 48051, require the parent or guardian of such person to pay to the district an amount not more than sufficient to reimburse the district for the total cost of educating the person, inc[l]uding the total of the amounts expended per pupil for the current expenses of education, the use of buildings and equipment, the repayment of local bonds and interest payments and state building loan funds, capital outlay, and transportation to and from school.... The attendance of the pupils shall not be included in computing the average daily attendance of the class or school for the purpose of obtaining apportionment of state funds. The school district shall not be eligible for nonimmigrant or noncitizen reimbursement under the provisions of Chapter 11 (commencing with Section 42900) of Part 24 of Division 3 of this title, Article 2 (commencing with Section 56865) of Chapter 6 of Part 30 of this division for these students."

*1147 We reject defendants' reliance on these statutes. Defendants ask us to believe that the Legislature enacted section 68130.5 to subsidize the college education of students who were not entitled to free or subsidized education in California's elementary/secondary schools. That makes no sense.

Along the same lines, defendants argue section 68130.5 does not benefit only illegal aliens, because the statute gives in-state tuition to students who are *not* illegal aliens. Examples include a U.S. citizen who attended high school in California but lived in another state after high school before enrolling in a California college/university; such a person would not be considered a California resident unless he or **537 she has resided in California for at least one year before the residence determination date. (§§ 68017-68018.) However, it could also be said such a student receives the benefit of section 68130.5 based on prior California residence. Other examples given by defendants are (1) a student who attended boarding school in California while maintaining a residence in another state; (2) a minor financially dependent on parents who reside in another state (since a minor's residence is derived from that of his or her parents); (3) a lawful immigrant dependent student whose parents have returned to another country; and (4) an "undocumented" student whose parents were granted permanent residency through an amnesty program and who is awaiting acceptance of his or her own application for permanent residency.

However, even assuming these examples involve persons lawfully present in this country, the circumstance that section 68130.5 may benefit some people who are not illegal aliens does not save the statute from plaintiffs' preemption claims if the statute benefits illegal aliens in contravention of federal law. Moreover, we suspect, and a liberal construction of plaintiffs' complaint is that plaintiffs allege, the vast majority of students attending California high schools for three years live in California. Indeed, an Enrolled Bill Report of the Office of the Secretary For Education (which is part of the record on appeal and which is subject to judicial notice under *Kaufman, supra,* 133 Cal.App.4th at pp. 40-42, 34 Cal.Rptr.3d 520) estimated that 5,000 to 6,000 "undocumented" students would qualify for section 68130.5's exemption from nonresident tuition, while "the number of boarding school and border area students in California who are expected to qualify for a nonresident tuition exemption under the provisions of this bill [AB 540] is expected to be *less than 500.*" [FN19] (Enrolled Bill Report on Assem. Bill No. 540, *1148 Off. of the Sec. for Ed. (2001-2002 Reg. Sess.) Oct. 3, 2001, p. 5, italics added.) Since this case comes to us at the demurrer stage, we do not refer to these figures as proven facts but merely observe that, if true, they would undermine defendants' insinuation that the statute was not designed to benefit illegal aliens.

> FN19. The amicus curiae brief supporting defendants, filed by Alicia A. et al., asserts that in 2005-2006, 1,500 UC students qualified for section 68130.5 in-state tuition, of which only 390 students were undocumented. Plaintiffs assert the total number of illegal aliens paying in-state tuition throughout the college and university systems is over 25,000. We need not resolve factual disputes at this demurrer stage.

The wording of the California statute, requiring attendance at a California high school for three or

more years, creates a de facto residence requirement. Or, as plaintiffs put it, if section 68130.5 requires an illegal alien to attend a California high school for three years in order to qualify for the exemption from nonresident tuition, then the state has effectively established a surrogate criterion for residence.[FN20] That section 68130.5 also incidentally benefits a few students other than resident illegal aliens is, in our view, irrelevant. Section 68130.5 manifestly thwarts the will of Congress expressed in title 8 U.S.C. section 1623, that illegal aliens who are residents of a state not receive a postsecondary education benefit that is not available to citizens of the United States. Thus, we reject defendants' reliance on the **538 presumption of constitutionality of legislation. (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1086, 17 Cal.Rptr.3d 225, 95 P.3d 459.)

FN20. We ask the same question that we posed to defendants' counsel at oral argument: "Could the Legislature enact a statute granting in-state tuition to every illegal alien whose parents maintained a post office box in California, without violating title 8 U.S.C. section 1623?" We think the answer is, "No."

[18] Defendants argue the Legislature expressly stated, in an uncodified section of the bill enacting section 68130.5: "This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code."(Stats.2001, ch. 814, § 1.) Defendants cite *Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 63 Cal.Rptr.2d 467, 936 P.2d 473, which said, "courts must give legislative findings great weight and should uphold them unless unreasonable or arbitrary...."(*Id.* at p. 569, 63 Cal.Rptr.2d 467, 936 P.2d 473.) However, the Legislature's statement in this case was not a finding of fact, but a legal conclusion. As defendants acknowledge, the Legislature's interpretation is not dispositive. Indeed, the cited case also said in the same paragraph that "the deference afforded to legislative findings does 'not foreclose [a court's] independent judgment of the facts bearing on an issue of constitutional law.' " (*Id.* at p. 569, 63 Cal.Rptr.2d 467, 936 P.2d 473.) Ultimately, statutory interpretation is a judicial function. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244, 62 Cal.Rptr.2d 243, 933 P.2d 507.)

Moreover, the remainder of the uncodified section reflects an intent to benefit illegal aliens living in California:

"(a) The Legislature hereby finds and declares all of the following:

*1149 "(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives *and who are likely to remain,* but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

"(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

"(3) A fair tuition policy for all high school pupils *in California* ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.[FN21]

FN21. The parties dispute whether, and to what extent, this policy applies to illegal aliens unable to obtain lawful, gainful jobs in California. *Kirk v. Regents of University of California, supra,* 273 Cal.App.2d 430, 78 Cal.Rptr. 260, said the State has a valid interest in providing tuition benefits "to those who have demonstrated by ... residence a bona fide intention of remaining here and who, by reason of that education, will be prepared to make a greater contribution to the state's economy and future." (*Id.* at p. 444, 78 Cal.Rptr. 260.) However, *Kirk* did not involve illegal aliens.

"(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, *including undocumented immigrant* students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

"(5) [Statement that the statute does not confer

benefits based on residence.]

"(b) It is the intent of the Legislature that:

"(1) A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit interpreting Section 68130.5....

"(2) This act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act." (Stats.2001, ch. 814, § 1, italics added.)

**539 A 2002 amendment deleted subdivision (b)(1) of the uncodified section, regarding remedy, and added codified section 68130.7: "If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the *1150 California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief." (Stats.2002, ch. 19, §§ 1-2.)

That section 68130.5 was enacted to benefit illegal aliens living in California is also apparent in the cognizable legislative history of section 68130.5, which includes references to prior attempts at similar legislation. We disregard plaintiffs' citation of newspaper articles attributing statements to legislators. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1065, 31 Cal.Rptr.2d 358, 875 P.2d 73 [existence of newspaper article was irrelevant, and truth of its contents was not judicially noticeable].) We disregard plaintiffs' citation of a letter from James E. Holst, General Counsel to the UC Regents, because the trial court denied judicial notice of this letter (Exhibit O to RJN) due to lack of evidence it was considered by the Legislature, and we have rejected plaintiffs' challenge to this ruling. We shall consider the following legislative history that was the subject of judicial notice by the trial court.

Thus, the Higher Education Committee Analysis of Assembly Bill No. 540 (which became section 68130.5) summarized the bill as follows: "Qualifies long-term California *residents*, as specified, regardless of citizenship status, for lower 'resident' fee payments at the [CCC] and the [CSU]." (Concurrence in Sen. Amends., Assem. Bill No. 540 (2001-2002 Reg. Sess.) as amended Sept. 7, 2001, p. 1, italics added, cited by the parties as Higher Education Com. Analysis.) The same summary appears elsewhere in the legislative history. (Sen. Rules Com., Off. of Sen. Floor Analyses, Assem. Bill No. 540 (2001-2002 Reg. Sess.) Sept. 7, 2001, p. 1.) This description, which admits an intent to benefit residents, is telling. Defendants' assertion that the summary merely illustrates the common understanding that most California high school graduates reside in the state does not help defendants' position.

We disagree, however, with plaintiffs' further, unnecessary assertion that the legislative analysis indicated the majority of students to be benefitted consider California their home. What the analysis said was, "According to the author, many of the students that would benefit under this measure are children of parents who have been granted amnesty by the federal government and are waiting for their own applications for citizenship to be accepted by the Immigration and Naturalization Service [INS]. The majority of these students consider California their home and are expected to become citizens." (Concurrence in Sen. Amends., Assem. Bill No. 540, *supra*, at p. 3.) Thus, the analysis referred to a majority of a specific class-children of parents who have amnesty.

*1151 The analysis also said:

"Previous legislation: This measure is similar to AB 1197 (Firebaugh) of 1999 which was passed by the Committee on Higher Education, Assembly, and Senate, **540 but vetoed by the Governor. AB 1197 had a provision requiring the students to be in the process of obtaining citizenship in order to benefit from the in-state tuition. This is not a part of the current legislation.

"In his veto message, Governor Davis cited the

[IIRIRA], by which undocumented aliens are ineligible to receive postsecondary education benefits based on state residence unless a citizen or national of the U.S. would be eligible for the same benefits without regard to their residence ([title 8 U.S.C.] Section 1623).[FN22]

> FN22. The trial court sustained a defense objection to the complaint's Exhibit D: legislative history of the prior bill, which included the contents of the Governor's veto message expressing the view that the prior bill (which contained substantially the same language that was later enacted) would conflict with federal law unless the state gave the same benefit to out-of-state residents. The trial court said there was no evidence that the contents of the veto message of the prior bill was before the Legislature when it enacted section 68130.5 in Assembly Bill No. 540. However, the above-quoted language from the legislative history of Assembly Bill No. 540 adequately conveyed the contents of the veto message concerning the prior bill.

"In response to the veto message, the Chief Legislative Counsel issued an opinion that AB 1197 did not violate federal law since it did not tamper with a student's residency status under federal law and because it excluded from out-of-state tuition exemptions foreign students as specified in the United States Code."(Concurrence in Sen. Amends., Assem. Bill No. 540, *supra,* at pp. 3-4.)

Thus, the bill which became section 68130.5 was a second attempt to overcome a perceived conflict with federal law. Yet the content of section 68130.5 is not significantly different from the content of Assembly Bill No. 1197, which would have granted in-state tuition if the student (1) attended a California high school for at least three years; (2) graduated from a California high school; (3) enrolled in college within one year of high school graduation or on or before January 1, 2001; and (4) initiated an application to legalize his or her immigration status. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d Reading of Assem. Bill No. 1197 (1999-2000 Reg. Sess.) as amended Jan. 4, 2000, p. 2.) Defendants say, without citation, that the later bill omitted a provision in the earlier bill expressly making eligible those aliens precluded from establishing California residency by section 68062.

Also consistent with our interpretation of section 68130.5 (though not cognizable legislative history of intent at the time section 68130.5 was enacted) is *1152 the legislative history of subsequently-enacted section 68130.7 (fn. 6, *ante*), limiting defendants' legal exposure. A Senate Rules Committee analysis of Assembly Bill No. 1543 (which became § 68130.7) stated, "Current law (AB 540, Firebaugh and Maldonado, Chapter 814, Statutes of 2001), which took effect January 1, 2002, qualifies specified long-term *California residents,* regardless of citizenship status, for lower 'resident' fee payments...." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d Reading of Assem. Bill No. 1543 (2001-2002 Reg. Sess.) as amended Jan. 24, 2002, p. 1, italics added.)

We conclude section 68130.5 does, and was intended to, benefit illegal aliens on the basis of residence in California.

3. *Section 68130.5 is Preempted by Title 8 U.S.C. Section 1623*

Since California does not afford the same benefit to U.S. citizens from other states "without regard to" California residence, section 68130.5 conflicts with title 8 U.S.C. section 1623, which states, "an alien **541 who is not lawfully present in the United States shall not be eligible on the basis of residence within a State ... for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

As indicated, state law is preempted to the extent that it actually conflicts with federal law, where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (*English v. General Electric Co., supra,* 496 U.S. at pp. 78-79, 110 S.Ct. 2270, 2275, 110 L.Ed.2d 65, 74; *De Canas v. Bica, supra,* 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43; *LULAC II, supra,* 997 F.Supp. at p. 1253.)

Section 68130.5 does not regulate immigration and therefore is not expressly preempted as a regulation of immigration. (*De Canas v. Bica, supra,* 424 U.S. at p. 356, 96 S.Ct. 933.)

However, Congress in title 8 U.S.C. section 1623 expressly limited the state's power to give in-state tuition to illegal aliens, and in that sense Congress manifested a clear purpose to oust state power with respect to the subject matter which the state statute attempts to regulate. (*Id.* at p. 357, 96 S.Ct. 933.) Though not binding on us, we observe that a federal district court concluded with respect to title 8 U.S.C. section 1621 (fn. 8, *ante*), which we discuss *post,* that Congress has occupied the field of regulation of public postsecondary education benefits to aliens (and *1153 thus invalidated portions of California initiative measure Proposition 187). (*LULAC II, supra,* 997 F.Supp. at p. 1256.) The *LULAC* cases concluded that some provisions (i.e., requiring college admissions officers to report students suspected of being in the country illegally) were preempted because they amounted to determinations of who may and may not remain in this country (*LULAC I, supra,* 908 F.Supp. at p. 774), while other provisions (e.g., denying public postsecondary education to illegal aliens) were preempted because Congress had occupied the field of regulation of public postsecondary education (*LULAC II, supra,* 997 F.Supp. at p. 1256).

It is impossible *for defendants* to comply with both state and federal requirements, because section 68130.5 conflicts with title 8 U.S.C. section 1623, in that the state statute allows the benefit to U.S. citizens from other states only if they attend a California high school for three years. Thus, the state statute does not afford the same benefit to U.S. citizens "without regard to" California residence, as required by title 8 U.S.C. section 1623.

Plaintiffs argue it is also impossible *for illegal aliens* to enjoy the benefits of section 68130.5 while complying with federal law. If they attend a California public university/college, they remain unlawfully present in the United States in violation of federal immigration law. "Federal law forbids aliens to enter the United States without applying for admission. (8 U.S.C. §§ 1101(a)(4), 1181(a), 1201.) Those who nonetheless succeed in doing so, or in overstaying their visas, are subject to arrest and deportation. (*Id.,* §§ 1251, 1252, 1357.)" (*Bradford, supra,* 225 Cal.App.3d at p. 979, 276 Cal.Rptr. 197.) Defendants respond that a finding of impossibility would preempt *all* legislation conferring *any* benefits on illegal immigrants, even emergency medical care. Defendants cite *Lozano v. City of Hazleton* (M.D.Pa.2007) 496 F.Supp.2d 477 at page 498, as stating the single illegal act of entering this country without legal authorization does not strip individuals of all rights. We question **542 plaintiffs' claim that the federal appellate court granted review. In any event, the case does not help defendants because title 8 U.S.C. section 1623 expressly forbids the particular right at issue in this case unless it is given to U.S. citizens without regard to residence (which section 68130.5 does not do).

Plaintiffs add that encouraging illegal aliens to stay in the United States is a potential criminal violation. (8 U.S.C. § 1324(a)(1)(A)(iv); *United States v. Oloyede* (4th Cir.1992) 982 F.2d 133, 137; *Incalza v. Fendi* (9th Cir.2007) 479 F.3d 1005, 1009-1010 [8U.S.C. § 1324a(a)(2), forbidding employers from knowingly employing illegal aliens, provides good cause for terminating employment, as defined by California labor law].) We *1154 presume for purposes of this appeal that title 8 U.S.C. section 1324 would not apply if section 68130.5 comported with title 8 U.S.C. sections 1621 and 1623.

Section 68130.5 also falls within the principle of implied preemption in that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (*De Canas v. Bica, supra,* 424 U.S. at p. 357, 96 S.Ct. 933.) The Congressional objective was stated in title 8 U.S.C. section 1601:

"The Congress makes the following statements concerning national policy with respect to welfare and immigration:

"(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

"(2) It continues to be the immigration policy of the United States that-[¶] (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and

private organizations, and [¶] (B) the availability of public benefits not constitute an incentive for immigration to the United States.

"[¶] ... [¶]

"(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."

Defendants quote from *Day v. Bond* (10th Cir.2007) 500 F.3d 1127(*Day I*), where the court stated in the course of concluding out-of-state students lacked standing for an equal protection claim that a Kansas statute (with language similar to the California statute) involved "a nondiscriminatory prerequisite for benefits under [the statute], regardless of citizenship of the students." (*Id.* at p. 1135.) That statement does not help defendants on the issues of preemption and residence. Nor is defendants' position assisted by their assertion that nine states other than California (Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington) have statutes similar to section 68130.5.

Defendants cite case law holding federal law did *not* preempt state statutes. (*Reyes v. Van Elk, Ltd.* (2007) 148 Cal.App.4th 604, 617-618, 56 Cal.Rptr.3d 68 [federal immigration law did not preempt state prevailing wage law or statutes making immigration status irrelevant to liability under labor, housing, and civil rights laws]; *Farmers Bros. Coffee v. Workers' Compensation Appeals Bd.* (2005) 133 Cal.App.4th 533, 540, 35 Cal.Rptr.3d 23 [federal immigration law did not preempt workers' compensation law].) However, those cases *1155 indicated the state statutes which were designed for purposes such as discouraging unscrupulous employers from hiring illegal aliens were consistent with the ultimate goal of federal immigration law to control illegal immigration. (*Reyes, supra,* 148 Cal.App.4th at pp. 617-618, 56 **543 Cal.Rptr.3d 68; *Farmers, supra,* 133 Cal.App.4th at p. 540, 35 Cal.Rptr.3d 23.) The same cannot be said of section 68130.5.

Defendants argue our interpretation (that section 68130.5 conflicts with title 8 U.S.C. section 1623) effectively deletes from the federal statute the phrase "on the basis of residence within a State," thereby violating the principle of statutory construction to give effect to every word. To the contrary, our conclusion gives realistic effect to that phrase in the federal statute, resulting in preemption of the state statute which confers a benefit on the basis of residence. ...

Defendants cite a law review article that undocumented children are caught in a fierce and complicated debate; the federal government does little to deport them; and it makes little sense to maintain obstacles to their pursuit of a college education. These policy arguments are beyond the scope of this court's authority in this appeal. Such arguments should be directed to Congress.

We conclude plaintiffs have stated a viable claim that title 8 U.S.C. section 1623 preempts section 68130.5. Although this conclusion suffices to require reversal of the judgment, we consider the parties' other contentions to determine what other claims will be at issue upon remand.

C. Preemption by Title 8 U.S.C. Section 1621

Plaintiffs argue section 68130.5 is also preempted by title 8 U.S.C. section 1621. We agree they stated a viable claim.

[19] As indicated, title 8 U.S.C. section 1621 (fn. 8, *ante*) provides in part: "(a) In general. Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an [illegal alien] is not eligible for any State or local public benefit (as defined in subsection (c) of this section) ... [¶] (c) ... 'State or local public benefit' means [¶] ... [¶] (B) any ... postsecondary education ... benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government. [¶] ... [¶] (d) ... A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after [August 22, 1996], which affirmatively provides for such eligibility."

*1156 Title 8 U.S.C. section 1621 was enacted in August 1996 (shortly before title 8 U.S.C. section 1623) as part of the Personal Responsibility and

Work Opportunity Reconciliation Act (PRA or PRWORA). (puB.L. 104-193, (aug. 22, 1996) § 411, 110 stat. 2268.)

As indicated, a federal district court has held that the PRA preempted portions of California initiative measure Proposition 187 denying certain services to illegal aliens, including provisions that excluded illegal aliens from public schools (elementary/secondary and postsecondary) and a provision requiring denial of public postsecondary education benefits to illegal aliens. (*LULAC II, supra,* 997 F.Supp. 1244; *LULAC I, supra,* 908 F.Supp. 755.)

As we have explained in our discussion of title 8 U.S.C. section 1621, "benefit" in title 8 U.S.C. section 1621 includes exemption from nonresident tuition.

[20] Title 8 U.S.C. section 1621 expressly preempts states from giving postsecondary education benefits to illegal aliens-unless the state enacts a statute which "affirmatively provides" for such eligibility.**544 The parties refer to this as a "savings clause" or "safe harbor." The existence of a savings clause in federal legislation does not necessarily preclude a conclusion of conflict preemption. (*Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 926, 12 Cal.Rptr.3d 262, 88 P.3d 1.) However, to the extent the federal law expressly authorizes state legislation, Congress cannot have intended impliedly to preclude such action. (*People v. Edward D. Jones & Co.* (2007) 154 Cal.App.4th 627, 639, 65 Cal.Rptr.3d 130.)

What is the meaning of "affirmatively provides"? Plaintiffs argue it means the California Legislature must expressly refer to title 8 U.S.C. section 1621 and illegal aliens; otherwise, the word "affirmatively" is superfluous. Defendants argue "affirmatively" merely means explicitly rather than implicitly; no "magic words" are required; and section 68130.5 affirmatively provides for eligibility by referring to "person[s] without lawful immigration status." We agree with plaintiffs that something more is required.

Since "affirmatively provides" is ambiguous, we refer to the cognizable federal legislative history-a conference report which stated, "Only the affirmative enactment of a law by a State legislature and signed by the Governor after the date of enactment of this Act, that references this provision [title 8 U.S.C. section 1621], will meet the requirements of this section. The phrase 'affirmatively provides for such eligibility' means that the State law enacted must specify that illegal aliens are eligible for State or local benefits." (H.R.Rep. No. 104-725, 2nd Sess., p. 1 (1996).)

*1157 We conclude the conference report supports plaintiffs' position that not only must the state law specify that illegal aliens are eligible, but the state Legislature must also expressly reference title 8 U.S.C. section 1621 (which was not done in the case of section 68130.5).

We agree with plaintiffs that the federal law's requirements are not a trivial formality. The federal law forces any state that is contemplating the provision of benefits to illegal aliens to spell out that intent publicly and explicitly. Doing so places the public on notice that their tax dollars are being used to support illegal aliens. It is a matter of democratic accountability, forcing state legislators to take public responsibility for their actions.

Here, the California Legislature in enacting section 68130.5 did not expressly reference title 8 U.S.C. section 1621. Moreover, even accepting defendants' view that "affirmatively" merely means explicitly rather than implicitly and does not require the statute to use the words "illegal aliens," section 68130.5 does its best to conceal the benefit to illegal aliens. Although section 68130.5 does indicate that illegal aliens are eligible, it does so in a convoluted manner. The statute starts out by saying a student "other than a nonimmigrant alien [as defined under federal law]" is exempt from nonresident tuition. This sounds like the California statute does not benefit aliens. Section 68130.5 then says that a person "without lawful immigration status" must swear he or she has filed an application to legalize his/her immigration status or will file "as soon as he or she is eligible to do so." This almost sounds like the student will become legalized. The reality, in contrast, is that it could very well be that these students will never be eligible for legal status. Thus, while we do not hold that title 8 U.S.C. section 1621 requires the state statute to use the words "illegal aliens," we conclude the language of section 68130.5 does not clearly put the public on notice that tax dollars are being used to benefit illegal

aliens.

**545 Additionally, while the uncodified section of the enactment stated section 68130.5 allows "undocumented immigrant students" to be exempt from nonresident tuition, the same uncodified section went on to disavow any conferring of benefits on the basis of residence within the meaning of title 8 U.S.C. section 1623. (Stats.2001, ch. 814, § 1; [FN23] Stats.2002, ch. 19, § 1.)

FN23. The uncodified section stated the enactment "allows all persons, including undocumented immigrant students who meet the requirements" to be exempt from nonresident tuition, but also stated the enactment "does not confer postsecondary education benefits on the basis of residence within the meaning of [8 U.S.C. Section 1623]..." (Stats.2001, ch. 814, § 1, (4)-(5).)

We conclude the California Legislature has not met the requirements of title 8 U.S.C. section 1621's "safe harbor" or "savings clause." We need not address plaintiffs' further suggestion that "affirmatively provides" in title *1158 8 U.S.C. section 1621 requires the state statute to use the words "illegal alien" or "alien who is not lawfully present in the United States."

Accordingly, plaintiffs have stated a cause of action that section 68130.5 is preempted by title 8 U.S.C. section 1621.

VI. *Equal Protection*

We next address whether plaintiffs stated a viable claim that section 68130.5 violates the Equal Protection Clause of the Fourteenth Amendment (count four) and the California Constitution (art. I, § 7) (count seven), by denying to plaintiffs the postsecondary education benefits granted to illegal aliens living in California. Plaintiffs claim they are similarly situated with the illegal aliens in that neither class is recognized under law as "domiciled" in the state of California, yet illegal aliens are allowed a benefit denied to U.S. citizens from sister states. We shall conclude plaintiffs should be allowed leave to amend regarding equal protection.

Even assuming for the sake of argument that strict scrutiny applies, as urged by plaintiffs, plaintiffs provide no legal analysis of the legal term of art "domicile," and section 68130.5 does not, on its face, allow illegal aliens a benefit denied to U.S. citizens from sister states. U.S. citizens, like illegal aliens, can obtain the benefit of section 68130.5 by attending a California high school for three years and obtaining a high school diploma or its equivalent.

[21][22] We observe the high school attendance requirement of section 68130.5 is not troubling in and of itself, because a state may favor its own residents. " '[A] State has a legitimate interest in protecting and preserving ... the right of its own bona fide residents to attend [its colleges and universities]' on a preferential tuition basis.' [Citation.]" (*Martinez v. Bynum, supra,* 461 U.S. at pp. 327-328, 103 S.Ct. at p. 1842, 75 L.Ed.2d at p. 886, orig. brackets.) Although a state cannot exclude illegal aliens from free public elementary and secondary schools (*Plyler v. Doe, supra,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786), school districts "may require that illegal alien children, like any other children, actually reside in the school district before admitting them to the schools. A requirement of de facto residency, uniformly applied, would not violate any principle of equal protection.' [¶] A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement with respect to attendance in public free schools does not violate the Equal Protection Clause of the Fourteenth Amendment. [Fn. omitted.]" (*Martinez v. Bynum, supra,* 461 U.S. at **546 pp. 328-329, 103 S.Ct. at pp. 1842-1843, 75 L.Ed.2d at pp. 886-887.) Similarly, *Bradford, supra,* 225 *1159 Cal.App.3d at pages 980 through 981, 276 Cal.Rptr. 197, held there was no equal protection violation in section 68062, subdivision (h), which precluded illegal aliens from qualifying as California residents for tuition purposes. *Bradford, supra,* at pages 981 through 982, 276 Cal.Rptr. 197, observed the heart of *Plyler v. Doe, supra,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (requiring states to educate illegal aliens at the elementary and secondary school levels) was that the "stigma of illiteracy" would mark these children for the rest of their lives.

Plaintiffs claim they alleged that some California

colleges/universities have implemented section 68130.5 to deny eligibility to all U.S. citizens. Defendants respond plaintiffs did not allege this "as applied" challenge in their complaint and may not do so for the first time on appeal. However, plaintiffs, in their brief opposing the demurrer said: "Defendants argue that § 68130.5 withstands equal protection scrutiny because some U.S. citizens at some institutions of higher education have received benefits under the former [*sic*]." Plaintiffs added a footnote that, "Defendants are flatly wrong in arguing that there is no equal protection violation because in-state tuition benefits are being provided to certain non-resident U.S. citizens. By their own admission, Defendants are denying such benefits to non-resident U.S. citizens. [Citation to discovery response.] Evidence of this will be provided at trial."

[23] The cited discovery response does not support the allegation. However, at the demurrer stage, plaintiffs are not required to prove their allegations. Plaintiffs should be allowed leave to amend if they show a reasonable possibility that defects can be cured by amendment. (*Aubry v. Tri-City Hospital Dist., supra,* 2 Cal.4th at pp. 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317.)

We conclude that, on remand, the trial court shall give plaintiffs the opportunity to amend their complaint as to the equal protection claim. We need not address plaintiffs' argument that the state cannot have a rational basis for subsidizing the higher education of persons who by virtue of their illegal alien status may be unable to work legally in the state.

VII. *Privileges and Immunities*

[24] Plaintiffs maintain their fifth count stated a viable claim that section 68130.5 contravenes the Privileges and Immunities Clause of the Fourteenth Amendment, Section One, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Plaintiffs' theory, as alleged in the complaint, was that, "By making illegal aliens who possess no lawful domicile in the state of California eligible for in-state tuition rates, while denying this benefit to U.S. citizens whose lawful domicile is outside California, the state of California has *1160 denigrated U.S. citizenship and placed U.S. citizen Plaintiffs in a legally disfavored position compared to that of illegal aliens." The complaint cited section 5 of the Fourteenth Amendment, which provides, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." The complaint alleged Congress exercised this power by enacting title 8 U.S.C. section 1623.

The trial court dismissed this count based on *Kirk v. Regents, supra,* 273 Cal.App.2d 430, 78 Cal.Rptr. 260, which said, "the privileges and immunities clause does not guarantee [a student from Ohio who married a California resident and moved to California] the right to attend the university**547 for the same fee as that charged to persons who have met the one-year residence requirement." (*Id.* at pp. 444-445, 78 Cal.Rptr. 260.)

Given the complaint's allegations, this reason is invalid.

That in-state tuition is conferred by state rather than federal law does not defeat the privileges and immunities claim here, where plaintiffs allege a violation of their rights under federal law, 8 U.S.C. section 1623.

Defendants' response on this point is that section 68130.5 applies equally to U.S. citizens and illegal aliens. We have rejected this view in our discussion of preemption.

Accordingly, the demurrer should be overruled as to the privileges and immunities claim. We need not address plaintiffs' invocation of a different constitutional provision regarding privileges and immunities which was not alleged in the complaint.

VIII. *Due Process Taking of Property*

[25] Plaintiffs contend defendants' illegal and discriminatory conduct operated as an illegal extraction of excessive tuition from plaintiffs and constituted a taking of property without due process of law under the federal and California Constitutions. No such claim was asserted in the complaint, and we see no reason for leave to amend.

Plaintiffs fail to show they could amend the complaint to add a viable takings claim. They cite

authority for the general proposition that a plaintiff deprived of a property right without due process is entitled to compensation under the Fourteenth Amendment and the California Constitution. Plaintiffs cite *Lister v. Hoover, supra,* 706 F.2d 796, for the supposed proposition that the right to lower tuition constituted a property interest. However, the only issue in *Lister* was whether due process required the University of Wisconsin *1161 to give written reasons for its denial of student requests to be classified as state residents for tuition purposes. (*Id.* at p. 797.) In *Lister,* no one disputed that the plaintiffs' claimed entitlement to lower tuition constituted a property interest; the question was what process was due. (*Id.* at p. 798.) The reviewing court said the interest was slight, and due process did not require the university to give written reasons for its denial. (*Id.* at pp. 797, 805.)

Plaintiffs' citation of authority that they have a contractual relationship with defendants adds nothing to their constitutional claims.

We conclude plaintiffs fail to show they should be given leave to amend to assert a due process claim based on the taking of their property.

IX. *Unruh Act*

[26] Plaintiffs contend they adequately pleaded a claim under the Unruh Civil Rights Act (Civ.Code, § 51 et seq.), in that they are American citizens from states other than California who are being discriminated against on the basis of national origin (reverse discrimination) and geographic origin. We shall conclude plaintiffs fail to show grounds for reversal regarding the Unruh Act claim.

Civil Code section 51, subdivision (b), provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

**548 Section 68130.5 does not discriminate against plaintiffs on the basis of national origin. Plaintiffs are denied the exemption from nonresident tuition, *not* because they are U.S. citizens, but because they have not attended high school in California. However, plaintiffs claim the effect of section 68130.5 is reverse discrimination against U.S. citizens from states other than California (geographic origin) and in favor of illegal aliens.

[27][28] The Unruh Act must be construed liberally to carry out its purpose of compelling recognition of the equality of all persons receiving services offered by business establishments. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167, 59 Cal.Rptr.3d 142, 158 P.3d 718.) Although Civil Code section 51 does not mention geographic origin, the enumerated categories in the Unruh Act are " 'illustrative rather *1162 than restrictive.' " (*Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, 839, 31 Cal.Rptr.3d 565, 115 P.3d 1212.) Nevertheless, the enumerated categories set forth the type of categories that will fall within the scope of the statute. (*Id.* at p. 841, 31 Cal.Rptr.3d 565, 115 P.3d 1212.) The common element of the enumerated categories and those added by judicial construction is they " 'involve personal ... characteristics-a person's geographic origin, physical attributes, and personal beliefs.' " (*Id.* at pp. 841, 842-843.) *Koebke* held the version of the Unruh Act in effect at that time extended to prohibit discrimination in favor of married couples and against domestic partners. (*Ibid.*) Thus, *Koebke* did not, as plaintiffs claim, extend the Unruh Act to geographic origin. Cases are not authority for propositions not decided. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620, 71 Cal.Rptr.2d 830, 951 P.2d 399.)

Plaintiffs' position finds indirect support in *Bradford, supra,* 225 Cal.App.3d 972, 276 Cal.Rptr. 197, which held before enactment of section 68130.5 that section 68082 (fn. 9, *ante*) precluded illegal aliens from qualifying as California residents for tuition purposes. (*Id.* at p. 980, 276 Cal.Rptr. 197.) Among the state's legitimate interests in denying resident tuition to illegal aliens was the interest "in avoiding discrimination against citizens of our sister states...."(*Id.* at p. 981, 276 Cal.Rptr. 197.)

However, *Bradford* was not an Unruh Act case. We disregard plaintiffs' unsupported assertion, raised for the first time in the reply brief, that the doctrine of collateral estoppel bars defendants, who were parties in the *Bradford* case, from denying that discrimination has occurred.

Defendants argue the Unruh Act prohibits only "arbitrary discrimination," and defendants' actions in applying a statute (§ 68130.5) enacted by the Legislature cannot be considered arbitrary discrimination, since the Legislature has specifically permitted public colleges and universities to charge non-resident tuition and to exempt certain persons from the requirement of paying nonresident tuition.

Defendants have the better argument, particularly since section 68130.7 (fn. 6, *ante*) limits the remedy available in the event of invalidation of section 68130.5. The money damages available under the Unruh Act (Civ.Code, §§ 52, 52.1, subd. (b)) are barred by section 68130.7 (fn. 6, *ante*), which prohibits monetary damages if a court finds section 68130.5 unlawful.

We conclude plaintiffs fail to show grounds for reversal regarding the Unruh Act claim (count eight).

*1163 X. *Discrimination-(Cal. Const., Art. I, § 31)*

[29] Although not alleged in the complaint, plaintiffs claim they argued at the **549 hearing on the demurrer (no transcript appears in the record on appeal) that they have a viable claim under California Constitution, article I, section 31, which was adopted by Proposition 209 in 1996, and which provides in part that "[t]he State [expressly including the public university system] shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or *national origin* in the operation of public employment, *public education*, or public contracting." (Italics added.) This self-executing provision states the remedies are the same as are otherwise available for violations of California antidiscrimination law. (Cal. Const., art. I, § 31, subds. (g)-(h).)

Plaintiffs argue illegal aliens who receive the in-state tuition benefit under section 68130.5 are by necessity foreign nationals, and therefore they receive preference based on their national origin. Plaintiffs also argue they themselves are the objects of reverse discrimination based on their national origin, i.e., American citizens from out-of-state.

However, plaintiffs fail to persuade us that "national origin" includes alienage/citizenship.[FN24]

FN24. Even plaintiffs' amicus curiae, Pacific Legal Foundation (PLF) is not persuaded. PLF filed an amicus curiae brief in support of plaintiffs on other grounds but argued plaintiffs are wrong about article I, section 31, and national origin does not include citizenship.

Proposition 209 was intended to reinstitute in California an interpretation of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000a et seq.) that preference to any group constitutes inherent inequality, however it is rationalized. (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 561, 101 Cal.Rptr.2d 653, 12 P.3d 1068.) In interpreting title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), the United States Supreme Court concluded "national origin" did not include alienage/citizenship. (*Espinoza v. Farah Mfg. Co.* (1973) 414 U.S. 86, 88, 94 S.Ct. 334, 336, 38 L.Ed.2d 287, 291.) "The term 'national origin' on its face refers to the country where a person was born, or more broadly, the country from which his or her ancestors came." (*Ibid.*)"Congress did not intend the term 'national origin' to embrace citizenship requirements." (*Id.* at p. 89, 94 S.Ct. 334.) "Certainly it would be unlawful for an employer to discriminate against aliens because of race, color, religion, sex, or national origin-for example, by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry. Aliens are protected from illegal discrimination *1164 under the Act, but nothing in the Act makes it illegal to discriminate on the basis of citizenship or alienage." (*Id.* at p. 95, 94 S.Ct. 334.)

Plaintiffs cite federal cases allowing American citizens to pursue title VII claims alleging they were terminated from employment solely because they were born in the United States. However, plaintiffs fail to discuss these cases. None of these cases said "national origin" included alienage/citizenship, and none helps plaintiffs. Thus, the parties in *Chaiffetz v. Robertson Research Holding, Ltd.* (5th Cir.1986) 798 F.2d 731-an American employee of a Texas subsidiary of a British parent corporation-agreed that "national origin" in title VII includes American citizens. (*Id.* at p. 732-733.) The appellate court held

the district court erroneously found a legitimate, nondiscriminatory reason for the dismissal. (*Ibid.*) The appellate court reversed on that ground but added that the district court did not need to consider on remand the plaintiff's equal protection claim under title 42 U.S.C. section 1981 because, although that statute covers alienage, in America discrimination against Americans can never be discrimination ****550** based on a alienage. (*Id.* at p. 735.) Plaintiffs do not discuss this latter point. *Bilka v. Pepe's Inc.* (N.D.Ill.1985) 601 F.Supp. 1254, held an employee could pursue a claim of national origin discrimination, where the American employee alleged he was fired for teaching the Mexican workers English and talking about unions, though the court expressed no view as to whether being fired for having "American ideas" was the same as being fired for being born American. (*Id.* at p. 1258, fn. 7.)*Thomas v. Rohner-Gehrig & Co.* (N.D.Ill.1984) 582 F.Supp. 669, held a complaint alleging that the plaintiffs were discharged by their employer (a Swiss-owned company incorporated in New York) solely because they were born in the United States, sufficiently stated a title VII cause of action based on national origin discrimination. (*Id.* at pp. 674-675.) Thus, none of these cases helps plaintiffs here.

We conclude plaintiffs fail to show a viable claim for violation of California Constitution, article I, section 31.

XI. *Injunctive and Declaratory Relief*

Plaintiffs summarily argue they adequately pleaded claims for injunctive and declaratory relief. Given our foregoing conclusions, we agree.

In summary, the demurrer was improperly sustained as to the preemption and privileges and immunities claims, and leave to amend should be granted as to the equal protection claim.

*1165 DISPOSITION

The judgment is reversed. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

We concur: RAYE and HULL, JJ.
Cal.App. 3 Dist.,2008.

Martinez v. Regents of University of California
166 Cal.App.4th 1121, 83 Cal.Rptr.3d 518, 236 Ed. Law Rep. 922, 08 Cal. Daily Op. Serv. 12,151, 2008 Daily Journal D.A.R. 14,438

END OF DOCUMENT

Original List Date: 6/3/2003
Last Updated: 4/26/2007
List Print Date: 12/04/2008
Claim Number: 02-TC-21
Issue: Tuition Fee Waivers

Mailing Information: Draft Staff Analysis

Mailing List

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BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, Petitioner,
v.
W. E. SIMPSON, as District Attorney, etc., Respondent.
L. A. No. 21704.

Supreme Court of California
Feb. 2, 1951.

HEADNOTES

(1) Disorderly Houses § 14--Abatement Under Statute.
It is the duty of the district attorney of Los Angeles County to abate, when directed by the board of supervisors, that which constitutes a public nuisance within the Red Light Abatement Act (Stats. 1913, p. 20, §§ 1-3), although the county charter invests county counsel with exclusive control of civil actions in which the county is concerned. (Gov. Code, § 26528; Code Civ. Proc., § 731.)
See 9 **Cal.Jur.** 577; 17 **Am.Jur.** 114.

(2) Counties § 49--Officers--County Counsel.
Powers and duties of county counsel appointed pursuant to a charter are not defined by Gov. Code, § 27642, which requires a county counsel appointed pursuant to Gov. Code, tit. 3, div. 1, pt. 3, ch. 12, to discharge all duties invested by law in the district attorney other than those of a public prosecutor, but such counsel, not being appointed pursuant to such code provisions, has only the powers and duties given him by the charter.

(3a, 3b) Disorderly Houses § 14--Abatement Under Statute.
Assuming that provisions of the Government Code requiring county counsel to discharge all duties vested by law in the district attorney other than those of a public prosecutor apply to county counsel of Los Angeles County appointed pursuant to its charter, still the duty to abate a nuisance within the Red Light Abatement Act is within those reserved to the district attorney by Gov. Code, § 27642, since proceedings under the Abatement Act are in the name of the People of the state, and are in the nature of actions to recover penalties or forfeitures. (See Gov. Code, §§ 26500, 26502, 26521.)

(4) Disorderly Houses § 13--Abatement Under Statute--Nature of Proceeding.
Although actions to abate nuisances are considered civil in nature, the abatement of houses of prostitution is in aid of, and auxiliary to, enforcement of the criminal law, and the Red Light Abatement Act is penal in nature.

(5) District Attorney § 7--Powers and Duties--Prosecuting Actions.
Where a mandatory duty to abate a nuisance is imposed upon a district attorney by a statute leaving him no discretion to exercise, mandamus is the proper remedy to compel him to institute abatement proceedings.
See 9 **Cal.Jur.** 601; 42 **Am.Jur.** 245.

SUMMARY

PROCEEDING in mandamus to compel the district attorney to institute proceedings for the abatement of a public nuisance. Writ granted.

COUNSEL

Harold W. Kennedy, County Counsel, Gerald G. Kelly, Assistant County Counsel, Milnor E. Gleaves and Arvo Van Alstyne, Deputy County Counsel, for Petitioner.

W. E. Simpson, District Attorney, in pro. per., and Jere J. Sullivan, Deputy District Attorney, for Respondent.

CARTER, J.

In this mandamus proceeding, petitioner, the Board of Supervisors of Los Angeles County, seeks to require respondent, district attorney of that county, to institute proceedings for the abatement of a certain public nuisance as directed by petitioner.

The undisputed petition shows that petitioner has been presented with facts and has determined that a certain building situated in Los Angeles County is

being used for "lewdness, assignation and prostitution." It directed respondent to commence an action to abate the nuisance, but respondent refused to act asserting that the duty of bringing the action rested on the county counsel rather than the district attorney. Places used as described are declared to be public nuisances and abatable by action by the district attorney in the name of the People (Stats. 1913, p. 20, §§ 1- 3), by the statute known as the Red Light Abatement Act.

(1) The Los Angeles County charter invests the county counsel with the duty of representing all county officers in all matters pertaining to their duties and with "exclusive charge and control of all civil actions and proceedings in which the county or any officer thereof, is concerned or is a party." (Los Angeles County Charter, § 21; Stats. 1913, p. 1484.) It has been held that an action or proceeding by a public authority to abate a public nuisance is civil in nature. (*People v. Macy,* 43 Cal.App. 479, 482 [184 P. 1008]; *People v. Arcega,* 49 Cal.App. 233 [193 P. 268]; see Code Civ. Proc., § 731; Stats., 1913, p. 20.) This lends some support to the view that it is the duty of the county counsel to prosecute actions to abate nuisances. There are, however, other factors of more persuasive significance which compel the conclusion that the duty rests upon the district attorney. ***673**

The charter provides that each county officer shall have the powers and perform the duties now or hereafter prescribed by general law and by the charter (§ 25). The district attorney and county counsel are named as county officers (§ 21). The statute (Red Light Abatement Act) expressly and particularly imposes upon district attorneys the duty of maintaining actions in equity to abate houses of prostitution. (Stats., 1913, p. 20, §§ 2, 3.) "A civil action may be brought in the name of the people of the State of California to abate a public nuisance ... by the *district attorney* of any county in which such nuisance exists ... and such district attorney ... of any county ... in which such nuisance exists *must* bring such action whenever directed by the board of supervisors of such county ..." (Emphasis added.) (Code Civ. Proc., § 731.)(See, also, Gov. Code, § 26528.) Thus the particular duty with respect to abatement of public nuisances is that of the district attorney. That is a factor with some significance as a particular statutory provision should prevail over a general one. (Civ. Code, § 3534; Code Civ. Proc., § 1859; *Division of Labor Law Enforcement v. Moroney,* 28 Cal.2d 344 [170 P.2d 3].)

(2) Under the general law, in any county with a population of over 60,000, the board of supervisors may, except in one with a charter providing that the district attorney is attorney for one or more county officers, appoint a county counsel. (Gov. Code, § 27640.)Los Angeles County does not fall within that exception as seen from its charter, *supra,* under which the county counsel represents county officers. When the board appoints a county counsel pursuant to *this chapter* (Gov. Code, title 3, div. 1, pt. 3, ch. 12) he "shall discharge all the duties vested by law in the district attorney other than those of a public prosecutor." (Gov. Code, § 27642.)That section and section 27640 were new in 1941, being then added as section 4041.12a to the Political Code. (Stats. 1941, ch. 618, § 2.) Another section provides that in counties having a county counsel appointed pursuant to the same chapter 12, he shall discharge all the civil duties vested in the district attorney. (Gov. Code, § 26529.)Apparently the county counsel of Los Angeles County is appointed pursuant to its charter which has provided for such office since its adoption in 1913, rather than the Political Code and its successor, the Government Code. That being true, the provisions ***674** of the Government Code relating to county counsel would not apply to the situation where the office of county counsel is established by charter in the manner here appearing. It is true the charter gives to the county counsel the powers and duties provided by general law, but the provisions of the Government Code with reference to county counsel are not general in the sense that they apply to all county counsel however they hold office. They apply only to county counsel appointed thereunder. Thus it follows that the county counsel here does not have the powers and duties of a district attorney except as they are given by section 22 of the charter. On the other hand, the district attorney has all the powers and duties conferred by the laws of the state, except as limited by the provisions of the charter.

(3a) Even if it be assumed that the provisions of the Government Code on county counsel apply to the Los Angeles county counsel, still properly construed, the duty rests upon the district attorney. The abatement of places under the Red Light Abatement Act is more appropriately the duty of the district attorney since it is compatible with his duties as public prose-

cutor. It will be remembered that the proceeding is prosecuted in the name of the People of the state, as are criminal prosecutions, which indicates that the county as such is not as much concerned as the People of the state. The Government Code, in speaking of the duties of the district attorney, states that he is "the public prosecutor and must conduct on behalf of the people all prosecutions for public offenses and prosecute actions for the recovery of fines, penalties, and forfeitures" accruing to the state or his county. (Gov. Code, §§ 26500-26502, 26521.)Proceedings under the Red Light Abatement Act are somewhat in the nature of actions to recover penalties or forfeitures, for thereunder the fixtures and paraphernalia in the place abated are partially forfeited and the place may be closed to use for any purpose for a year. (Stats. 1913, p. 20, § 7.) (4) It is penal in nature. (See *State ex rel. Whall v. Saenger Theatres Corp.*, 190 Miss. 391 [200 So. 442]; *Hofferman v. Simmons*, 177 Misc. 962 [32 N.Y.S.2d 244].) While actions to abate nuisances are considered civil in nature (cases cited *supra*.), the abatement of houses of prostitution is in aid of and auxiliary to the enforcement of the criminal law. Such places are declared public nuisances. (Stats. 1913, § 20.) Each and every day a public nuisance is maintained is a separate offense and is a misdemeanor which it is the duty of the district *675 attorney to prosecute by continuous prosecutions. (Pen. Code, § 373(a).) In general, any person maintaining a public nuisance is guilty of a misdemeanor. (Pen. Code, § 372.)It is aptly said in *People v. Barbiere*, 33 Cal.App. 770, 775 [166 P. 812]: "The general object of the legislation involved in the said act (Red Light Abatement Act) is, it is obvious, no different from that of certain penal statutes which have been upon the pages of our lawbooks for many years. Sections 315 and 316 of the Penal Code declare it to be a misdemeanor for any person to keep or reside in a house of ill fame in this state, resorted to for purposes of prostitution or lewdness, or to keep a disorderly house, or any house for the purpose of assignation or prostitution. And the last-named section further places a ban upon the act of letting or leasing property to another, where the owner of the property knows that the same is to be used for the purpose of assignation or prostitution, and makes such act a misdemeanor.

"The abatement act is only in furtherance of the policy of the state as established by the sections of the Penal Code above adverted to, and differs in a general sense from those sections only in that, unlike those sections, its design was to establish a summary method, through the civil processes of the law, for putting a stop to the maintenance of houses of ill fame, as that designation is commonly understood, and other like places, where acts of lewdness and prostitution are habitually practiced and carried on as a business. The act, in other words, represents only the concrete application of the state's power of police, and, preferably to the courts of criminal jurisdiction, invokes the aid of the civil courts as the most certain instrumentality for the suppression of an evil which has been by the legislature deemed of so pernicious a nature, in its effect upon society, as to have actuated that body in denouncing its practice as a public crime." (*People v. Barbiere*, 33 Cal.App. 770, 775 [166 P. 812].) (3b) Hence we think that section 27642 of the Government Code reserving to district attorneys the duties of public prosecutor should embrace the abatement of such nuisances.

It follows from the foregoing factors that it is the duty of the district attorney rather than the county counsel to prosecute actions for abatement of houses of prostitution.

(5) That mandamus is the proper remedy is clear. As pointed out above, the district attorney *must* or *shall* bring an action to abate a public nuisance when so directed by the board of supervisors. (Code Civ. Proc., § 731, *supra*;Gov.*676 Code, § 26528.) "Shall" is mandatory (Gov. Code, § 14), and certainly "must" is also. The writ of mandamus issues "... to compel the performance of an act which the law specially enjoins, as a duty resulting from an office ..." (Code Civ. Proc., § 1085.)The statutes (Code Civ. Proc., § 731; Gov. Code, § 26528) specifically "enjoin" upon the district attorney "as a duty resulting from (his) office" the bringing of actions to abate public nuisances when directed by the board of supervisors. It may well be that where he is not directed by the board he has some discretion in the matter (Code Civ. Proc., § 731; Stats., 1913, p. 20, § 3), but plainly there is none where he is so directed. Moreover, in this case he refuses to exercise any discretion he might have as his failure to act is based solely upon his claim that the duty rests upon the county counsel; thus mandamus would be proper. (See *Hollman v. Warren*, 32 Cal.2d 351 [196 P.2d 562].)

Ordinarily a district attorney cannot be compelled by mandamus to prosecute a criminal case (see *Boyne v.*

Ryan, 100 Cal. 265 [34 P. 707]; 55 C.J.S., Mandamus, § 69(f)) but here the mandatory duty to prosecute is imposed upon him and the statute leaves him no discretion to exercise. In *Boyne v. Ryan, supra,* the court seemed to feel that mandamus would not lie because the court could not supervise the many ramifications of the prosecution of the action. In the instant case, however, the district attorney is not refusing to prosecute the action for any reason other than his view that he has no authority under the law. Under these circumstances we may presume he will diligently prosecute once he has commenced the action. (See Code Civ. Proc., § 1963(15).)

It is ordered that a peremptory writ of mandamus issue as prayed.

Gibson, C. J., Shenk, J., Edmonds, J., Traynor, J., Schauer, J., and Spence, J., concurred. *677

Cal.
Board of Sup'rs of Los Angeles County v. Simpson
36 Cal.2d 671, 227 P.2d 14

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H

Court of Appeal, First District, Division 3, California.
DIABLO VALLEY COLLEGE FACULTY SENATE, Plaintiff and Appellant,
v.
CONTRA COSTA COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.
No. A108713.

March 21, 2007.
Rehearing Denied April 6, 2007.
Review Denied June 27, 2007.

Background: Faculty senate of community college filed petition for a writ of mandate against community college district, and a complaint for declaratory relief against Chancellor. Faculty senate alleged that district was required to engage in collegial consultation with senate before effecting an administrative reorganization. The Superior Court, Contra Costa County, No. N03-0005,Steven K. Austin, J., denied relief, and faculty senate appealed.

Holding: The Court of Appeal, McGuiness, P.J., held that community college district was not required to engage in collegial consultation with faculty senate before effecting an administrative reorganization.

Affirmed.

West Headnotes

[1] Declaratory Judgment 118A 393

118A Declaratory Judgment
118AIII Proceedings
118AIII(H) Appeal and Error
118Ak392 Appeal and Error
118Ak393 k. Scope and Extent of Review in General. Most Cited Cases

Mandamus 250 187.9(6)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(6) k. Questions of Fact. Most Cited Cases
In mandate and declaratory relief proceedings, the appellate court defers to the trial court's findings of fact if they are supported by substantial evidence.

[2] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
Where the material facts are undisputed, the trial court's interpretation of a statute is subject to de novo review.

[3] Colleges and Universities 81 7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases
Community college district was not required by applicable regulations to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization, which consisted of hiring professional deans for managerial positions previously filled on a part-time basis by faculty members; district's administrative organization could not be construed as a "district or college governance structure" within the meaning of regulation, and, moreover, the management system was not "related to faculty roles." 5 CCR § 53200(c)(6).

[4] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construc-

tion. Most Cited Cases

Statutes 361 ⚿219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement.
See 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 111 et seq.; Cal. Jur. 3d, Administrative Law, § 147 et seq.

[5] Administrative Law and Procedure 15A ⚿751

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak751 k. Limitation of Scope of Review in General. Most Cited Cases
Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum.

[6] Colleges and Universities 81 ⚿7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases
Court of Appeals would accord some weight to the Chancellor's interpretation of state regulations requiring collegial consultation for policies relating to academic and professional matters; Chancellor's careful consideration of the issue was evinced by his having issued four legal opinions, and Chancellor had consistently interpreted the regulation so as not to require collegial consultation for management reorganizations. 5 CCR § 53200(c)(6).

[7] Administrative Law and Procedure 15A ⚿796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Two broad categories of factors are relevant to a court's assessment of the weight due an agency's interpretation of a legal text: those indicating that the agency has a comparative interpretive advantage over the courts, and those indicating that the interpretation in question is probably correct.

[8] Administrative Law and Procedure 15A ⚿796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.

[9] Administrative Law and Procedure 15A ⚿413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.

[10] Administrative Law and Procedure 15A ⚿413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
With respect to whether an agency's decision is probably correct, factors suggesting such correctness include: (1) indications that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time.

[11] Administrative Law and Procedure 15A 796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Whatever the force of administrative construction, final responsibility for the interpretation of the law rests with the courts; at most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.

[12] Administrative Law and Procedure 15A 412.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases
Rules governing the interpretation of statutes also apply to interpretation of regulations.

[13] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage.

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McGUINESS, P.J.

*1027 This case concerns whether the Education Code or applicable regulations required a community college district to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization. In September 2001, the President of Diablo Valley College (DVC) announced that, as part of a district-wide reorganization, professional deans would be hired for managerial positions previously filled on a part-time basis by faculty members. The Diablo Valley College *1028 Faculty Senate (Faculty Senate) complained this change could not be undertaken without its consent, based on regulations requiring collegial consultation for policies relating to "academic and professional matters." (Cal.Code Regs., tit. 5, §§ 53200, 53203, subd. (a).) [FN1] After several unsuccessful complaints to the Chancellor of the California Community Colleges (Chancellor), which resulted in a series of legal opinions from the Chancellor concluding the reor-

ganization did not impose a duty of collegial consultation, the Faculty Senate filed a petition for writ of mandate against the Contra Costa Community College District (District) and its governing board (Board) and a complaint for declaratory relief against the Chancellor. The trial court agreed that the regulations did not require collegial consultation and denied relief. As the third neutral entity to evaluate the question, we reach the same conclusion and affirm the judgment.

FN1. All unspecified section references are to Title 5 of the California Code of Regulations.

BACKGROUND

I. History of DVC Division Chairs and the Change to Professional Deans

With an annual enrollment of approximately 35,000 students, DVC is one of the largest community colleges in northern California, and it is one of three colleges managed by the District. Beginning in approximately 1968, DVC employed faculty "division chairs" to manage the various academic divisions within the college.[FN2] Division chairs were nominated by a majority vote of full-time faculty members within each division and then appointed to the position by the university president. Selected faculty members served up to two consecutive three-year terms as division chair and continued to teach part-time during this period. At the end of his or her service, a division chair generally resumed full-time teaching responsibilities. Division chairs acted as first-line managers for their divisions. They facilitated communications between faculty and administrators and managed most aspects of the faculty's involvement in college administration.

FN2. "Division" refers to an aggregate of related academic disciplines.

The division chair management system at DVC was first memorialized in writing in June 1977, when it was added to the District's Administrative Procedures Manual as AP 4111.07. The District moved this provision into different manuals over **297 the years, but the description of division chair selection procedures and responsibilities remained substantively unchanged. The parties dispute whether any of these acts were accompanied by collegial consultation and whether the Board ever formally adopted AP 4111.07 or its successors.

In addition, in 1982 or 1983, a description of the procedure for selecting division chairs was added to the collective bargaining agreement (CBA) between the District and United Faculty, the union representing faculty *1029 members in District colleges. The CBA identifies division chairs as "management positions." The significance of this description's appearance in the CBA is another subject of dispute between the parties.

In the spring of 2001, the chancellor of the District (Charles Spence) determined it would be advantageous for colleges in the District to switch from the division chair system, which all three were using, to full-time management by professional administrators. In accordance with this decision, on September 14, 2001, DVC president Mark Edelstein sent a memorandum to all faculty and staff advising them of the upcoming change. Because of the school's high enrollment and almost year-round instructional calendar, Edelstein explained it had become increasingly difficult for the college to manage its affairs effectively using part-time faculty division chairs, who worked for only nine months of the year and served relatively brief terms.

II. Opinions of the State Chancellor and Legal Proceedings

Although the change from division chairs to professional deans was accepted at other colleges in the District, it was controversial at DVC. On September 28, 2001, the Faculty Senate filed a formal complaint with statewide Chancellor Thomas J. Nussbaum arguing state regulations required the District to consult collegially with DVC faculty before implementing the proposed reorganization.[FN3] Specifically, the Faculty Senate maintained that the reorganization was an "academic or professional matter[ ]" requiring consultation (§ 53203, subd. (a)) because it would alter faculty roles in governance (§ 53200, subd. (c)(6)). For such matters, Board policy required the District to reach "mutual agreement" with faculty before they could legally make the change.

FN3. Mr. Nussbaum served as Chancellor of the California Community Colleges from

May 1996 to January 17, 2004. The current statewide Chancellor is Marshall Drummond.

The Chancellor has statutory responsibility for establishing "minimum conditions" and ensuring these conditions are met at state community colleges as a prerequisite of their receipt of state funding. (Ed.Code, § 70901, subd. (b)(6).) One "minimum condition" is the requirement of collegial consultation with academic senates under certain defined circumstances. (§§ 51023, 53200, 53203.) The Chancellor treated the Faculty Senate's September 2001 letter (and subsequent letters) as a minimum conditions complaint triggering the office's duty to investigate, and on October 23, 2001, he issued the first of several legal opinions addressing the proposal to replace division chairs with full-time deans.

Legal opinion L 01-26 reported that the Board had tabled the proposed change for 90 days to allow for continuing informal discussions between the *1030 DVC faculty and administration. Because the Board had taken no action to implement the reorganization, the Chancellor observed a formal complaint about the lack of collegial consultation was "technically premature." Nevertheless, in order to provide guidance, the Chancellor identified specific changes **298 that might require collegial consultation if they were implicated by the District's actions, but he also repeated the general rule-set forth in his September 1997 advisory opinion on shared governance (legal opinion M 97-20)-that mere changes to a District's administrative organization do not require collegial consultation. The Chancellor issued a second opinion almost a month later. Legal opinion L 01-31 (November 15, 2001) repeated the prior opinion's conclusion that changes in the District's management structure "might" require collegial consultation if they could be construed as affecting faculty roles in governance. However, consultation would not be required if the change was merely to a past practice rather than to a policy. In addition, because the division chair practice was outlined in the CBA with United Faculty, the Chancellor believed collegial consultation would be inconsistent with a regulation exempting the provisions of collective bargaining agreements from such consultation obligations (§ 53204).

The Board formally approved the replacement of DVC's division chairs with full-time deans in December 2001, and the Faculty Senate renewed its complaint with Chancellor Nussbaum. On July 22, 2002, the Chancellor issued an exhaustive opinion (legal opinion O 02-19) reviewing all aspects of the District's reorganization, including the change from division chairs to deans. He concluded the regulations require collegial consultation only for "matters that go to the heart of faculty expertise," based on "their expertise as teachers and subject matter specialists and their professional status." Consistent with this understanding, the Chancellor's office had developed a general rule that management reorganizations do not require collegial consultation, and the Chancellor discerned no reason to depart from this rule with regard to the District's reorganization. Specifically, because the reorganization concerned only management of the colleges, it did not affect "governance structures ... related to faculty roles" (§ 53200, subd. (c)(6)). The Chancellor also found that the faculty's role in selecting division chairs was established through the collective bargaining process, and collegial consultation on the matter was therefore precluded.

On January 8, 2003, the Faculty Senate filed a petition for writ of mandate (Code Civ. Proc., § 1085) against the District and the Board and a complaint for declaratory relief against the Chancellor. Later in January 2003, counsel for the Faculty Senate sent a letter to Chancellor Nussbaum advising him that the Senate had just discovered the existence of a District policy for the selection of division chairs. This policy, which counsel represented had been in effect for many years, was contained in the District's Curriculum and Instruction Procedure Manual. The Chancellor responded with a fourth *1031 opinion. In legal opinion O 03-13 (May 2, 2003), the Chancellor observed that, just like AP 4111.07, there was no evidence the provision in question was ever adopted by the Board.[FN4] The Chancellor therefore continued to maintain collegial consultation was not required, and he reiterated his additional conclusions that the division chair procedure was not an "academic or professional matter" requiring consultation (§ 53200, subd. (c)) and that the parties' CBA precluded such consultation.

FN4. Indeed, the Curriculum and Instruction provision was simply one of several successive versions of the procedure originally described in AP 4111.07.

After a hearing, on October 13, 2004, the trial court entered an order denying the petition for writ of mandate and denying "all relief requested in the complaint for declaratory relief." The court rejected the **299 respondents' arguments about the absence of a Board policy, interpreting the collegial consultation regulations as "applying to established practices, as well as to formally approved policies." Further, the court found the District and Board were estopped from denying that the division chair structure was an approved policy by their knowledge and approval of this job description over the years, through various policy and procedure manuals. The court also rejected the respondents' assertion that the CBA precluded collegial consultation, based on a finding that neither side intended the CBA to be binding on the subject of the division chair management structure.[FN5] However, the trial court agreed with the respondents that the regulations did not require collegial consultation because the switch from division chairs to deans did not implicate "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6).) The court interpreted the regulations as requiring collegial consultation only when a change in a college's governing structure diminishes the faculty's ability to perform their unique "faculty roles," as opposed to roles they might serve in management.

FN5. The court also observed this provision could not have been a negotiable term in the CBA because modification of a management structure was exclusively a management prerogative.

DISCUSSION

[1][2] In mandate and declaratory relief proceedings, we defer to the trial court's findings of fact if they are supported by substantial evidence. (*Franzosi v. Santa Monica Community College Dist.* (2004) 118 Cal.App.4th 442, 447, 13 Cal.Rptr.3d 25; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 974, 97 Cal.Rptr.2d 280.) Where, as here, the material facts are undisputed, the trial court's interpretation of the Education Code is subject to de novo review. (*Franzosi v. Santa Monica Community College Dist., supra,* 118 Cal.App.4th at p. 447, 13 Cal.Rptr.3d 25.)

[3] The District and the Chancellor, respondents herein, both adopt the trial court's interpretation of the applicable regulations. In addition, both liken *1032 the Chancellor's office to a state agency and argue the Chancellor's interpretation of the regulations must be accorded deference unless it is clearly erroneous. The District repeats several alternative arguments that the trial court rejected (concerning the Faculty Senate's standing, lack of a Board-approved policy, and the provision regarding division chairs in the CBA) and adds a new claim that the collegial consultation regulations are invalid because they exceed the shared governance authority granted to academic senates by the Legislature. We do not address these alternative arguments because we agree with the trial court's conclusion that the regulations did not require collegial consultation for the specific management reorganization implemented at DVC.

I. Legislative and Regulatory Framework

In 1988, the Legislature enacted Assembly Bill No. 1725 (AB 1725), which provided for substantial changes in the administration and governance of the state's community colleges.[FN6] (Stats.1988, ch. 973, §§ 1-72, pp. 3087-3144.) AB **300 1725 established a statewide board of governors and charged this body with establishing minimum standards to govern academic matters, hiring, administration and governance. (Stats.1988, ch. 973, § 8, pp. 3102-3105.) Among several other additions and amendments to the Education Code, newly added Education Code section 70901, subdivision (b)(1)(E) required the statewide board of governors to establish: "Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards." (Stats.1988, ch. 973, § 8, p. 3103.)

FN6. We grant the Chancellor's request for judicial notice of legislative history concerning AB 1725. Other requests for judicial notice, filed by the Faculty Senate and amicus curiae Academic Senate for California

> Community Colleges, are denied because they concern arguments not addressed in this opinion.

With input from the statewide academic senate, the state Chancellor's office and others, the statewide board of governors promulgated regulations to implement this "minimum standards" directive for shared governance. The regulations direct the governing boards of local community college districts to adopt policies for delegating authority to academic senates. Such a policy must provide, at a minimum, "that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters."(§ 53203, subd. (a).) *1033 "Academic and professional matters" are defined exclusively as: "(1) curriculum, including establishing prerequisites and placing courses within disciplines; [¶] (2) degree and certificate requirements; [¶] (3) grading policies; [¶] (4) educational program development; [¶] (5) standards or policies regarding student preparation and success; [¶] (6) district and college governance structures, as related to faculty roles; [¶] (7) faculty roles and involvement in accreditation processes, including self-study and annual reports; [¶] (8) policies for faculty professional development activities; [¶] (9) processes for program review; [¶] [and] (10) processes for institutional planning and budget development ...." (§ 53200, subd. (c).) Beyond these 10 subjects, collegial consultation may also be required for "other academic and professional matters ... mutually agreed upon between the governing board and the academic senate."(§ 53200, subd. (c)(11).)

Collegial consultation may take either of two forms, as decided by each local district. With respect to a particular subject, the district may decide to "rely primarily upon the advice and judgment of the academic senate," in which case, absent exceptional circumstances, "the recommendations of the senate will normally be accepted."(§ 53203, subd. (d)(1).) Or, the district may elect to require "mutual agreement" with the academic senate for certain subjects. In such cases, when an agreement is not reached, "existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship."(§ 53203, subd. (d)(2).)

In accordance with these regulations, the District's Governing Board adopted Board Policy 1009, which stated that the Governing Board would consult collegially with the District's academic senate "when adopting policies and procedures on academic and professional matters as defined in Title 5, Section 53200(c)." Board Policy 1009 sets forth the same categories of "academic and professional matters" defined in section 53200, subdivision (c), and it provides that the Board will "rely primarily upon the advice and judgment" of **301 the academic senate with respect to curriculum, degree requirements and grading, and will "reach mutual agreement" with the academic senate with respect to all other categories.

II. Collegial Consultation Not Required for Administrative Reorganization

As discussed, local community college districts must consult collegially with faculty senates only with regard to specific "academic and professional matters." (§ 53203.) No one has suggested the parties here had a preexisting agreement to consult collegially about the administrative reorganization that occurred at DVC; thus, the question comes down to whether the reorganization comes within one of the categories enumerated in section 53200, subdivision (c). The only potentially relevant category in section 53200, as all *1034 parties recognize, is subdivision (c)(6), which identifies "district and college governance structures, as related to faculty roles," as an academic and professional matter requiring collegial consultation.

A. Weight to be Accorded the Chancellor's Opinions

[4][5] Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 756-757, 151 P.2d 233; *Spanish Speaking Citizens' Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1214, 103 Cal.Rptr.2d 75 (*Spanish Speaking Citizens*).) " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-

legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

[6] The parties dispute how much weight, if any, we should accord the Chancellor's interpretation of section 53200, subdivision (c)(6). When he was general counsel for the statewide board of governors, Chancellor Nussbaum personally participated in drafting the regulations at issue in this case. Then, as Chancellor of the California Community Colleges, he assumed responsibility for enforcing these regulations, including the statutory requirement that colleges satisfy certain "minimum conditions" as a condition of receiving state aid.[FN7] Respondents analogize the Chancellor's office to an administrative agency and cite case law holding an agency's interpretation of its own regulations is controlling unless it is plainly erroneous or unauthorized. (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 613, 52 Cal.Rptr.2d 846; *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.* (1991) 1 Cal.App.4th 639, 645, 2 Cal.Rptr.2d 297.) While no precedent directly addresses this situation, a rule affording such great deference to legal opinions issued by the Chancellor's office appears to be precluded by *Yamaha Corp. of America v. State Bd. of Equalization***302* (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031(*Yamaha*).

> FN7. This authority was delegated to the Chancellor by the statewide board of governors pursuant to Education Code section 70901, subdivision (d).

[7] In *Yamaha,* the Supreme Court distinguished between the level of judicial deference to be accorded to quasi-legislative acts, in which an agency *1035 exercises its delegated lawmaking power, as compared with interpretive acts, in which an agency interprets the meaning or legal effect of a statute or regulation. (*Yamaha, supra,* 19 Cal.4th at pp. 7, 10-11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Whereas courts are bound by an agency's rulemaking, so long as it is authorized by the enabling legislation, "the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)Here, we are considering the Chancellor's interpretation of a regulation, as opposed to his quasi-legislative act in drafting the regulation itself. "The level of deference due to an agency's regulatory interpretation turns on a legally informed, commonsense assessment of its merit in the context presented. [Citation.]" (*State Farm Mutual Automobile Ins. Co. v. Quackenbush* (1999) 77 Cal.App.4th 65, 71, 91 Cal.Rptr.2d 381.) More specifically, the Supreme Court has proffered "two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: Those 'indicating that the agency has a comparative interpretive advantage over the courts,' and those 'indicating that the interpretation in question is probably correct.' [Citations.]" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Both of these factors weigh in favor of according the Chancellor's decision some deference.

[8][9] An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, " 'especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.'" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Although the specific regulations at issue are not highly technical, they are part of a complex regulatory system of shared governance that is very familiar to the Chancellor's office but essentially foreign to the courts. " 'A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' [Citation.]" (*Ibid.*)As is apparent from declarations and other opinions in the record, the Chancellor's office routinely issues opinions advising colleges and academic senates about whether collegial consultation is required for specific changes in policy or procedure. Because the Chancellor is thus " 'immersed in administering' " the collegial consultation regulations, he can be expected to have " 'an intimate knowledge of the problems dealt with in the [regulations] and the various administrative consequences arising from particular interpretations. In contrast, a generalist court that visits a particular regulatory stat-

ute only infrequently lacks the advantage arising out of specialization.'" (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75, quoting Asimow, *The Scope of Judicial Review of Decisions of Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1195-1196.)

[10] ***1036** With respect to whether an agency's decision is "probably correct" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031), factors suggesting such correctness include: (1) indications****303** that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time. (*Id.* at pp. 12-13, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75.) The Chancellor issued four legal opinions addressing the issues in this case. These opinions, especially the final two, contain exhaustive analyses of the Faculty Senate's complaints, and they were drafted by the Chancellor's chief legal counsel. It is hard to envision evidence of a more careful consideration than occurred here.

The record also demonstrates that the Chancellor has maintained a consistent interpretation of the phrase "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6)). In 1997, the Chancellor issued an advisory opinion addressing several questions about the shared governance regulations. One question asked, "Must the district consult collegially on the administrative organization chart of the college?" The Chancellor answered, "No. Neither the governing board nor its designee(s) are required to 'consult collegially' with the academic senate regarding organization of the district administration, but the board would certainly have the discretion to do so if it wished." [FN8] The following year, the Chancellor applied this interpretation to a specific set of facts when he addressed a reorganization proposed by the Los Angeles Community College District. In response to the Los Angeles district's claim that collegial consultation was not required, the Chancellor's July 2, 1998 opinion explained: "A particular change in the administrative organization of a district may or may not affect academic and professional matters; but if it does, the governing board would have an obligation to consult with the academic senate before approving the change in administrative structure. In other words, a district is free to revise its administrative organization chart without consulting the academic senate, but if the changes in administrative structure also implicate academic and professional matters then there is an obligation to consult collegially before the policy is adopted." The Chancellor concluded the Los Angeles reorganization went "well beyond merely changing the administrative organization" of the district. In addition to changing fiscal planning and budgeting processes, the reorganization affected "faculty roles in governance" because it altered the local district's procedures for determining curriculum. Here, because the ***1037** District's switch from division chairs to deans is a much narrower reorganization and does not affect curriculum or other academic matters, the Chancellor's current interpretation of section 53200, subdivision (c)(6) is consistent with his opinion in the Los Angeles case that collegial consultation is required only when an administrative reorganization affects academic and professional matters.

> FN8. The Chancellor added that, although collegial consultation was not required, it would "probably be a good practice" for the district to inform faculty, staff and students and solicit their views before finalizing a reorganization. The record indicates the District took part in extended informal discussions with DVC faculty before it implemented the reorganization.

[11] Accordingly, we conclude some weight should be afforded to the Chancellor's consistent interpretation that section 53200, subdivision (c)(6) does not require collegial consultation for management reorganizations, and to his carefully considered opinion that the District was not required to consult collegially before implementing the reorganization ****304** at issue in this case. However, this conclusion does not relieve us of the obligation to interpret the meaning of the regulation ourselves. "Whatever the force of administrative construction, however, final responsibility for the interpretation of the law rests with the courts. 'At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.... While we are of course bound to weigh seriously such rulings, they are never conclusive.' [Citation.]" (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra,* 24 Cal.2d at p. 757, 151 P.2d 233.)

B. De Novo Review Supports Chancellor's Inter-

pretation

[12][13] Rules governing the interpretation of statutes also apply to interpretation of regulations. (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75.) "In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage. [Citation.]" (*Modern Paint & Body Supply, Inc. v. State Bd. of Equalization* (2001) 87 Cal.App.4th 703, 708, 104 Cal.Rptr.2d 784.)

The Chancellor determined the reorganization at issue in this case did not require collegial consultation because the District's administrative organization could not be construed as a "district or college governance structure" (§ 53200, subd. (c)(6)). Unlike curriculum committees or budget committees, which clearly function in college governance, the Chancellor concluded the process of choosing managers of various college divisions is administrative in nature. This conclusion is reasonable, and it is consistent with the preexisting rule that collegial consultation is not required for administrative reorganizations that do not impact academic matters, such as curriculum.

Moreover, without regard to whether management by division chairs or deans constitutes a "district or college governance structure," it seems ***1038** clear that this management system is not "related to faculty roles." As the trial court observed, the phrase "as related to faculty roles" in section 53200, subdivision (c)(6) acts as a limitation imposed on the general subject of "district and college governance structures." Thus, only when a district seeks to change aspects of such governance structures that are related to "faculty roles"-such as, for example, curriculum or faculty hiring committees-must it consult collegially with the faculty. The regulations do not define "faculty roles." However, all other "academic and professional matters" defined in section 53200, subdivision (c) concern subjects that are within the unique expertise of faculty members, as opposed to administrators or any other specialists. These matters concern the development of academic programs and curriculum (§ 53200, subds. (c)(1), (2), (4), (9)), assessment of students and their progress toward degrees (§ 53200, subds. (c)(2), (3), (5)), professional development for faculty (§ 53200, subd. (c)(8)), and institutional development with respect to accreditation, review of existing academic programs, future planning and budgeting (§ 53200, subds. (c)(7), (9), (10)). Consistent with these other defined "academic and professional matters," we construe the term "faculty roles" in subdivision (c)(6) as referring to the traditionally understood roles faculty members play in a college. Faculty members are uniquely qualified to instruct students and assess their work, to design and implement curriculum, to develop the college's educational offerings, and to address broader institutional issues such as ****305** accreditation and budgeting to the extent these issues depend upon or impact student instruction. No evidence in the record, however, suggests faculty members at DVC are uniquely qualified to manage their peers or to decide which management structure the college should use.

The Faculty Senate advances two arguments against this construction. First, the Senate argues the District's management structure is related to faculty roles because DVC faculty members previously had a "role"-i.e., a function they performed-in selecting their managers and occasionally serving as managers themselves. In other words, because, through longstanding practice, the DVC faculty once played a role in college management, no change in management affecting this role could be accomplished without collegial consultation. This interpretation renders the definition of "faculty roles" in section 53200, subdivision (c)(6) entirely contextual, dependent in any given case on the faculty's history of involvement in a particular area. Such a broad construction would undermine the independent statutory authority of local governing boards to manage the colleges in their districts. (Ed.Code, § 70902.) In addition, it could prove unworkable in practice if districts were required to engage in the formal process of collegial consultation for every administrative practice that marginally involved faculty. (See *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75 [court should consider consequences that might flow from a particular construction ***1039** in interpreting a statute or regulation].) In short, the faculty's past participation does not convert the District's reorganization of purely managerial positions into an "academic or professional matter" requiring collegial consultation.

Second, reaching back to legislative history, the Fac-

ulty Senate argues section 53200 must be interpreted broadly consistent with the purpose of AB 1725, which was to expand the role of faculty in shared governance. However, the Senate's characterization of AB 1725 is far too narrow. This bill enacted comprehensive reforms of all aspects of the state's community college system, and we find no indication in the legislative history to support the Senate's view that a primary purpose of the statute was to increase faculty's ability to participate in purely administrative decisions concerning their colleges. On the contrary, among numerous other declarations, AB 1725 stated: "It is the intent of the Legislature that the California Community Colleges be governed under an efficient and flexible system.... The Legislature recognizes that the California Community Colleges is a statewide system with common standards and practices governing local initiative and control. The Legislature therefore finds and declares that clarifying and strengthening the respective roles of the Board of Governors and the Chancellor of the California Community Colleges will enhance the efficiency and flexibility of the system." (Stats.1988, ch. 973, § 3, p. 3093.) Thus, the Legislature envisioned clearly defined and enhanced powers for these administrators. With respect to shared governance, AB 1725 stated: "It is a general purpose of this act to improve *academic quality,* and to that end the Legislature specifically intends to authorize more responsibility for faculty members in duties that are *incidental to their primary professional duties.*" (Stats.1988, ch. 973, § 4(n), p. 3096, italics added.) This purpose of enhancing faculty responsibility "incidental to their primary professional duties" is consistent with the interpretation of section 53200, subdivision (c)(6) we reach here-i.e., districts must consult collegially with faculty for changes in college governance when such changes **306 are related to the faculty's acknowledged areas of expertise. Although the Legislature clearly intended to expand the participation of faculty (and students) in college governance, the language of AB 1725 does not indicate a legislative intent to encourage faculty involvement in purely administrative matters.[FN9]

FN9. In its reply brief and at oral argument, the Faculty Senate urged us to rely on *Irvine Valley College Academic Senate v. South Orange County Community College Dist.* (2005) 129 Cal.App.4th 1482, 29 Cal.Rptr.3d 336(*Irvine Valley*) as a "mirror image" of this case. The *Irvine Valley* decision construed a specific statute, Education Code section 87360, which expressly requires a governing board to reach joint agreement with the academic senate in developing faculty hiring procedures. Based on this statute's language and legislative history, *Irvine Valley* concluded the Legislature intended academic senates to have a role in developing hiring procedures. (*Irvine Valley, supra,* 129 Cal.App.4th at pp. 1491-1492, 29 Cal.Rptr.3d 336.) The court never considered the regulation before us, or whether, for purposes of this regulation, faculty have an acknowledged "role" in choosing their managers. *Irvine Valley* is also notable for its rejection of the community college district's argument that requiring a joint agreement with faculty would give academic senates an unfair "veto" in the process of creating hiring policies. (*Id.* at p. 1492, 29 Cal.Rptr.3d 336.) Because we do not reach the District's argument that the collegial consultation regulations here give greater power to academic senates than is statutorily permitted, we have no occasion to consider the validity of *Irvine Valley's* observations on this point.

***1040 DISPOSITION**

The judgment is affirmed. Appellant shall bear costs on appeal.

PARRILLI and POLLAK, JJ., concur.
Cal.App. 1 Dist.,2007.
Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.
148 Cal.App.4th 1023, 56 Cal.Rptr.3d 294, 217 Ed. Law Rep. 877, 07 Cal. Daily Op. Serv. 2998, 2007 Daily Journal D.A.R. 3801

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Court of Appeal, Fifth District, California.
Carol FIORENTINO et al., Plaintiffs and Appellants,
v.
CITY OF FRESNO et al., Defendants and Respondents.
No. F050578.

April 5, 2007.
Certified for Partial Publication.[FN*]

FN* This opinion is certified for publication with the exception of the part subtitled Relief Under Code of Civil Procedure section 473 under the heading FACTS AND PROCEEDINGS, and parts III.-V. under the heading DISCUSSION.

As Modified May 4, 2007.
Review Denied July 18, 2007.

Background: Association of taxpayers and its member filed petition for a writ of mandate to enforce the California Environmental Quality Act (CEQA) as to city's resolution to charge homeowners for water based on volume of water used. The Superior Court, Fresno County, No. 05CECG02617, Rosendo Peña, Jr., J., dismissed petition and subsequently denied plaintiffs relief from the dismissal. They appealed.

Holdings: The Court of Appeal, Dawson, J., held that:
(1) dismissal of petition was mandatory for failure to file request for hearing within 90 days of filing action;
(2) late-filed request for hearing did not cure violation of 90-day deadline; and
(3) Court of Appeal would not create an exception to the 90-day deadline for circumstances where request for hearing was filed after deadline but before motion to dismiss.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ⚿842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(1) k. In General. Most Cited Cases
The Court of Appeal independently reviews questions of law, which include issues of statutory construction and the application of that construction to a set of undisputed facts.

[2] Environmental Law 149E ⚿669

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek669 k. In General. Most Cited Cases
The statutory language providing a petitioner in an action or proceeding alleging noncompliance with California Environmental Quality Act (CEQA) "shall request a hearing within 90 days from the date of filing the petition" was not ambiguous, either on its face or latently, with respect to creating a filing deadline. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[3] Environmental Law 149E ⚿696

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek694 Determination, Judgment, and Relief
149Ek696 k. Dismissal. Most Cited Cases
Use of the word "or" in statute providing a petitioner in an action or proceeding alleging noncompliance with California Environmental Quality Act (CEQA) shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal was not ambiguous and plainly meant that if the mandatory requirement for filing a request for hearing was not met, then the statutory alternative applied. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[4] Statutes 361 ⚿197

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k197 k. Conjunctive and Disjunctive Words. Most Cited Cases
The plain and ordinary meaning of the word "or" in a statute is to mark an alternative such as "either this or that."

[5] Environmental Law 149E 696

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek694 Determination, Judgment, and Relief
149Ek696 k. Dismissal. Most Cited Cases
Under the plain meaning of the statutory language, a California Environmental Quality Act (CEQA) action must be dismissed when a timely request for hearing is not filed, provided that a motion is made by any interested party or the court. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[6] Environmental Law 149E 696

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek694 Determination, Judgment, and Relief
149Ek696 k. Dismissal. Most Cited Cases
Dismissal of petition for a writ of mandate filed by association of taxpayers and its member to enforce the California Environmental Quality Act (CEQA) as to city's resolution to charge homeowners for water based on volume of water used was mandatory for failure to file request for hearing within 90 days of filing action, where city, as an interested party, made a motion to dismiss. West's Ann.Cal.Pub.Res.Code § 21167.4(a).
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 858; 9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25:194; Cal. Jur. 3d, Pollution and Conservation Laws, § 656; Cal. Civil Practice (Thomson/West 2003) Environmental Litigation, § 8:29.

[7] Environmental Law 149E 671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases
The late-filed request of association of taxpayers and its member for hearing on petition for writ of mandate to enforce the California Environmental Quality Act (CEQA) as to city's resolution to charge homeowners for water based on volume of water used did not cure the violation of requirement that they file a request for hearing within 90 days of filing the action. West's Ann.Cal.Pub.Res.Code § 21167.4(a).

[8] Statutes 361 47

361 Statutes
361I Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases
A statute need not identify explicitly all of the factual situations that might fall within its general rule; only relevant facts need be expressed by the Legislature when creating a general rule.

[9] Environmental Law 149E 671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases
Court of Appeal would not create an exception to the 90-day deadline for requesting hearing in an action or proceeding alleging noncompliance with California Environmental Quality Act (CEQA) for circumstances where the request for hearing was filed after the deadline but before the motion to dismiss, as the Legislature did not express one; nothing in CEQA conditioned dismissal on the filing of a motion to dismiss before a late-filed request for hearing. West's Ann.Cal.Pub.Res.Code § 21167.4(a).
**31 Griswold, LaSalle, Cobb, Dowd & Gin, Raymond L. Carlson, Hanford, and Kristine M. Howe for Plaintiffs and Appellants.

Hatch & Parent, Lisabeth D. Rothman and Robert J. Saperstein, Santa Barbara, for Defendants and Respondents.

*598 OPINION

DAWSON, J.

Appellants contend that the superior court committed reversible error when it dismissed their petition for a writ of mandate to enforce the California Environmental Quality Act (CEQA) [FN1] and subsequently denied them relief from the dismissal under Code of Civil Procedure section 473.

FN1. Public Resources Code section 21000 et seq. All further statutory references are to the Public Resources Code unless otherwise indicated.

We conclude that the superior court correctly interpreted and applied the dismissal provisions contained in section 21167.4. Dismissal of the CEQA petition occurred because appellants did not file a request for hearing within 90 days of filing their petition, as was required by subdivision (a) of section 21167.4. Furthermore, filing a request for hearing on the 91st day did not cure the failure to meet the deadline, even though it was filed before the motion to dismiss.

In addition, in an unpublished part of this opinion, we conclude the superior court did not abuse its discretion when it denied relief under the discretionary relief provisions of Code of Civil Procedure section 473.

**32 Accordingly, the order dismissing the CEQA action is affirmed.

*599 FACTS AND PROCEEDINGS

Appellant Carol Fiorentino alleged that she owned property in an unincorporated portion of Fresno County that is supplied with water by the City of Fresno at a fixed or flat rate.

Appellant San Joaquin Valley Taxpayers Association alleged that it was a nonprofit unincorporated association of taxpayers formed to fight the wrongful imposition of taxes, charges, fees, and assessments. Appellant Fiorentino is a member of the San Joaquin Valley Taxpayers Association and has acted as its treasurer and custodian of its books and records.

In 2005, the City of Fresno and its city council (collectively, City) adopted resolution No.2005-311 titled "A Resolution of the Council of the City of Fresno, California, Certifying the Finding of Conformity for the Long-Term Renewal of the Central Valley Project ('CVP') Contract with the United States Bureau of Reclamation and Authorizing the Department of Public Utilities to Execute the Long-Term CVP Contract."

Appellants allege that in 2004 representatives of City and the United States Bureau of Reclamation negotiated the renewal of a contract made in 1961 under which the United States agreed to deliver to City 60,000 acre-feet of Class 1 water per year from March 1, 1966, through March 1, 2006. Class 1 water refers to the first 800,000 acre-feet of water of the San Joaquin River, which is considered a firm water supply that is available each year.

Appellants allege that all of the actions leading to the adoption of the resolution constitute a project for purposes of CEQA. Appellants further allege that the project includes a plan to (1) fit meters on all homes located in City and (2) charge for water based on volume of water used as measured by the meters. Appellants allege City's longstanding practice has been to charge flat rates for water supplied to homes. Appellants allege this plan will raise monthly utility bills, which currently average about $66 per month in City.

Appellants challenged City's adoption of resolution No.2005-311 by filing a petition for writ of mandate that included four causes of action. Each cause of action alleged a violation of CEQA. The first cause of action alleged the environmental review documents prepared by City in connection with the project were inadequate because they failed to consider all of the significant environmental impacts and cumulative impacts of the project. The second cause of action alleged City did not adequately address feasible mitigation measures. The third cause of action alleged City failed to adopt an environmentally superior alternative. The fourth cause of action alleged City performed an inadequate evaluation of environmental impacts of water diversion *600 and extraction on water quality, particularly the withdrawals required to serve new development that is dependent in whole or in part on water saved by imposing metered water

rates.

Appellants filed their petition for a writ of mandate to enforce CEQA on Friday, August 19, 2005.

On November 10, 2005, the parties met and conferred regarding settlement of the matter in accordance with section 21167.8. At the meeting, City requested additional time to compile the record of proceedings, and appellants agreed to the request.

Late Request for Hearing and Resulting Dismissal.

Appellants filed a request for hearing under section 21167.4, subdivision (a) on Friday, November 18, 2005. November **33 18, 2005, was 91 days after August 19, 2005. The request for hearing proposed (1) a deadline for the service and filing of the record of proceeding, (2) a briefing schedule, and (3) a hearing on the petition during the week of May 22, 2006.

On November 21, 2005, City filed a motion to dismiss that asserted appellants failed to request a hearing within 90 days from the date they filed the petition and, as a result, section 21167.4, subdivision (a) mandated dismissal of the petition. Appellants filed an opposition to the motion to dismiss and three declarations in support of their opposition.

The motion to dismiss was heard by the superior court on December 16, 2005, and was taken under advisement. On December 28, 2005, the superior court issued a nine-page document titled "Ruling," which included the statement that "the motion to dismiss must be granted because dismissal is mandatory...."

Relief Under Code of Civil Procedure section 473 FN**

FN** See footnote *, *ante*.

***601 Orders**

The attorneys representing City submitted a proposed order dismissing the action without prejudice. The superior court signed and filed the order on May 23, 2006. Notice of entry of the order was served on appellants on May 31, 2006.

On June 2, 2006, appellants filed a notice of appeal that referenced the order entered on April 20, 2006, and the order filed on May 23, 2006.

DISCUSSION

I. Appealability

We assume without deciding that the order of dismissal and the order denying relief under Code of Civil Procedure section 473 are properly before this court.

II. Motion to Dismiss

City based its motion to dismiss on section 21167.4. Appellants argue the motion to dismiss was granted improperly because they filed the request for hearing before City filed its motion to dismiss. Because the request for hearing was filed before the motion to dismiss, appellants contend the motion to dismiss was moot.

A. Applicable Statutory and Regulatory Language

Subdivision (a) of section 21167.4 provides that "[i]n any action or proceeding alleging noncompliance with [CEQA], the petitioner shall request ***602** a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding."

The regulation that corresponds to section 21167.4 is California Code of Regulations, title 14, section 15232, which provides: "In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit." This regulation restates, with slight variations, the original version of section 21167.4, which was enacted in 1980. (Stats.1980, ch. 131, § 3, p. 304, eff. May 28, 1980.)

**34 Appellants contend that Code of Civil Procedure section 1005.5 is relevant to understanding their argument regarding the significance of filing the request for hearing before City filed its motion to dis-

miss. Code of Civil Procedure section 1005.5 provides:

"A motion upon all the grounds stated in the written notice thereof is deemed to have been made and to be pending before the court *for all purposes*, upon the due service and filing of the notice of motion, but this shall not deprive a party of a hearing of the motion to which he is otherwise entitled." (Italics added.)

B. Standard of Review

[1] Appellants' argument presents a question of statutory construction. We independently review questions of law, which include issues of (1) statutory construction and (2) the application of that construction to a set of undisputed facts. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1492, 35 Cal.Rptr.3d 596(*Coburn*).)

C. Rules of Statutory Construction

The principles for determining the meaning of a statute have been set forth in detail by this court in *Coburn, supra,* 133 Cal.App.4th at pages 1494 through 1496, 35 Cal.Rptr.3d 596. We will not restate those principles here.

D. Meaning of Section 21167.4, Subdivision (a)

1. Deadline for requesting a hearing

[2] First, we conclude that the statutory language that provides a "petitioner shall request a hearing within 90 days from the date of filing the petition" is not ambiguous on its face with respect to creating a filing deadline. Second, appellants have not shown that the language contains a *603 latent ambiguity. In short, it means what it plainly says-the request for a hearing must be filed within 90 days from the date the petition was filed. (See *Coburn, supra,* 133 Cal.App.4th at p. 1495, 35 Cal.Rptr.3d 596 [facial and latent ambiguity].)

The undisputed facts of this case establish that appellants failed to comply with this statutory language.

2. "Or"

[3][4] The mandatory 90-day deadline is connected to the clause about dismissal by the word "or." The plain and ordinary meaning of the word "or" is "to mark an alternative such as 'either this or that' [citations]." (*Houge v. Ford* (1955) 44 Cal.2d 706, 712, 285 P.2d 257.) Therefore, the use of the word "or" in section 21167.4, subdivision (a) is not ambiguous. It plainly means that if the mandatory requirement for filing a request for hearing is not met, then the statutory alternative applies.

3. Dismissal

[5] The alternative to the timely filing of a request for hearing is that the petitioner "shall be subject to dismissal on the court's own motion or on the motion of any party interested ...." (§ 21167.4, subd. (a).) This language is plainly mandatory. (§ 15 [" 'Shall' is mandatory"]; *Guardians of Elk Creek Old Growth v. Department of Forestry & Fire Protection* (2001) 89 Cal.App.4th 1431, 1435, 108 Cal.Rptr.2d 259.) It is also conditional. The condition is that a motion must be made by an interested party or by the court itself. No other conditions for dismissal are set forth in the statutory language. Consequently, under the plain meaning of the statutory language, a CEQA action must be dismissed when a timely request for hearing is not filed, provided that a motion is made by any interested party or the court.

**35 [6] The undisputed facts of this case establish that City is an interested party and that City made a motion to dismiss. Thus, the conditional language expressed in the statute was satisfied, and dismissal was mandatory.

4. Appellants' arguments

First, appellants argue that City's motion to dismiss was made and pending "for all purposes" as of November 21, 2005, as that phrase is used in Code of Civil Procedure section 1005.5. Appellants contend the motion "was filed after the Request for Hearing and was therefore moot, as the condition complained of, failure to file a request for hearing within 90 days of filing the action, no longer existed when the dismissal motion was filed and served."

[7] *604 We disagree. This argument is wrong on the facts. When City filed and served its motion to dismiss, a request for hearing had not been filed *within*

90 days from the date the petition was filed. In other words, a violation of the 90-day deadline existed at the time the motion to dismiss was filed, and the violation still exists today. The late-filed request for hearing did not cure the violation. Section 21167.4 does not mention any cure for late-filed requests. Furthermore, we will not conclude the Legislature intended to imply a cure provision because such a provision would directly contradict the language used to create the 90-day deadline. (See Code Civ. Proc., § 1858 [when construing a statute, judges may not insert what Legislature has omitted].)

Stated otherwise, appellants' argument has it exactly backwards. City has not sought the retroactive application of its motion to dismiss. Rather, appellants have asked, in effect, that their late-filed request for hearing be given retroactive effect so that the violation of the mandatory 90-day deadline is deemed to no longer exist.

Second, appellants argue that the "phrase 'shall be subject to dismissal' suggests that a CEQA claimant risks dismissal if the request for hearing is not filed by the 90th day, but that this risk may be cured if the request is filed before the motion to dismiss." Appellants point out that section 21167.4 does not address the specific circumstances where the request for hearing is filed after the 90-day deadline but before the motion to dismiss. Because the statutory language does not explicitly address this specific factual situation, appellants contend the only fair import of the statutory language is that the request may be filed after the 90-day deadline.

[8][9] These arguments are not convincing. The literal language of subdivision (a) of section 21167.4 applies to the factual situation presented in this case as well as others. Furthermore, a statute need not identify explicitly all of the factual situations that might fall within its general rule. Only relevant facts need be expressed by the Legislature when creating a general rule. It follows that, if the Legislature had intended the filing of a request for hearing after the deadline to be relevant to whether the CEQA proceeding was dismissed, it would have said so. Thus, we will not create an exception to the 90-day deadline where the Legislature did not express one. (Code Civ. Proc., § 1858.)

Appellants are correct in observing that the phrase "shall be subject to dismissal" is consistent with the existence of one or more conditions that must be met before dismissal is mandatory. Appellants are **36 wrong, however, in identifying the applicable condition. It is plainly set forth in the statute-a *605 motion by the court or an interested party. Nothing in the statute also conditions dismissal on the filing of a motion to dismiss before a late-filed request for hearing.

5. Summary

The meaning of the language used in section 21167.4, subdivision (a) is unambiguous. It requires superior courts to grant a motion to dismiss filed by an interested party when a CEQA petitioner has failed to file a request for hearing within 90 days from the date of filing the petition.[FN2] Furthermore, dismissal is mandatory regardless of whether a request for hearing was filed before the motion to dismiss.

FN2. This opinion does not reach a number of issues and should not be interpreted to contain implied rulings. For example, City filed its motion to dismiss four calendar days (two business days) after the 90-day deadline expired. We have concluded that City did not wait too long to file the motion. In other words, City's motion cannot be characterized by the phrase "unduly delayed," "lacking in promptness," or other words describing untimeliness. Because the motion was filed promptly in this case, we need not decide whether the law requires such a motion to be brought promptly or not. Questions such as whether it is possible to wait too long to bring such a motion and, if so, what factors are relevant to determining how long is too long must await another day.

Similarly, the facts of this case do not require us to address (1) appellants' concern that a superior court might delay (perhaps until the petition has been heard on its merits) before bringing its own motion to dismiss or (2) whether any constraints are placed on the authority of the superior court to bring its own motion to dismiss. For example, is the *bringing* of such a mo-

> tion committed to the discretion of the superior court and, as such, subject to review under an abuse of discretion standard? Again, these issues must await another day.

Accordingly, the superior court correctly applied the language in section 21167.4, subdivision (a) to the facts presented in this case.[FN3]

> FN3. The statutory language of section 21167.4 does not parallel the statutory language that addresses judgments on default. Code of Civil Procedure section 585, subdivision (a) states that if no answer or other responsive pleading "has been filed with the clerk, ... within the time specified in the summons, *or such further time as may be allowed,* the clerk ... upon written application of the plaintiff, ... shall enter the default of the defendant...." (Italics added.) When a responsive pleading is filed before a plaintiff's application for default, courts have applied the italicized language to the facts and concluded that the plaintiff, in effect, has *allowed* the defendant *further time.* (E.g., *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141, 112 Cal.Rptr. 215.)Because section 21167.4 does not contain any language that permits City to impliedly extend the 90-day deadline by not filing a motion to dismiss, we reject appellants' attempt to analogize dismissals under section 21167.4 to defaults under Code of Civil Procedure section 585.

III.-V. [FN***]

> FN*** See footnote *, *ante.*

DISPOSITION

The order of dismissal is affirmed. Respondents shall recover their costs on appeal.

WE CONCUR: VARTABEDIAN, Acting P.J., and CORNELL, J.

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150 Cal.App.4th 596, 59 Cal.Rptr.3d 30, 07 Cal. Daily Op. Serv. 4994, 2007 Daily Journal D.A.R. 6341

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a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the opening of the semester, quarter or term, or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes should also be provided.

54033. Member of Military. A student claiming application of Section 22854 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

54033.5. Students in Advanced Degree Programs. Students attending a Community College under an advanced degree completion program for which the district contracted with the federal government on or before May 1, 1973, shall be classified as a resident until he has resided in this state the minimum time necessary to become a resident. This section shall have no force or effect after May 1, 1975, and is, as of that date, repealed.

NOTE: Authority cited: Sections 22839, 22841 and 22865, Education Code. Reference: Chapter 7 (commencing with Section 22800) of Division 16.5, Education Code, as amended by Stats. 1973, Chap. 206.

History: 1. New section filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).

54034. Adult Aliens. An adult alien lawfully admitted to the United States for permanent residence and having residence in this state for more than one year and claiming residence immediately prior to the residence determination date and claiming residence for tuition purposes shall show his or her immigrant visa to the admissions officer at the time of classification.

54035. Minor Aliens. A minor alien claiming residence for tuition purposes shall be required at the time of classification to show his or her immigrant visa, his or her parents' immigrant visa and evidence that the parent has had permanent residence in the state for more than one year after admission to permanent residence prior to the residence determination date.

54036. Public School Employee Holding Valid Credential. A student claiming residence status pursuant to Section 22857 of the Education Code should provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a provisional credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 13125 of the Education Code and is enrolled in courses necessary to

fulfill credential requirements, or is enrolled in courses necessary to fulfill credential requirements of the fifth year of education prescribed by subdivision (b) of Section 13130 of the Education Code.

History: 1. Amendment filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).

54037. Apprentices. A student claiming resident status pursuant to Section 22858.5 of the Education Code shall provide evidence such as a card or certification from the Joint Apprenticeship Committee or the student's employer, evidencing such apprenticeship status.

54038. Student Under Custody of Resident Adult. A student claiming residence under provisions of 22852.5 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 22839, 22841, 22865, Education Code. Reference: Chapter 7 (commencing with Section 22800) of Division 16.5, Education Code as amended by Stats. 1973, Chapter 206.

History: 1. New section filed 11-1-73; effective thirtieth day thereafter (Register 73, No. 44).

54040. Exceptions from the One-Year Waiting Period. Those exceptions from payment of nonresident tuition provided by Education Code Sections 22850 (certain minors), 22853 (military dependents), and 22854 (military members) apply only so long as the student has not been in California long enough to have one year of California residence.

SUBCHAPTER 3. APPEAL

54060. Appeal Procedure. Any student, following a final decision on residence classification by the college, may make written appeal to the superintendent of the district or his designee within 30 calendar days of notification of final decision by the campus regarding classification. The superintendent, on the basis of the Statement of Legal Residence, pertinent information contained in the registrar's file, and information contained in the student's appeal, will make his determination and notify the student by United States mail, postage prepaid.

SUBCHAPTER 4. REFUNDS

54070. Refunds. The governing board of each Community College district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the Community College for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or his withdrawal from an education program at the Community College for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

GILLETT-HARRIS-DURANCEAU & ASSOCIATES, INC., Plaintiff and Appellant,
v.
ROBERT C. KEMPLE et al., Defendants and Respondents.
Civ. No. 40857.

Court of Appeal, First District, Division 2, California.
July 27, 1978.

SUMMARY

An engineering, land surveying, and architectural services firm brought an action for defamation against individual members of a grand jury. In its report on its investigations of local government affairs (Pen. Code, §§ 925-931), the jury had charged that the firm had been negligent, incompetent, and wrong in the performance of its duties. The firm alleged that the statement in the report was untrue. No indictment was returned against the firm, any of its employees, or against any elected or appointed officials mentioned in the report. The trial court ruled that, though Pen. Code, § 930, attempted to remove civil immunity from grand jury functions, the statute was unconstitutional because the grand jury was a judicial body entitled to be protected in its functions in the same way as courts and the statute constituted an impermissible invasion of the jury's judicial prerogatives. (Superior Court of Lake County, No. 13430, Frank S. Petersen, Judge. [FN*])

The Court of Appeal reversed, holding that, while the grand jury's criminal indictment function was clearly judicial in nature and provided for in the state Constitution, its function in investigating and reporting on local government was a task imposed solely by statute. The court noted that the procedural safeguards available to a defendant in a criminal proceeding were not available to individuals mentioned in the jury's reports on civil matters and held that, under those circumstances, the removal of civil immunity of jury members was justified and not in conflict with the state Constitution.

FN* Assigned by the Chairperson of the Judicial Council.(Opinion by Rouse, J., with Taylor, P. J., and Kane, J., concurring.) *215

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 29--Language--Legislative Intent--Literal Meaning.
Though courts cannot add to, alter, or insert qualifying provisions to a statute when its language is clear, the intent of the law will prevail over the literal meaning when a strict interpretation of statutory language is contrary to the legislative objective.

(2a, 2b) Grand Jury § 3--Powers and Jurisdiction--Distinctions--Authority to Investigate Local Government--Civil Immunity of Jury Members.
A grand jury's authority to indict (Cal. Const., art. I, § 14) is separate from its authority to investigate and report on matters pertaining to local government (Pen. Code, §§ 925-931). The latter function is a unique creature of the Legislature and is subject to its limitations. Thus, the statutory removal of civil immunity from members of the jury for comments upon any person or official not indicted contained within a report on local government (Pen. Code, § 930) is not conflict with the state Constitution.
[See **Cal.Jur.3d**, Criminal Law, § 406; **Am.Jur.2d**, Grand Jury, § 29.]

(3) Statutes § 51--Construction--Codes--Conflicting Provisions--Reconciling Specific and General Statutes.
A special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject.

(4) Grand Jury § 3--Powers and Jurisdiction--Distinctions Between Criminal and Investigative Powers--Procedural Safeguards.
A grand jury's function of investigating and reporting on local government is not inherently a part of the judicial system. Criminal indictments are subject to public trial and judicial review, but the power of a court to review a grand jury's investigation and report on local government is limited because procedural safeguards such as a means for challenging the sufficiency of evidence and rules of evidence controlling

the type of information that can be presented to a grand jury in its investigative function are not available.

COUNSEL

Littlejohn & Westfall, Donald W. Littlejohn, Gerald W. Nash and Crump, Bruchler & Crump for Plaintiff and Appellant.

Spridgen, Barrett, Achor, Luckhardt, Anderson & James, William G. Luckhardt and Harry A. Allen for Defendants and Respondents.

ROUSE, J.

Plaintiff, Gillett-Harris-Duranceau & Associates, Inc., appeals from a judgment of dismissal entered after a demurrer to its second amended complaint was sustained without leave to amend.

Plaintiff's second amended complaint named, as defendants, 19 individuals who served on the Lake County Grand Jury during the fiscal year 1974-1975. It was alleged therein that plaintiff was a firm which provided engineering, land surveying and architectural services, and that in 1970, it began contracting to furnish such services to the County of Lake and to certain special districts within said county. Plaintiff alleged that on August 8, 1975, defendants had filed a public report entitled 'Final Report of the Grand Jury-1975,' with the Lake County Clerk, and that said report contained the statement that plaintiff had been negligent, incompetent and wrong in the performance of its duties. Allegedly, such statement was untrue, was known by defendants to be untrue, was made with the intent to convey defamatory meaning, and did, in fact, bring plaintiff into public disgrace and disrepute and injure plaintiff in its profession. Plaintiff's complaint alleged that the grand jury had returned no indictment against plaintiff or any of its employees or agents or against any elected or appointed officers of the County of Lake. Plaintiff sought to recover compensatory damages for defamation and interference with prospective business advantage. Exemplary damages were also sought on the theory that defendants had acted maliciously in making the defamatory statement concerning plaintiff.

In sustaining the demurrer without leave to amend, the trial court concluded that a grand jury was a judicial body which was entitled to be as fully protected in the exercise of its powers and functions as the courts themselves and that, like the courts, the grand jury was therefore entitled *217 to full immunity from liability based upon statements made in the performance of its duties. The court further concluded that to the extent that section 930 of the Penal Code constituted an attempt to remove civil immunity from the grand jury's functions, such statute was an unconstitutional invasion of judicial prerogatives.

Plaintiff's appeal presents two issues: (1) whether section 930 of the Penal Code is applicable in this instance, and (2) whether said statute, if applicable, is constitutional.

Section 930 of the Penal Code [FN1] is based upon former section 928, as amended in 1897. That statute specified the affairs of county government upon which the grand jury was required to make its annual report, and included the following caveat: '*provided*, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury, the said comments shall not be deemed to be privileged.' (Stats. 1897, ch. 142, § 2, p. 205.)

FN1 Unless otherwise specified, all subsequent statutory references are to the Penal Code.

Former section 928 was later amended, on various occasions, [FN2] until 1959, when it was repealed and its provisions were reenacted as seven separate statutes, namely, sections 925 through 931. (Stats. 1959, ch. 501, art. 2, pp. 2449-2450.) Sections 925 and 926 were based upon the first paragraph of former section 928, sections 927 and 928 upon the second paragraph of said statute, section 929 upon the third paragraph, section 930 upon the fourth paragraph, and section 931 upon the fifth paragraph. *218

FN2 In 1957, that section read as follows: 'It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records and accounts of all the officers of the county, of all hospital districts which were organized in the county, and especially those pertaining to the revenue, and report as to the facts they have found, with

such recommendations as they may deem proper and fit; and if, in their judgment, the services of an expert are necessary, they shall have power to employ one, at an agreed compensation, to be first approved by the court; and if, in their judgment, the services of assistants to such expert are required, they shall have power to employ such, at a compensation to be agreed upon and approved by the court.

'It shall be the duty of every grand jury first impaneled in even-numbered years to investigate, upon request to grant personal interviews to the officials concerned, and to report upon the needs for increase or decrease in salaries of the county supervisors, the district attorney and the auditor, and it shall cause a copy of such report to be transmitted to each Member of the Legislature representing the county in which it has been impaneled before the commencement of the regular session of the Legislature in odd-numbered years. It shall also be the duty of every grand jury to investigate and report upon the needs of all county officers in its county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices, and it shall cause a copy of such report to be transmitted to each member of the board of supervisors in its county.

'It shall be the duty of the grand jury, when making an examination of the books, records, and accounts of all the officers of the county and when investigating and reporting upon the needs of all county officers in its county, to include an examination and report upon all the books, records, and accounts of all the officers of such county which are kept in their ex officio capacity, as incumbents or officers of any special legislative district or other district created by or under the laws of the State of California, in their respective counties.

'The judge, on impanelment of the grand jury, shall charge them especially as to their duties under this section; provided, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury the said comments shall not be deemed to be privileged.

'Any and all expenses incurred under this section, and also the per diem and mileage where allowed by law, of the grand jurors, shall be paid by the treasurer of the county out of the general fund of said county upon warrants drawn by the county auditor upon the written order of the judge of the superior court in said county.' (Stats. 1957, ch. 1364, § 1, p. 2699.)

In 1961, the Legislature enacted a new statute, section 933.5, which authorized the grand jury to examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county. (Stats. 1961, ch. 1461, § 2, p. 3313.) The statute was amended in 1969 to add language to the effect that the grand jury could investigate and report upon the method or system of performing the duties of such districts. (Stats. 1969, ch. 931, § 1, p. 1870.)

At the time of the grand jury report here in issue, section 930 read as follows: 'If any grand jury shall, *in the report above mentioned*, comment upon any person or official who has not been indicted by such grand jury such comments shall not be deemed to be privileged.' (Italics added.)

Section 930 was immediately preceded by section 929, [FN3] which provided that 'When making an examination of the books, records, and accounts of all the officers of the county and when investigating and reporting upon the needs of all county officers in its county, the grand jury shall include an examination and report upon all the books, records, and accounts of all the officers of such county which are kept in their ex officio capacity, as incumbents or officers of any special legislative district or other district in the county, created pursuant to state law.'

FN3 Section 929.1, which dealt with the employment by the grand jury of expert auditors or appraisers to assist in the examination of the county assessor's records, was repealed in 1974. (Stats. 1974, ch. 1396, § 2, p. 3054.)

The alleged defamatory statement upon which the action is based was contained in a report rendered by the 'Special Districts Committee' of *219 the grand jury. Defendants point out that, when the provision eliminating the grand jury's privilege was originally added to former section 928 in 1897, that statute dealt solely with the examination of the books, records and accounts of county officers and made no mention of special-purpose assessing or taxing districts. They assert that the Legislature could not have had special districts in mind when it originally added the provision eliminating the grand jury's privilege, since it was not until the 1961 enactment of section 933.5 that the grand jury was authorized to examine the books and records of such special districts. In 1975, when the grand jury rendered the report here in issue, section 930 provided that there should be no privilege in connection with 'the report above mentioned.' Reports on special districts are not mentioned in any of the statutes preceding section 930, but only in the subsequent statute, section 933.5. According to defendants, it follows that a special district report cannot be deemed 'the report above mentioned,' within the meaning of section 930. They contend that the statute was intended to eliminate immunity on the part of the grand jury only in connection with the previously mentioned reports on county officers.

Plaintiff asserts that there is no logical reason why the Legislature would have intended that a grand jury report on county officers not be privileged, while a report on special districts would be privileged. They point out that, as a matter of practice, grand juries do not separate special districts reports from reports on county officials; rather, that the normal practice, which was followed in this case, is to render a single report dealing with both subjects. Plaintiff argues that since the Legislature has imposed no requirement that grand juries separate special district reports from reports on county officers, it may be presumed that the Legislature approved of the preparation of a single report and that the reference to 'the report above mentioned' in section 930 should be interpreted as referring to a report by the grand jury on the subject of special districts as well as county officers.

(1)Juridical construction of a statute is possible only when uncertainty is found. 'Clear statutory language no more needs to be interpreted than pure water needs to be strained.' (*Holder v. Superior Court* (1969) 269 Cal.App.2d 314, 317 [74 Cal.Rptr. 853].) A court may not rewrite a statute by inserting thoughts that have been omitted or by omitting thoughts that have been inserted. (*Richardson v. City of San Diego* (1961) 193 Cal.App.2d 648, 650 [14 Cal.Rptr. 494].) Where the words of a statute are clear, the courts cannot add to them or alter them or insert qualifying *220 provisions to conform to an assumed intent or accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Rowan v. City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314 [53 Cal.Rptr. 88].)

On the other hand, there is abundant authority for the proposition that the literal construction of a statute will not prevail if it is opposed to legislative objective. (*Pacific Gas & Elec. Co. v. Morse* (1970) 6 Cal.App.3d 707, 712 [86 Cal.Rptr. 7].) The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law, and every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. (*Cannon v. American Hydrocarbon Corp.* (1970) 4 Cal.App.3d 639, 648 [84 Cal.Rptr. 575].) Words will not be given their literal meaning when to do so would make the provisions of a statute apply to transactions never contemplated by the Legislature, and to this end, the intent of a law must be held to prevail over the letter. (*La-Borde v. McKesson & Robbins, Inc.* (1968) 264 Cal.App.2d 363, 370 [70 Cal.Rptr. 726].)

Here, the language of section 930 renders it applicable only to 'the report above mentioned.' The statutes preceding section 930 make no mention of reports concerning special districts; they refer only to reports on county officers. We agree, however, with plaintiff's assertion that it is difficult to conceive of any valid legislative objective which would be furthered by eliminating the grand jury's privilege in connection with reports concerning county officers while preserving such privilege as to reports which concern special districts within the county. We conclude that the provisions of section 930 apply both to grand jury reports on county officers and reports on special districts.

The question remaining is whether the provisions of section 930 constitute an unconstitutional impairment of the judicial privilege. Defendants remind us that article III, section 3, of the California Constitution

divides the state government into legislative, executive and judicial departments, and that it has long been settled that the Legislature cannot exercise or place limitations upon judicial powers. Thus, in *Oppenheimer v. Ashburn* (1959) 173 Cal.App.2d 624 [343 P.2d 931], the appellate court held invalid a section of the Penal Code which provided for the imposition of a fine upon a judge who refused to grant a writ of habeas corpus after a proper application therefor had been made. In so holding, the court observed that the decisions of this state uniformly and *221 consistently grant immunity to judges in the exercise of their judicial functions. The court then referred to an early California case which applied such rule to grand jurors, pointing out that 'The clear line of California decisions begins with the early case of *Turpen v. Booth* (1880), 56 Cal. 65[38 Am.Rep. 48], which held that since a grand juror served in a quasi-judicial status he was not civilly responsible, no matter how erroneous his findings or how malicious his motive, for his action on the grand jury.' (P. 629.)

Defendants also rely upon section 47, subdivision 2, of the Civil Code, which provides that a privileged publication or broadcast is one made in any judicial proceeding. They note that in *Irwin v. Murphy* (1933) 129 Cal.App. 713 [19 P.2d 292], it was held that a grand jury is a judicial body and grand jurors are officers of the court (p. 716), and that statements impugning the integrity of the plaintiff as a boxing referee were privileged where pertinent to the matters or persons under investigation (p. 718).

Plaintiff points out that the only reference to the grand jury in the California Constitution concerns the indicting function of that body and provides for the annual summoning of grand jurors. (Cal. Const., art. I, §§ 14, 23.)

In *Fitts v. Superior Court* (1936) 6 Cal.2d 230, 241 [57 P.2d 510], the California Supreme Court held that, by failing to make any further provision regarding the grand jury, the constitutional convention of 1879 left to the Legislature all questions affecting the grand jury not expressly covered by the Constitution.

(2a)Thus, as plaintiff suggests, an important distinction must be made between a grand jury's authority to indict and its authority to exercise a 'watchdog' function in matters of local government. The latter activity is a unique creature of the California Legislature, which has a long and well respected heritage. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430, 436 [119 Cal.Rptr. 193, 531 P.2d 761].) Since the grand jury's power to investigate and report on matters pertaining to local government is a creature of statute, the Legislature is at liberty to impose reasonable limitations upon the exercise of this watchdog function. Section 930 imposes such a limitation.

The cases relied upon by defendants, namely, *Turpen v. Booth, supra.*, 56 Cal. 65, and *Irwin v. Murphy, supra.*, 129 Cal.App. 713, are readily *222 distinguishable from the situation before us. Each of those cases upheld a claim of privilege in connection with statements made by grand juries as a part of investigations which were conducted in order to determine whether their constitutional authority to indict should be exercised. Also, we believe that defendants' reliance upon section 47, subdivision 2, of the Civil Code, is misplaced. (3)It is well settled that a special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject. (*In re Williamson* (1954) 43 Cal.2d 651, 654 [276 P.2d 593]*Burum v. State Compensation Ins. Fund* (1947) 30 Cal.2d 575, 586 [184 P.2d 505].) Therefore, where the Legislature has enacted a statute which exempts statements made in certain reports rendered by the grand jury from the status of privileged communications, that statute takes precedence over another statute which deals generally with the subject of privilege in judicial proceedings.

(2b)Defendants have not established, nor have we been able to discern, any conflict between the provisions of section 930 and those of our state Constitution which deal with grand juries. The simple truth is that the latter document does not deal with the grand jury's authority to act as a watchdog and prepare reports on local government. Since the watchdog function of the grand jury was created by statute, there is no reason why its exercise cannot be limited by statute.

(4)We agree with plaintiff that the grand jury's function of investigating and reporting on local government is not inherently a part of the judicial system. Further, we find merit in plaintiff's contention that there is sufficient basis for distinguishing the grand

jury's watchdog role from its role as an indicting body: indictment proceedings are secret and their disclosure is a misdemeanor (§ 924.1); the sufficiency of the evidence presented to the grand jury may be challenged pursuant to section 995; the accused, if indicted, is afforded a public trial and the opportunity to defend against the charges. By contrast, when the grand jury renders its watchdog report, the trial court's power to review such report is limited: it may refuse to file an illegal report which is beyond the grand jury's jurisdiction to render. (*People v. Superior Court (1973 Grand Jury)*, *supra.*, 13 Cal.3d at p. 440.) There is no statutory provision similar to section 995 for challenging the sufficiency of the evidence; there are no rules of evidence controlling the type of information which can be presented to the grand jury for its report; and there is no forum in which an individual who has been unfavorably mentioned by the grand jury may present his version of the facts. In our opinion, these considerations furnish ample justification for the Legislature's decision to enact section 930 and thereby *223 eliminate the claim of privilege in connection with the grand jury's report on local government. [FN4] We conclude that, in so doing, the Legislature acted well within its power and that the restrictions thus imposed do not violate the California Constitution.

FN4 It is of interest to note that when the grand jurors in this case were impaneled and sworn, the court advised them of their lack of immunity in certain instances, stating, 'as to any comments in your reports upon a person or public official not indicted, such comments are not privileged and could, if libelous, be the basis for a charge of civil or criminal libel.'

The judgment of dismissal is reversed.

Taylor, P. J., and Kane, J., concurred.
Respondents' petition for a hearing by the Supreme Court was denied October 12, 1978. *224

Cal.App.1.Dist.
Gillett-Harris-Duranceau & Associates, Inc. v. Kemple
83 Cal.App.3d 214, 147 Cal.Rptr. 616

END OF DOCUMENT

HARTWELL CORPORATION et al., Petitioners,
v.
THE SUPERIOR COURT OF VENTURA COUNTY, Respondent; KRISTIN SANTAMARIA et al., Real Parties in Interest.
[And eight other cases. [FN*]]
No. S082782.

Feb. 4, 2002.

FN* *Boswell v. Superior Court* (No. A085482); *Celi v. Superior Court* (No. A085486); *Adler v. Superior Court* (No. A085488); *Suburban Water Systems v. Superior Court* (No. A085495); *Covina Irrigating Co. v. Superior Court* (No. A085496); *San Gabriel Valley Water Co. v. Superior Court* (No. A085501); *Southern California Water Co. v. Superior Court* (No. A085502); *Santamaria v. Suburban Water Systems* (No. A085761).

SUMMARY

Residents brought multiple actions in two counties against water providers regulated by the California Public Utilities Commission (PUC), and against industrial entities and water providers not regulated by the PUC, seeking injunctive relief and damages for injuries to persons and property plaintiffs alleged were caused by harmful chemicals in the water. The trial court in the first county deferred ruling on defendants' demurrers, motions for judgment on the pleadings, and motions for summary judgment, and stayed the proceedings pending the PUC's completion of an investigation. (Superior Court of Los Angeles County, Nos. KC025995, KC027318, GC020622 and BC169892, Thomas William Stoever and Robert A. Dukes, Judges.) The trial court in the second county sustained the regulated utilities' demurrers without leave to amend, but overruled the demurrers and denied the stay requests by both the water providers not regulated by the PUC and the industrial defendants. (Superior Court of Ventura County, No. CIV180894, Henry J. Walsh, Judge.) The Court of Appeal, First Dist., Div. Five, Nos. A085477, A085482, A085486, A085488, A085495, A085496, A085501, A085502 and A085761, ordered issuance of writs of mandate, ruling that the PUC's statutory authority and jurisdiction over water quality preempted all of plaintiffs' claims against the regulated utilities, but not those against the nonregulated water providers and the industrial defendants.

The Supreme Court reversed in part and affirmed in part the judgment of the Court of Appeal, and remanded to that court for further proceedings. The court held that while Pub. Util. Code, § 1759, which deprives the superior court of jurisdiction to review any order or decision of the PUC or to interfere with the PUC in the performance of its official duties, did not preempt plaintiffs' damage claims alleging past violations of federal and state drinking water standards against the regulated utilities, it did preempt plaintiffs' requests for injunctive relief against those utilities and their challenge to the adequacy of federal and state water quality standards. The court also held that § 1759 did not bar plaintiffs' claims against the nonregulated water providers and the industrial defendants, since the duties of the PUC by constitutional mandate apply only to regulated utilities. (Opinion by Chin, J., with George, C. J., Kennard, Baxter, Brown, and Moreno, JJ., concurring. Concurring opinion by Kline, J. [FN*] (see p. 283).)

FN* Presiding Justice of the Court of Appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c)Public Utilities § 20--Public Utilities Commission-- Jurisdiction--Statutory Preclusion of Judicial Control--Action Against Water Utilities Seeking Damages and Injuctive Relief: Waters § 182--Water Utilities.
In multiple actions alleging damage to persons and property caused by harmful chemicals in water, brought by residents of two counties against water providers regulated by the California Public Utilities Commission (PUC), and against industrial entities

and water providers not regulated by the PUC, while some of plaintiffs' claims were barred by Pub. Util. Code, § 1759, others were not. Section 1759 deprives the superior court of jurisdiction to review any order or decision of the PUC or to interfere with the PUC in the performance of its official duties. While § 1759 preempted plaintiffs' requests for injunctive relief and challenge to the adequacy of federal and state water quality standards regulated by the PUC in conjunction with the Department of Health Services, § 1759 did not preempt plaintiffs' damage claims alleging past violations of those standards against the regulated utilities. Despite the fact the PUC had found that the regulated utilities had complied with those standards, since the PUC cannot provide relief for past violations, damages actions based on past violations would not interfere with the PUC. However, any prospective judicial relief would conflict with the PUC's regulatory role. Section 1759 also did not bar plaintiffs' claims against the nonregulated water providers and the industrial defendants, since the duties of the PUC by constitutional mandate apply only to regulated utilities.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 893, 894, 911; See West's Key Digest System, Public Utilities ⇨183.]

(2a, 2b) Public Utilities § 22--Public Utilities Commission-- Jurisdiction--Statutory Preclusion of Judicial Control--Determinative Factors.

In applying Pub. Util. Code, § 1759, which deprives the superior court of jurisdiction to review any order or decision of the California Public Utilities Commission (PUC) or to interfere with the PUC in the performance of its official duties, courts apply a three-part test. First, the court must determine whether the PUC had the authority to adopt a regulatory policy on the subject germane to the lawsuit. Second, the court must determine whether the PUC had exercised its authority. Third, the court must determine whether the superior court action would hinder or interfere with the PUC's exercise of its regulatory authority. Superior court lawsuits against public utilities are barred by § 1759 not only when an award of damages would directly contravene a specific order or decision of the commission, i.e., when it would reverse, correct, or annul that order or decision, but also when an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission, i.e., when it would hinder, frustrate, interfere with, or obstruct that policy. The PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same issue. In short, an award of damages is barred by § 1759 if it would be contrary to a policy adopted by the PUC and would interfere with its regulation of public utilities.

COUNSEL

Carroll, Burdick & McDonough, N. Kathleen Strickland, Donald T. Ramsey, Jack T. Friedman, Elizabeth L. Zepeda; Holland & Knight, N. Kathleen Strickland, Donald T. Ramsey and Devin C. Courteau for Petitioners The Hartwell Corporation, Rubber Urethanes, Inc., Screwmatic, Inc., J.H. Mitchell & Sons Distributors, Fairchild Industries, Azusa Land Reclamation Company, Inc., and Oil and Solvent Process Company.

Beveridge & Diamond, James L. Meeder, Janet C. Loduca; Allen Matkins Leck Gamble & Mallory, James L. Meeder and Alexander C. Crockett for Petitioners Mobil Oil Corporation, Lockheed-Martin Corporation and The Valspar Corporation.

Law Offices of David C. Solinger, David C. Solinger; Resolution Law Group, Philip C. Hunsucker, Michael O. Nelson and Andrea J. Greenberg for Petitioners Whico Machine, Inc., Donald White and John White.

Gallagher & Gallagher, Timothy V. P. Gallagher, Thomas C. Sites and Martin N. Refkin for Petitioner Oil and Solvent Process Company. ***259**

Engstrom, Lipscomb & Lack, Walter J. Lack, Gary A. Praglin, Joy L. Robertson, Michele Hitt; Girardi & Keese, Thomas V. Girardi; DeWitt, Algorri & Algorri and Mark Steven Algorri for Petitioners and Real Parties in Interest Christine Boswell et al., Loretta Celi et al., and Jeff Adler et al.

McKenna & Cuneo and Joseph F. Butler for Petitioners and Real Parties in Interest Covina Irrigating Company and California Domestic Water Company.

Lagerlof, Senecal, Bradley & Swift and Andrew D. Turner for Petitioner and Real Party in Interest California Domestic Water Company.

Lemieux & O'Neill, W. Keith Lemieux and Steven P.

O'Neill for Petitioners and Real Parties in Interest San Gabriel County Water District and Valley County Water District.

Proskauer Rose, Aaron P. Allan, Barry C. Groveman, Gregory J. Patterson; Musick, Peeler & Garrett, Barry C. Groveman; Timothy J. Ryan; Chapin Shea McNutt & Carter and Steven J. Renshaw for Petitioner and Real Party in Interest San Gabriel Valley Water Company.

Haight, Brown & Bonesteel, Gary C. Ottoson, Rita Gunasekaran; Bacalski, Byre & Koska, William K. Koska; Hatch & Parent, Steven A. Amerikaner and Scott S. Slater for Petitioner and Real Party in Interest Southern California Water Company.

Daniels, Baratta & Fine, Daniels, Fine, Israel & Schonbuch, Mary Hulett, Mark A. Vega, Paul Fine; Ragsdale Liggett and Mary Hulett for Petitioners and Real Parties in Interests Surburban Water Systems and Southwest Water Company, Inc.

Crosby, Heafey, Roach & May, Randall D. Morrison and Joan M. Haratani for Petitioner and Real Party in Interest Baxter Healthcare Corporation.

Shapiro, Mitchell & Dupont, Shapiro & Dupont, Shapiro, Borenstein & Dupont and Norman A. Dupont for Petitioner and for Real Party in Interest Reichhold.

No appearance for Respondent Superior Court.

McCutchen, Doyle, Brown & Enersen, John R. Reese, Barry P. Goode, Jill F. Cooper, Eric F. Pierson and Lonnie Finkel for Real Party in Interest Wynn Oil Company.

Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, Patricia L. Glaser, Terry Avchen, David A. Giannotti and Jan Jensen for Real Party Interest Huffy Corporation. *260

Morgan, Lewis & Bockius, Jeffrey N. Brown, Steven J. Oppenheimer and Wendy K. Kilbride for Real Party in Interest Avery Dennison Corporation.

Munger, Tolles & Olson and Peter R. Taft for Real Party in Interest Aerojet General Corporation.

Belcher, Henzie & Biegenzahn, E. Lee Horton, John S. Curtis, Scott J. Leipzig; Steefel, Levitt & Weiss, Lenard G. Weiss, Mark Fogelman; and Jan S. Driscoll for Real Party in Interest California-American Water Company.

Rose, Klein & Marias, Barry I. Goldman, Dennis J. Sherwin, David A. Rosen, Christopher P. Ridout and Arlyn M. Latin for Real Parties in Interest Kristin Santamaria et al.

Horvitz & Levy, Frederic D. Cohen and David S. Ettinger for California Water Association as Amicus Curiae.

CHIN, J.

Plaintiffs, residents of the San Gabriel Valley in Southern California, filed lawsuits in superior court, alleging, inter alia, that certain water companies provided them unsafe drinking water causing death, personal injury, and property damage. Public Utilities Code section 1759, [FN1] however, precludes superior court jurisdiction to review any order or decision of the California Public Utilities Commission (PUC) or to interfere with the PUC in the performance of its official duties. We granted review in this case to determine whether section 1759 bars the superior court actions. As explained below, we conclude that the PUC's regulation of water quality and safety does not preempt damage claims alleging violations of federal and state drinking water standards against the water providers subject to PUC regulation, but that the remaining claims against those water providers are preempted. We further conclude that the causes of action against those defendants not subject to PUC regulation are not barred.

FN1 Unless stated otherwise, all statutory references are to the Public Utilities Code.

Procedural History

A. *Superior Court Actions*

1. *Adler, Celi and Boswell Actions*

Three groups of plaintiffs, Jeff Adler and over 100 coplaintiffs, Loretta Celi and about 20 other plain-

tiffs, and Christine Boswell and 13 other plaintiffs, each filed separate actions for damages in the Los Angeles County Superior Court. The Adler complaint named as defendants Southern California Water Company, California American Water Company, and eight corporate parties that are not water providers or regulated by the PUC (hereafter *261 referred to as industrial defendants). The Celi complaint named as defendants San Gabriel Valley Water Company and the same eight industrial defendants. The Boswell complaint named as defendants Suburban Water Systems, Southwest Water Company, Covina Irrigating Company, California Domestic Water Company, and the same industrial defendants named in the Adler and Celi complaints. Southern California Water Company, California American Water Company, San Gabriel Valley Water Company, Suburban Water Systems, and Southwest Water Company are water providers subject to PUC regulation (hereafter referred to as regulated utilities). Covina Irrigating Company and California Domestic Water Company are public water districts and mutual water companies not subject to PUC regulation (hereafter referred to as nonregulated water providers).

The complaints sought damages based on causes of action for negligence, strict liability, trespass, public and private nuisance, and fraudulent concealment. Some plaintiffs also sued for wrongful death. These causes of action were based on the following allegations: that defendant water companies had provided the contaminated well water to plaintiffs, longtime residents of the San Gabriel Valley, over a period of years; that the water contaminants included trichloroethylene, perchloroethene, carbon tetrachloride, and perchlorates; and that as a result, plaintiffs suffered physical and mental pain and suffering, including fear of cancer, and property damage. The complaints further alleged that the industrial defendants disposed of toxic substances in the ground.

2. *Santamaria Action*

Kristin Santamaria and some 300 coplaintiffs filed a separate action in Los Angeles County against many of the same defendants. The complaint named additional industrial defendants, as well as nonregulated water providers Valley County Water District and San Gabriel County Municipal Water District. In addition to the same causes of action contained in the Adler, Boswell and Celi complaints, the Santamaria complaint alleged conspiracy, battery, and nine causes of action for unfair business practices based on the same kinds of conduct and toxic substances in the drinking water as alleged in the other lawsuits. The Santamaria plaintiffs prayed for damages, as well as injunctions against disposing toxic materials, supplying contaminated water, and engaging in unlawful business practices. They also sought medical monitoring, a constructive trust against defendants' property to pay for plaintiffs' injuries, and an order compelling defendants to disgorge profits and restore money acquired through unlawful business practices.

The court changed the venue of the Santamaria action to Ventura County on motion of several defendants. *262

B. *PUC Investigation*

In response to the lawsuits filed against the regulated utilities, the PUC filed an order instituting an investigation on March 12, 1998. (Cal.P.U.C. Order Instituting Investigation No. 98-03-013 (Mar. 12, 1998) [1998 Cal.P.U.C. Lexis 73].) Concerned that the complaints "raise public concerns over the safety of the drinking water supplies of these utilities," (*id.*, 1998 Cal.P.U.C. Lexis 73 at p. 2) the PUC instituted "a full-scale investigation" (*id.*, 1998 Cal.P.U.C. Lexis 73 at p. 3) to determine (1) whether current drinking water standards adequately protect the public health and safety; (2) whether the regulated utilities have complied with those standards; (3) what remedies should apply for noncompliance with safe drinking water standards; and (4) whether the occurrence of temporary excursions of contaminant levels above regulatory thresholds are acceptable "taking into consideration economic, technological, and public health and safety issues, and compliance with Public Utilities Code Section 770." (Cal.P.U.C. Order No. 98-03-013,*supra*, 1998 Cal.P.U.C. Lexis 73 at p. 10.) The PUC limited its investigation to the operations and practices of the named defendant public utilities and all other class A and class B public utility water companies, [FN2] which collectively serve over 90 percent of all public utility water customers in California. (Cal.P.U.C. Order No. 98-03-013,*supra*, 1998 Cal.P.U.C. Lexis 73 at p. 4.)

FN2 Class A utilities are those with more than 10,000 service connections. Class B

utilities have more than 2,000 connections. (Cal.P.U.C. Final Opinion Resolving Substantive Water Quality Issues (Nov. 2, 2000) Dec. No. 00-11-014 [2000 Cal.P.U.C. Lexis 722, 1, fn. 1].)

Plaintiffs in all four actions intervened in the PUC's investigation. They moved to dismiss or limit the investigation, on the ground the PUC lacked subject matter jurisdiction over the quality of drinking water service provided by regulated utilities. On June 10, 1999, the PUC issued an interim opinion denying plaintiffs' motion. (Cal.P.U.C. Interim Opinion Denying Motions Challenging Jurisdiction to Conduct Investigation 98-03-013 (June 10, 1999) Dec. No. 99-06-054 [1999 Cal.P.U.C. Lexis 312].) Rejecting plaintiffs' jurisdictional argument, the PUC found that it possessed authority to regulate the quality of the service and the drinking water that the water utilities provide, that it had exercised such authority for decades, and that it continued to do so. It determined that its jurisdictional decision was final and thus subject to rehearing and appellate review. On September 16, 1999, the PUC denied plaintiffs' application for rehearing. (Cal.P.U.C. Order Modifying Decision 99-06-054 For Purposes of Clarification and Denying Rehearing (Sept. 16, 1999) Dec. No. 99-09-073 [1999 Cal.P.U.C. Lexis 594].) *263 Plaintiffs did not seek review of the PUC's jurisdictional decision in this court under section 1756. [FN3]

FN3 Plaintiffs withdrew as interveners after the PUC's denial of the motion to dismiss. (Cal.P.U.C. Final Opinion Resolving Motions to Compel Discovery and Motions to Withdraw From Proceeding (Nov. 21, 2000) Dec. No. 00-11-036.)

The regulated utilities, the California Department of Health Services (DHS), the water division staff of the PUC, and some of the industrial defendants in the lawsuits participated in the investigation. After 31 months of investigation and study, the PUC issued its "Final Opinion Resolving Substantive Water Quality Issues" on November 2, 2000. (Cal.P.U.C. Final Opinion Resolving Substantive Water Quality Issues, *supra*, Dec. No. 00-11-014 [2000 Cal.P.U.C. Lexis 722].) The PUC concluded that existing DHS drinking water quality standards adequately protect the public health and safety and that, over the past 25 years, the regulated utilities, including defendants in these lawsuits, had provided water that was " 'in no way harmful or dangerous to health' " and had satisfactorily complied with DHS drinking water quality requirements. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 39.) It also gave notice of its intention to initiate a future investigation or rulemaking proceeding to investigate specific water quality issues. (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 777 at pp. 71, 73-74.) [FN4]

FN4 The Court of Appeal granted judicial notice of all proceedings before the PUC, including PUC Decision No. 99-06-054. However, the PUC's modification order and denial of rehearing, its final opinion resolving motions to compel discovery and to withdraw from proceeding, and its final opinion resolving the substantive water quality issues occurred after the filing of the Court of Appeal opinion. The regulated utilities request that we take judicial notice of the modification order and denial of rehearing and the final opinion resolving motions to compel discovery and to withdraw from proceedings. Several of the industrial defendants join the regulated utilities in requesting that we take judicial notice of the PUC's final opinion in its investigation. Because the subsequent PUC proceedings are a continuation of the PUC's investigation into water quality safety issues, we grant those requests. (*Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143-144[39 Cal.Rptr. 332].)

C. *Superior Court and Court of Appeal Rulings*

In the meantime, in response to PUC Order No. 98-03-013 instituting an investigation of water quality safety, defendants in the four superior court actions sought dismissal on the ground that the litigation was barred by section 1759. In the alternative, certain defendants requested stays of the court proceedings pending the PUC's investigation. On June 24, 1998, the superior court in the Adler, Celi, and Boswell actions stayed all proceedings until the completion of the PUC's investigation. On August 27, 1998, the Ventura County Superior Court in the Santamaria action sustained the regulated utilities' demurrers without leave to amend, but overruled the *264 de-

murrers of the nonregulated water providers and the industrial defendants and denied their motions for a stay of proceedings. The court later accepted a stipulation that the proceedings be stayed pending review by the Court of Appeal.

Eight petitions for writs of mandate were filed in the Court of Appeal. The Adler, Celi, and Boswell plaintiffs and the regulated utility defendants filed petitions challenging the stay orders of the Los Angeles County Superior Court. In the Santamaria action, the nonregulated water providers and the industrial defendants filed petitions challenging Ventura County Superior Court's overruling of the demurrers and denial of the motions for a stay, while the plaintiffs appealed the order granting the demurrer of the regulated utility defendants. The Court of Appeal issued orders to show cause on the petitions and consolidated the appeal with the proceedings on all of the writs.

On September 1, 1999, the Court of Appeal ruled that the PUC's statutory authority over water quality and its exercise of jurisdiction in addressing water quality issues preempted the four actions against the regulated utilities, but did not preempt the actions against the nonregulated water providers and the industrial defendants. Accordingly, it ruled that the Los Angeles County Superior Court in the Adler, Celi, and Boswell actions erred (1) in staying the proceedings instead of ruling on the merits of the preemption issue; (2) in failing to sustain the demurrers and grant the summary judgment motion of the regulated utilities; and (3) in failing to overrule the demurrers and deny the judgment on the pleadings of the nonregulated water providers and industrial defendants. It further upheld the Ventura County Superior Court's rulings in the Santamaria action in all respects.

We granted the petitions for review filed by the Santamaria plaintiffs, and by the nonregulated water providers and the industrial defendants in all four lawsuits. [FN5]

FN5 The Adler, Boswell, and Celi plaintiffs did not seek review.

Discussion

" 'The [PUC] is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., art. XII, §§ 1-6.)The Constitution confers broad authority on the [PUC] to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (*Id.*,§§ 2, 4, 6.)' " (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 914-915[55 Cal.Rptr.2d 724, 920 P.2d 669](*Covalt*).) In addition to those powers expressly conferred on the PUC, the California Constitution confers broad *265 authority on the Legislature to regulate public utilities and to delegate regulatory functions to the PUC. (Cal. Const., art. XII, §§ 3, 5.)

Consistent with these constitutional mandates, the Legislature has granted the PUC comprehensive jurisdiction to regulate the operation and safety of public utilities. (§§ 701, 761, 768, 770, subd. (a).) Section 701 authorizes the PUC to "supervise and regulate every public utility in the State and [to] do all things ... which are necessary and convenient in the exercise of such power and jurisdiction." Section 702 commands every public utility to obey the PUC's orders, decisions, directions, or rules "in any way relating to or affecting its business as a public utility ...."

The California Constitution also confers plenary power on the Legislature to "establish the manner and scope of review of commission action in a court of record ...." (Cal. Const., art. XII, § 5.) In the exercise of that power, the Legislature has chosen to limit the jurisdiction of judicial review of the PUC's decisions. Section 1759, subdivision (a), provides that: "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court."

(1a) Defendants, which include the regulated utilities; nonregulated water providers, and the industrial defendants, contend that section 1759 precludes plaintiffs' actions in superior court. In response, plaintiffs argue that section 1759 is inapplicable and that section 2106 permits their lawsuit against the regulated utilities. Section 2106 provides in pertinent part: "Any public utility which does, causes to be done, or

permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, or any law of this State, or any other order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom.... An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person."

In *Waters v. Pacific Telephone Co.* (1974) 12 Cal.3d 1[114 Cal.Rptr. 753, 523 P.2d 1161](*Waters*), we concluded that "in order to resolve the potential conflict between sections 1759 and 2106, the latter section must be construed as limited to those situations in which an award of damages would not hinder or frustrate the [PUC's] declared supervisory and regulatory policies." (*Id.* at p. 4.) There, the plaintiffs sued a telephone company in superior ***266** court for failing to furnish adequate telephone service. We noted that the PUC, in approving rates charged, had relied on a policy it adopted of limiting liability of telephone utilities for acts of ordinary negligence to a specified credit allowance as set forth in approved tariff schedules. We held that section 1759 barred the superior court action because damage awards would conflict with the PUC's policies and interfere with its regulation of telephone utilities.

(2a) We again addressed the relationship between sections 1759 and 2106 in *Covalt, supra*, 13 Cal.4th 893, in which the issue was whether section 1759 barred a superior court action for nuisance and property damage allegedly caused by electric and magnetic fields (EMF's) from power lines owned and operated by a public utility. (*Covalt, supra*, at p. 903.)In applying section 1759, we used a three-part test: (1) whether the PUC had the authority to adopt a regulatory policy on whether EMF's are a public health risk and what steps the utilities should take, if any, to minimize the risk; (2) whether the PUC had exercised that authority; and (3) whether the superior court action would hinder or interfere with the PUC's exercise of regulatory authority with respect to EMF's. (*Covalt, supra*, at pp. 923, 926, 935.)We found preemption after answering all three questions in the affirmative.

(1b) Plaintiffs argue that *Covalt*'s three prongs have not been met in this case. They argue that the PUC lacks the authority to regulate water quality, that it has never exercised that authority until its recent investigation on water quality, and that the complaints in the lawsuits would not interfere with the PUC's exercise of regulatory authority. We reject plaintiffs' first two arguments, but agree that some of the damage claims would not interfere with any ongoing PUC regulatory program.

A. Section 1759 Bars the Injunctive Relief Claims and Some of the Damage Claims Against the Regulated Utilities

1. *Background Information*

Since the enactment of the Public Utilities Act in 1911 (Stats. 1911, Ex. Sess. 1911, ch. 14, § 1, p. 18), the PUC has regulated public utility water companies. (See *In re Application Southern California Mountain W. Co.* (1912) 1 Cal.P.U.C. 841.)From 1912 to 1956, the PUC exercised its public health and safety authority over public utility water service on a case-by-case basis; it examined water quality issues and, where necessary, required water utilities to take specific actions to ensure safe drinking water and authorized rate recovery for the associated costs. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 30, fn. 18, 38.) On its own motion in 1955, the PUC initiated a comprehensive investigation to ***267** establish "uniform service standards and service rules applicable to all privately-owned, public utility water companies in the State of California." (*Re Adoption of Service Standards and Service Rules for Water Utilities* (1956) 55 Cal.P.U.C. 56.)The proceeding resulted in the adoption of general order No. 103, which established uniform standards of water quality service for regulated utilities, including specific requirements for the source of water, operation of the water supply system, and water testing requirements. (*Ibid.*)

General order No. 103, which has been amended during the intervening years, presently provides that "[a]ny utility serving water for human consumption or for domestic uses shall provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color, and turbidity." (Cited by Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at pp. 39-40.) It requires each utility to comply with the water quality standards of

the DHS and the United States Environmental Protection Agency (EPA) and states that compliance with DHS regulations constitutes compliance with the PUC's rules, " 'except as otherwise ordered by the commission.' " [FN6] (*Id.*, 1999 Cal.P.U.C. Lexis 312 at p. 40.)

> FN6 Although general order No. 103 has been amended during the intervening years, the policy of requiring wholesome, potable, and healthful water and of adopting the DHS health standards has remained the same since its inception. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at pp. 39-40.)

Until 1974, the PUC's authority to determine the appropriate standards for the water quality and service provided by public utility water systems was limited only by the statutory requirement that such standards be "just and reasonable" and "adequate and serviceable." (§ 770; Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 44.) However, in 1974, Congress enacted the federal Safe Drinking Water Act (federal SDWA) (42 U.S.C. § 300f et seq.), which prohibits states from enacting drinking water laws less stringent than those established by the EPA. (42 U.S.C. § 300g.)"Congress occupied the field of public drinking water regulation with its enactment of the [federal] SDWA. 'The purpose of the [federal SDWA] is to assure that water supply systems serving the public meet minimum *national standards* for protection of public health.' [Citation.] With minor exceptions, the SDWA applies 'to each public water system in each State.' 42 U.S.C. § 300g .... [A]lthough the primary responsibility for enforcement remains with the States, the Administrator is empowered to enforce State compliance. *Id.* §§ 300g-2, 300g-3." (*Mattoon v. City of Pittsfield* (1st Cir. 1992) 980 F.2d 1, 4.) Accordingly, the federal SDWA grants states primary authority to implement the provisions of the federal standards and allows states to set stricter water quality standards than those of the federal government. (42 U.S.C. § 300g-2(a); see 42 U.S.C. § 300g-1(b).) Although the *268 federal SDWA preempts federal common law nuisance actions (*Mattoon v. City of Pittsfield, supra*, 980 F.2d at p. 4), state common law is not preempted. (*United States v. Hooker Chemical & Plastics Corp.* (W.D.N.Y. 1985) 607 F.Supp. 1052, 1055, fn. 3.)

In 1976, the Legislature enacted the state Safe Drinking Water Act (state SDWA). (Stats. 1976, ch. 1087, § 2.5, pp. 4918-4929, adding Health & Saf. Code, former § 4010 et seq., currently codified at Health & Saf. Code, § 116275 et seq.) When the Legislature enacted the state SDWA, it assumed the primary authority to administer the federal act. The state SDWA, administered by the DHS, establishes standards at least as stringent as the federal SDWA and is intended to be "more protective of public health" than the minimum federal standards. (Health & Saf. Code, §§ 116270, subd. (f), 116325.) The Court of Appeal below described the state SDWA:

"*Paredes v. County of Fresno* (1988) 203 Cal.App.3d 1[249 Cal.Rptr. 593](*Paredes*) described in some detail the California SDWA, in addressing the regulation of water contaminated with DBCP, a toxic substance not specifically in issue in our case. 'The California Legislature has declared water delivered by public water systems in this state should be at all times pure, wholesome, and potable. It has adopted procedures to be followed in an effort to accomplish this objective in [Health and Safety Code] sections 4010.1 through 4039.5. ([Health & Saf. Code,] § 4010.)These sections [which have since been amended and moved to Health and Safety Code sections 116275 through 117130 (Stats. 1995, ch. 415, § 6)] describe the permit process for the operation of a public water system ([Health & Saf. Code,] art. 1, §§ 4011-4022), the regulation of the quality of the water supply of a public water system ([*id.*,] art. 2, §§ 4023.5-4030.7), violations ([*id.*,] art. 3, § 4031), remedies ([*id.*,] art. 4, §§ 4032-4036.5), judicial review ([*id.*,] art. 4.5, § 4037), and applicable crimes and penalties ([*id.*,] art. 5, §§ 4037.5-4039.5).

" 'Any person who operates a public water system must: comply with primary and secondary drinking water standards; ensure the system will not be subject to backflow under normal operating conditions; and provide a reliable and adequate supply of pure, wholesome, healthful, and potable water. ([Health & Saf. Code,] § 4017.)Primary drinking water standards specify maximum levels of contaminants, which, in the judgment of the DHS director, may have an adverse effect on the health of persons. ([*Id.*,]§ 4010.1, subd. (b)(1).) Secondary drinking water standards specify maximum contaminant levels which, in the judgment of the director, are necessary to protect public welfare. Secondary drinking water standards

may apply to any drinking water contaminant which may: (1) adversely affect the odor or appearance of such water and cause a substantial number of persons *269 served by the public water system to discontinue its use; or (2) otherwise adversely affect the public welfare. ([*Id.*,]§ 4010.1, subd. (b)(2).) Maximum contaminant level means the maximum permissible level of a contaminant in water. ([*Id.*,]§ 4010.1, subd. (c).)

" 'The regulations establishing primary and secondary drinking water standards for public water systems are contained in title 22 of California Code of Regulations, section 64401 et seq. (Cal. Code Regs., tit. 22, § 64401, subd. (a).) Those drinking water standards are based upon the national interim primary and secondary drinking water regulations contained in the Code of Federal Regulations.' (*Paredes, supra*, 203 Cal.App.3d at p. 5, fn. omitted.)

"In California, when a contaminant is discovered for which there is no primary or secondary standard, the DHS develops an 'action level' for it. In the early 1980's, the Legislature adopted a program for detecting and monitoring organic chemical contaminants for which mandatory levels did not exist. Legislation authorized the DHS to require monitoring for these unregulated chemicals and notification of the public when action levels were exceeded. DHS implemented the legislation by adopting guidelines for responding when action levels were exceeded. (*Paredes, supra*, 203 Cal.App.3d at pp. 6-7.)

"Although the Legislature moved the Safe Drinking Water Act to Health and Safety Code section 116275 et seq. during a statutory reorganization in 1995 (Stats. 1995, ch. 415, § 6 ...) and amended it in subsequent years (Stats. 1996, ch. 755, §§ 1-12 ...; Stats. 1997, ch. 734, §§ 1-15 ...), the general regulatory scheme described in *Paredes* has remained intact." (Fn. omitted.)

2. The PUC Has Authority to Enforce Water Quality and Limited Authority to Adopt Water Quality Standards for Regulated Utilities

Plaintiffs argue that the DHS and the EPA have exclusive authority to set standards and enforce laws related to the state and federal SDWA's and that the regulation of water quality is the function of the DHS, not the PUC. Plaintiffs are correct that the Legislature has vested in DHS primary responsibility for the administration of the safe drinking water laws. (Health & Saf. Code, § 116325.)However, they are incorrect in asserting that the PUC has no authority to set and enforce drinking water standards when regulating water providers. The Legislature has vested the PUC with general and specific powers to ensure the health, safety, and availability of the public's drinking water.

Article X, section 5 of the California Constitution states: "The use of all water now appropriated, or that may hereafter be appropriated, for sale, *270 rental, or distribution, is hereby declared to be a public use; and subject to the regulation and control of the State, in the manner to be prescribed by law." Article XII, section 3 of the California Constitution provides that "Private corporations and persons that own, operate, control, or manage a line, plant, or system for ... the production, generation, transmission, or furnishing of ... water ... directly or indirectly to or for the public ... are public utilities subject to control by the Legislature." Such public utilities are thereby subject to regulation by the PUC. (Cal. Const, art. XII, § 5; Pub. Util. Code, §§ 701, 761, 770, 2701.) In regulating utilities, the PUC is authorized to "do all things ... which are necessary and convenient in the exercise of [its] power and jurisdiction" (§ 701) and required to ensure that the service and equipment of any public utility protect the public health and safety. (§§ 451, [FN7]768. [FN8]) Drinking water quality affects health and safety and is therefore within the PUC's regulatory jurisdiction over public utility water companies to ensure that public health and safety are protected. (§§ 451, 739.8, subd. (a), 761, 768, 770, subd. (b); see *Citizens Utilities Co. v. Superior Court.* (1976) 56 Cal.App.3d 399, 408[128 Cal.Rptr. 582].)

FN7 Section 451 provides in pertinent part: "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons ... and the public."

FN8 Section 768 provides in pertinent part: "The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system,

> equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its ... customers, and the public.... The commission may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its ... customers, or the public may demand...."

The PUC's most obvious regulatory authority includes the regulation of rates: "Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost." (§ 739.8, subd. (a).)

In addition, section 770 addresses water quality regulation and provides in pertinent part: "The commission may after hearing: [¶] ... [¶] (b) Ascertain and fix adequate and serviceable standards for the measurement of ... quality ... or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility. No standard of the commission applicable to any water corporation shall be inconsistent with the regulations and standards of the State Department of Health pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code."

In 1974, when Congress first passed the federal SDWA, the Legislature amended section 770, subdivision (b), to include the following proscription: *271 "No standard of the commission relating to water quality, however, shall be applicable to any water corporation which is required to comply with the regulations and standards of the State Department of Health pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code." (Stats. 1974, ch. 229, § 1, p. 434.) In 1976, the Legislature again amended subdivision (b) to eliminate the proscription and instead to provide that: "No standard of the commission applicable to any water corporation shall be *inconsistent* with the regulations and standards of the State Department of Health pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code." (Stats. 1976, ch. 1087, § 4, p. 4929, italics added; see Stats. 1976, ch. 1037, § 3, p. 4648.) Thus, the present statute gives the PUC authority to develop and apply standards for the quality of the product or service provided by regulated utilities as long as they are not "inconsistent" with the regulations and standards of DHS. [FN9]

> FN9 In its final opinion on water quality, the PUC ordered a subsequent investigation and/or rulemaking proceeding, which will consider (1) whether DHS's action levels, which DHS categorizes as nonmandatory and nonenforceable levels, should be mandatory for regulated utilities, and (2) whether the utilities complied with general order No. 103 standards in existence before the adoption by DHS of maximum contaminant levels and action levels. (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 722 at pp. 20, 65, 73-74.) A PUC rule requiring regulated utilities to meet DHS action levels would not be inconsistent with mandatory DHS water quality standards. Indeed, during the investigation, the DHS suggested that the PUC require utility compliance with the DHS action levels and customer notification when DHS action levels are exceeded. (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 722 at p. 37.)

Nevertheless, whether the PUC has independent authority to set water quality standards is not dispositive. The PUC has constitutional and statutory authority and responsibilities to ensure that the regulated utilities provide service (e.g., water) that protects the public health and safety. (§§ 701, 451, 768.)While the water quality standards may be the product of DHS study and expertise, they are the PUC standards as well. The Legislature, by mandating that the PUC standards cannot be "inconsistent" with DHS water quality standards, has established that the DHS safety standards are the minimum standards for the PUC to use in performing its regulatory function of ensuring compliance with safety standards.

Since 1956, the PUC's supervisory policy, as embodied in general order No. 103, has required public utilities to comply with the water quality standards of the relevant state and federal health agencies, " 'except as otherwise ordered by the Commission.' " (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999

Cal.P.U.C. Lexis 312 at p. 40.) In implementing that policy, the PUC can require prescribed water quality corrective actions, both in rate and complaint cases affecting particular utilities and in industrywide investigations such as the 1998-2000 investigation into water quality. (Pub. Util. *272 Code, §§ 1701-1702, 2101; Health & Saf. Code, § 116465; *Ford v. Pacific Gas & Electric Co.* (1997) 60 Cal.App.4th 696, 707[70 Cal.Rptr.2d 359]; see also *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 907[160 Cal.Rptr. 124, 603 P.2d 41].) It can enforce its orders and decisions by suit (Pub. Util. Code, § 2101), by mandamus or injunction (*id.*, §§ 2102-2103), by actions to recover penalties (*id.*, §§ 2104, 2107), and by contempt proceedings (*id.*, § 2113). Thus, the PUC has the authority to adopt a policy on water quality and to take the appropriate actions, if any, to ensure water safety.

3. *The PUC Has Undertaken the Ongoing Regulation of Drinking Water Quality*

As stated above, the PUC exercised its public health and safety authority over public utility water service on a case-by-case basis from 1912 to 1956 and adopted general order No. 103 in 1956. The PUC and DHS confirmed their partnership on water quality issues in a joint memorandum of understanding in 1987, which was updated in 1996. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 28, fn. 16.) It acknowledged "their joint goal to ensure that California water companies regulated by PUC are economically maintaining safe and reliable water supplies." (*Id.*, 1999 Cal.P.U.C. Lexis 312 at p. 111.) The memorandum defined DHS's responsibility for identifying contaminants and the improvements necessary to provide safe water supplies, and for initiating enforcement actions under the state SDWA; the PUC retained responsibility for approving rate changes to finance improvements, for informing customers, and for monitoring non-SDWA water quality requirements. The two agencies agreed to work together and share information. (*Id.*, 1999 Cal.P.U.C. Lexis 312 at pp. 104-120.)

In exercising its regulatory authority over water quality, the PUC has decided what constitutes adequate compliance with applicable water quality standards, whether any increased water treatment is justified in light of its impact on ratepayers, and what marginal increases in safety may be gained. (See, e.g., *California-American Water Co.* (1986) 20 Cal.P.U.C.2d 596 [PUC refused to authorize water utility to install water quality treatment facility, and instead ordered it to evaluate other, less costly alternatives]; *San Gabriel Valley Water Co.* (1998) Cal.P.U.C. Dec. No. 98-08-034 [1998 Cal.P.U.C. Lexis 575] [PUC approved water utility's request for additional water quality treatment facilities, rejecting ratepayers' argument that new treatment plant should be allowed only when prescribed maximum contaminant levels exceed DHS standards].)

The Court of Appeal below noted other actions by the PUC with respect to the quality of drinking water provided by public utilities: "In 1983, it *273 adopted a service improvement policy, requiring water utilities to identify the most cost-effective alternatives for dealing with water service problems, including contamination. In 1986, it issued guidelines for water quality improvement projects. In 1990, it issued a risk and return report, addressing the development of drinking water quality standards, new testing procedures, and application of drinking water standards to large and small water utilities. In 1994, it issued a decision concluding that drinking water quality standards would require investment of $50 million to $200 million in water treatment facilities over the next several years. In 1996, it authorized water utilities to establish accounts to record and recover expenses incurred in complying with EPA drinking water regulations and paying DHS testing and regulatory fees. In addition, the commission issued a series of individual rate decisions analyzing health standards and individual communities' abilities to absorb the costs of varying treatment levels."

The PUC itself has stated: "[T]he Commission's cost setting and regulating role is inextricably bound to the quality of water provided by the regulated utilities." (Cal.P.U.C. Dec. No. 99-09-073, *supra*, 1999 Cal.P.U.C. Lexis 594 at p. 9.) "Most often, authorization for corrective or preventative water quality measures occurs in a rate case." (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 31.) In reviewing a water utility's rate increase application, the PUC must review the reasonableness of the utility's proposed investment, its compliance with health department regulations, its implementation of previous PUC decisions affecting water quality, and its compliance with general order No. 103.(Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999

Cal.P.U.C. Lexis 312 at pp. 31-32.) Thus, in setting rates at affordable levels, the PUC must balance the quality and cost of water services.

In its final opinion, the PUC explained the basis for its concurrent jurisdiction with the DHS over water quality safety: "A jurisdictional structure that preserves the authority of both DHS and the [PUC] over the quality of water provided to residents and businesses by private water companies is consistent with the original intent of the 1911 Act giving the [PUC] authority over water issues. It remains crucial to the effective regulation of public utilities. The expertise of the [PUC], however, has always centered around the creation of financial and regulatory incentives that foster and support socially desired behavior from firms that operate in a marketplace characterized by limited competition. Thus, it is clearly reasonable that the Legislature continue to marshal the expertise of the [PUC] as well as the health-science expertise of DHS to support a public interest as critical as the quality of drinking water." (Cal.P.U.C. Dec. No. 00-11-014, *supra*, 2000 Cal.P.U.C. Lexis 722 at pp. 17-18.) As shown by the DHS's participation in the PUC's recent water quality investigation, the PUC and the DHS continue to work together to ensure that public water utilities provide safe and healthy water. *274

Plaintiffs argue that their lawsuits should not be preempted because the PUC has deferred to the DHS to set and enforce water quality standards, has no expertise in water quality issues, and has focused on ratemaking. Our decision in *Covalt* leads us to a different estimation of PUC's regulatory involvement. In *Covalt*, notwithstanding the PUC's deference to the DHS's expertise on health issues, we concluded that the PUC had preemptively exercised its authority to adopt a policy on powerline EMF's. (*Covalt, supra*, 13 Cal.4th at pp. 926-934, 946-947.)

The circumstances in that case involved a PUC investigation into the health effects of EMF emissions. The PUC had issued an interim opinion and order that summarized what had occurred during the investigation up to that point and the recommendations for further studies. In the interim opinion and order, the PUC recognized the DHS's expertise and concurrent jurisdiction in establishing EMF policy. (*Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities* (1993) 52 Cal.P.U.C.2d 1, 8, 14-15.)We noted that, for the investigation, the PUC had asked DHS to assess the scientific evidence concerning the potential dangers of EMF's and had relied on the DHS witness in developing a policy on the potential health risks of EMF's from utility facilities. (*Id.* at p. 8;*Covalt, supra*, 13 Cal.4th at p. 930.)In determining the need for further research and education programs, the PUC found that the DHS was the "appropriate agency" "to inform [it] as to the type of public health risk, if any, connected to EMF exposure and utility property or operations" and "to define the research needed to determine whether there is a clear cause and effect relationship between EMF from utility property and public health." (*Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities, supra*, 52 Cal.P.U.C.2d at pp. 27-28.)Accordingly, DHS was designated as the EMF education and research program manager. (*Id.* at pp. 15, 21, 30.)Its duties included implementing and coordinating statewide research and education programs, defining the needed research, developing educational information for distribution to utility customers, monitoring the quality of research and education, and providing an annual research report to PUC. (*Id.* at pp. 16, 22-23, 26, 28-30; see also *Covalt, supra*, 13 Cal.4th at pp. 932-933.)

It is true that the PUC's primary involvement with water quality has been in the context of ratemaking, determining which water quality improvements to authorize or mandate and their costs, and the necessary rate increases. However, in making those decisions, the PUC had to consider, as it did in *Covalt*, the health and safety of the service provided by the regulated utilities. Accordingly, we find that the PUC has exercised and continues to exercise its jurisdiction to regulate drinking water quality. *275

4. Some of Plaintiffs' Actions Would Interfere with the PUC's General Supervisory and Regulatory Policies, While Others Would Not

(2b) Under the third prong of *Covalt*, superior court lawsuits against public utilities are barred by section 1759 "not only when an award of damages would directly contravene a specific order or decision of the commission, i.e., when it would 'reverse, correct, or annul' that order or decision, but also when an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission, i.e., when it would 'hinder' or 'frus-

trate' or 'interfere with' or 'obstruct' that policy." (*Covalt, supra,* 13 Cal.4th at p. 918.) " 'The PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same issue.' " (*Id.* at p. 918, fn. 20, italics omitted; see, e.g., *Waters, supra,* 12 Cal.3d at pp. 10-12 [damage action for negligence in providing telephone service conflicted with PUC-approved tariff limiting telephone customer to credit allowance for improper service].) In short, an award of damages is barred by section 1759 if it would be contrary to a policy adopted by the PUC and would interfere with its regulation of public utilities. (*Waters, supra,* 12 Cal.3d at pp. 4, 11.)

On the other hand, superior courts are not precluded from acting in aid of, rather than in derogation of, the PUC's jurisdiction. (*Vila v. Tahoe Southside Water Utility* (1965) 233 Cal.App.2d 469[43 Cal.Rptr. 654].) Thus, a court has jurisdiction to enforce a water utility's legal obligation to comply with PUC standards and policies and to award damages for violations. (See, e.g., *id.* at pp. 479-480 [office building owner permitted to seek damages for water utility's failure to provide single water service connection to multipletenant building as required by unambiguous tariff approved by the PUC].)

"When the bar raised against a private damages action has been a ruling of the commission on a single matter such as its approval of a tariff or a merger, the courts have tended to hold that the action would not 'hinder' a 'policy' of the commission within the meaning of *Waters* and hence may proceed. But when the relief sought would have interfered with a broad and continuing supervisory or regulatory program of the commission, the courts have found such a hindrance and barred the action under section 1759." (*Covalt, supra,* 13 Cal.4th at pp. 918-919.)

a. *Damages*

(1c) Plaintiffs alleged water contamination without regard to whether the water met drinking water standards (e.g., injury from "the toxic contamination of drinking water, with chemicals, including, but not limited to," three *276 chemicals with established maximum contaminant levels). They also alleged water contamination that exceeded and violated federal and state drinking water standards. In essence, plaintiffs challenged both the adequacy of the standards and compliance with those standards.

The first challenge, to the adequacy of the standards, is barred. An award of damages on the theory that the public utilities provided unhealthy water, even if that water actually met DHS and PUC standards, would interfere with a "broad and continuing supervisory or regulatory program" of the PUC. (*Covalt, supra,* 13 Cal.4th at p. 919.)In order to perform its regulatory functions, such as ratemaking, the PUC must have certain water quality benchmarks. For example, in determining whether to approve a rate increase, the PUC must consider whether a regulated water utility's existing revenues are adequate to finance any water treatment facility that may be needed. Whether a treatment facility is needed, and, if so, the expense thereof, cannot be determined except with reference to an applicable water quality standard. General order No. 103, promulgated by the PUC in 1956, formally adopted the DHS water quality standards as its own. Thus, the DHS standards serve as those benchmarks. A superior court determination of the inadequacy of a DHS water quality standard applied by the PUC would not only call DHS regulation into question, it would also undermine the propriety of a PUC ratemaking determination. Moreover, the DHS standards have been used by the PUC in its regulatory proceedings for many years as an integral part of its broad and continuing program or policy of regulating water utilities. As part of that regulatory program, the PUC has provided a safe harbor for public utilities if they comply with the DHS standards. An award of damages on the theory that the public utilities provided unhealthy water, even if the water met DHS standards, "would plainly undermine the commission's policy by holding the utility liable for not doing what the commission has repeatedly determined that it and all similarly situated utilities were not required to do." (*Covalt, supra,* 13 Cal.4th at p. 950.)Thus, such damage actions are barred.

On the other hand, damage claims based on the theory that the water failed to meet federal and state drinking water standards are not preempted by section 1759. A jury award based on a finding that a public water utility violated DHS standards would not interfere with the PUC regulatory policy requiring water utility compliance with those standards. We recognize that in PUC Decision No. 00-11-014, the

final opinion on water quality, the PUC made a retrospective finding that the regulated utilities investigated, including the regulated defendants in this case, had substantially complied with DHS drinking water standards for the past 25 years. However, that factual finding was not part of an identifiable "broad and continuing supervisory or regulatory program of the commission" (*Covalt, supra,* 13 Cal.4th at p. 919),*277 related to such routine PUC proceedings as ratemaking (see *Citizens Utilities Co. v. Superior Court, supra,* 56 Cal.App.3d 399) or approval of water quality treatment facilities. Nor was that finding part of a broad and continuing program to regulate public utility water quality, a point the PUC itself implicitly recognized during its investigation when it stated: "This investigation is an inquiry into the safety of the drinking water supplied by Commission regulated water utilities. This is an information gathering process. This is not a rulemaking proceeding, although the information gathered here may result in our instituting a rulemaking proceeding to develop new operating practices for regulated water utilities to better ensure the health and safety of water service. This is also not an enforcement proceeding, although the information accumulated here regarding the compliance of regulated water utilities with the safe drinking water laws may result in our instituting formal enforcement investigations of individual water utilities where justified." (Cal.P.U.C. Dec. No. 99-06-054, *supra,* 1999 Cal.P.U.C. Lexis 312 at pp. 48-49, fn. omitted.)

Although a PUC factual finding of past compliance or noncompliance may be part of a future remedial program, a lawsuit for damages based on past violations of water quality standards would not interfere with such a prospective regulatory program. As noted, the PUC can redress violations of the law or its orders by suit (§ 2101), by mandamus or injunction (§§ 2102-2103), by actions to recover penalties (§§ 2104, 2107), and by contempt proceedings (§ 2113); but these remedies are essentially prospective in nature. They are designed to stop the utilities from engaging in current and ongoing violations and do not redress injuries for past wrongs. (See *Vila v. Tahoe Southside Water Utility, supra,* 233 Cal.App.2d at p. 479 [the PUC has no authority to award damages].) Here, plaintiffs alleged injuries caused by water that failed to meet state and federal drinking water standards "for many years." Because the PUC cannot provide for such relief for past violations, those damage actions would not interfere with the PUC in implementing its supervisory and regulatory policies to prevent future harm.

The regulated and nonregulated defendants argue that an award of damages against the regulated utility defendants for providing harmful or unhealthy water, would directly "contravene" a specific order or decision of the PUC, as stated in *Covalt.*(*Covalt, supra,* 13 Cal.4th at p. 918.)However, the *Covalt* language regarding the contravention of an order was simply a reference to the statutory language in subdivision (a) of section 1759 that "No court of this state, except the Supreme Court and the court of appeal ... shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission ...." (*Covalt, supra,* at p. 918.)Although a jury award supported by a finding that a public water utility violated DHS and PUC standards would be contrary to a single PUC decision, it would not *278 hinder or frustrate the PUC's declared supervisory and regulatory policies, for the reasons discussed earlier. Under the provisions of section 1759, it would also not constitute a direct review, reversal, correction, or annulment of the decision itself. Accordingly, such a jury verdict would not be barred by the statute.

b. *Injunctive Relief*

In addition to alleging damages, the Santamaria plaintiffs asked for injunctive relief for current water quality violations. However, a court injunction issued after a jury finding of DHS standards violations would "interfere with the commission in the performance of its official duties ...." (§ 1759.)As part of its water quality investigation, the PUC determined, not only whether the regulated utilities had complied with drinking water standards for the past 25 years, but also whether they were currently complying with existing water quality regulation. (Cal.P.U.C. Dec. No. 00-11-014, *supra,* 2000 Cal.P.U.C. Lexis 722 at pp. 5, 105-108.) In PUC Decision No. 00-11-014, the final opinion on water quality, the PUC found that the regulated utility defendants in this case were in compliance with DHS regulations and that "no further inquiry or evidentiary hearings" were required regarding compliance. (Cal.P.U.C. Dec. No. 00-11-014, *supra,* 2000 Cal.P.U.C. Lexis 722 at p. 6.) Based on that factual finding, the PUC impliedly determined it need not take any remedial action against those regulated utilities. A court injunction, predicated on a contrary finding of utility noncompliance,

would clearly conflict with the PUC's decision and interfere with its regulatory functions in determining the need to establish prospective remedial programs. In contrast, even if a jury award of damages on a finding of past violations would conflict with the PUC's factual finding of no past violations, the jurisdictional role of the PUC would not be affected. Under the regulatory framework at issue, here, the PUC's role is to ensure present and future compliance. [FN10]*279

FN10 Plaintiffs claim that PUC jurisdiction cannot preempt the private right of actions established by Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986; Health & Saf. Code, § 25249.5 et seq.) or the state SDWA, and that citizen enforcement is an essential part of the regulatory scheme. However, plaintiffs do not qualify as citizen enforcers of water quality standards under Proposition 65. Private enforcement under Proposition 65 supplements agency enforcement only if the Attorney General or other appropriate prosecutor has failed to act diligently against an alleged violator and notice of the alleged violation has been given to the appropriate prosecutor. (Health & Saf. Code, § 25249.7; see also 42 U.S.C. § 300j-8(b) [similar procedural requirements required for federal citizen enforcement proceedings].) The private enforcer may not seek damages, but may only obtain injunctive relief and statutory penalties. (Health & Saf. Code, § 25249.7, subds. (a), (b), (d).) Apart from failing to meet the procedural prerequisites, plaintiffs' damage claims clearly disqualify them as citizen enforcers. Moreover, preemption of private injunctive relief claims would not affect the enforcement provisions of either the state SDWA or Proposition 65. The state SDWA can be enforced by the DHS (Health & Saf. Code, §§ 116325, 116500, 116660) or the Attorney General (Code Civ. Proc., § 803; *Citizen Utilities Co. v. Superior Court*, *supra*, 56 Cal.App.3d at pp. 403-407), but there is no mandate for citizen enforcement actions under the state SDWA. Also, most, if not all, public water utilities are exempted from the coverage of Proposition 65. (Health & Saf. Code, §§ 25249.5, 25249.6, 25249.11, subd. (b), 116275, subd. (h).)

In summary, plaintiffs' damage claims, alleging water contamination irrespective of whether drinking water standards were met, and their injunctive relief claims, are preempted by section 1759.. [FN11] On the other hand, plaintiffs' damage claims alleging water contamination that violated and exceeded federal and state drinking water standards are authorized under section 2106. [FN12]

FN11 The regulated utilites argue that, because plaintiffs who intervened in the PUC's water quality investigation failed to appeal the PUC's jurisdictional finding, they are collaterally estopped from challenging its conclusion that it has jurisdiction over the quality of water supplied by the regulated utilities. The PUC found that it possesses authority and has exercised its authority to regulate the quality of the service and the drinking water that the water utilities provide. The PUC expressly refused to decide the third *Covalt* prong: whether the lawsuits in this case interfered with its water quality investigation. (Cal.P.U.C. Dec. No. 99-06-054, *supra*, 1999 Cal.P.U.C. Lexis 312 at p. 65, fn. 37.) Because we agree that the PUC has jurisdiction and has exercised its jurisdiction over the water quality supplied by the regulated utilities, we need not address the collateral estoppel claim.

FN12 Plaintiffs request that we take judicial notice of what appear to be Internet articles found on a DHS Web site. These articles indicate, as of January 3, 2001, that chromium VI is an unregulated chemical that required monitoring. Plaintiffs seek judicial notice of those articles as proof that their allegations raise no conflict with PUC policy because neither the PUC nor DHS has set water quality standards that govern chromium VI, an "unregulated chemical." The regulated utilities and the industrial defendants oppose the motion for judicial notice. We deny plaintiffs' request. As stated by the industrial defendants, the articles contain unauthenticated statements with no indication of author, custodian, date of creation, purpose, reliability, or veracity. Also, the articles do not appear to be relevant because the complaint

did not specifically allege plaintiffs had been exposed to chromium VI and no evidence regarding this chemical had been presented to the trial court.

B. *Section 1759 Does Not Bar the Superior Court Actions Against Defendants Not Regulated by the PUC*

Advocating an "issue oriented analysis," the nonregulated water providers and the industrial defendants claim that, as with the regulated utilities, the superior court actions against them are preempted. Their claim is based on the following arguments: (1) the statutory language of section 1759 does not make any distinction between utility and nonutility parties to a lawsuit; (2) our opinion in *Covalt* affirms that preemption of court proceedings applies to issues or subject matter before the PUC, not just to actions against regulated companies, if "an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission"; and (3) the issues in the superior court actions and the PUC investigation involve the safety of the very same water supply. Thus, it is argued, a jury ***280** award of damages against a nonregulated defendant, based on a determination that the water is unhealthy, would conflict with the PUC's conclusion that the water is safe and would undermine its drinking water policy.

Plaintiffs in the four lawsuits dispute that all of the water alleged to be contaminated is identical to the water provided by the regulated utilities. They claim that the liability of the nonregulated water providers and the industrial defendants are not "derivative" of the water supplied by the regulated utilities. They assert that: (1) although the nonregulated water providers sold wholesale water to some of the regulated utilities, they also supplied water to nonregulated water purveyors that may have supplied water to plaintiffs; and (2) the alleged contamination of the groundwater by the industrial defendants also contaminated the groundwater used and supplied by nonregulated water providers. Plaintiffs argue, therefore, that the water and the issues are not the same.

In rejecting the preemption argument advanced by the nonregulated water providers and the industrial defendants, the Court of Appeal below stated: "Section 1759 provides that no trial level court may 'review, reverse, correct, or annul' or 'enjoin, restrain, or interfere with' the PUC in its performance of its duties. By no stretch of language or logic does this mean that trial courts may not decide issues between parties not subject to PUC regulation simply because the same or similar issues are pending before the PUC or because the PUC regulates the same subject matter in its supervision over public utilities." (Fn. omitted.)

We agree. First, although section 1759 does not expressly restrict preemption to claims involving regulated utilities, it cannot be construed in isolation; rather, it must be viewed in context with " ' "the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." ' " (*People v. Ledesma* (1997) 16 Cal.4th 90, 95[65 Cal.Rptr.2d 610, 939 P.2d 1310]; *County of Sacramento v. Workers' Comp. Appeals Bd.* (1999) 69 Cal.App.4th 726, 733[81 Cal.Rptr.2d 780].) The California Constitution authorizes the PUC to establish rules only for *utilities*. (Cal. Const., art. XII, § 6.) The powers granted to the PUC by the Legislature must be "cognate and germane to the regulation of public utilities ...." (*Morel v. Railroad Commission* (1938) 11 Cal.2d 488, 492[81 P.2d 144].) The Legislature specified the PUC's regulatory powers over public utilities in the Public Utilities Code, of which section 1759 is a part. Under section 1759, a superior court cannot "enjoin, restrain, or interfere with the [PUC] in the performance of its *official* duties ...." (Italics added.) Thus, when read in context with the entire regulatory scheme, section 1759 must be read to bar superior court jurisdiction that interferes with the PUC's performance of ***281** its *regulatory* duties, duties which by constitutional mandate apply only to regulated utilities. Although a superior court jury may return findings on water safety issues that would conflict with those decided by the PUC on the same or similar issues, neither the nonregulated water providers nor the industrial defendants adequately explain how such conflicting findings, relating to them, would *interfere with* the PUC's *official regulatory duties*.

Second, the nonregulated defendants fail to cite case law to support their view that the jurisdictional bar of section 1759 applies to nonregulated parties. Instead, they rely on isolated statements in cases referring to the preemptive effect of issues or cases pending before the PUC. They argue that those cases do not

expressly confine their preemption language to actions against regulated parties. (See, e.g., *Covalt, supra,* 13 Cal.4th at p. 944 ["[t]he question is therefore whether section 1759 applies to this *case*" (italics added)]; *id.* at p. 918, fn. 20 [" 'once [the PUC] has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same *issue*' " (italics added, original italics omitted)]; *Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 681[187 Cal.Rptr. 219] [same].) Because those cases involved only regulated utilities, the references to the preemptive effect of "issues" or "cases" pending before the PUC must be read in context with the facts of the case, i.e., as barring only actions brought in trial courts against regulated utilities. (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2[39 Cal.Rptr. 377, 393 P.2d 689] ["Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered"].)

Indeed, in *Covalt, supra,* 13 Cal.4th 893, and *Waters, supra,* 12 Cal.3d 1, we sought to reconcile sections 1759 and 2106. Section 2106, by its terms, applies only to a "public utility" and does not authorize lawsuits against nonregulated entities. Therefore, the rationale expressed in both cases applies only to bar superior court jurisdiction over lawsuits otherwise authorized by section 2106, i.e., cases against regulated utilities.

Third, the regulatory scheme contained in the Public Utilities Code is rooted in the recognition that business enterprises "affected with a public interest" are subject to government regulation under the state's police power. (See *Munn v. Illinois* (1876) 94 U.S. 113, 125-130 [24 L.Ed. 77, 84-86];*Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 476[156 Cal.Rptr. 14, 595 P.2d 592].) Endowed by the state with a legally enforceable monopoly and authorized by the state to charge rates that guarantee it a reasonable rate of return (*Gay Law Students Assn., supra,* 24 Cal.3d at p. 476), a public utility, in turn, must comply with the comprehensive regulation of its rates, services, and facilities as specified in the Public Utilities *282 Code. (See *Pacific Gas & Elec. v. Energy Resources Comm'n* (1983) 461 U.S. 190, 205 [103 S.Ct. 1713, 1722-1723, 75 L.Ed.2d 752]; Sidak & Spulber, *Deregulatory Takings and Breach of the Regulatory Contract* (1996) 71 N.Y.U. L.Rev. 851, 907.)Thus, " 'a public utility, being strictly regulated in all operations with considerable curtailment of its rights and privileges, shall likewise be regulated and limited as to its liabilities. In consideration of its being peculiarly the subject of state control, "its liability is and should be defined and limited." [Citation.]' " (*Waters, supra,* 12 Cal.3d at p. 7; see also *Los Angeles Cellular Telephone Co. v. Superior Court* (1998) 65 Cal.App.4th 1013, 1018[76 Cal.Rptr.2d 894] ["As our courts have long recognized, it is an equitable trade-off-the power to regulate rates and to set them below the amount an unregulated provider might otherwise charge requires a concomitant limitation on liability"].)

Finally, unlike the regulated utilities, the PUC has no jurisdiction to hear complaints or claims against any nonregulated entities. If claims against nonregulated entities were preempted by section 1759, they could not be heard in any forum.

The Court of Appeal below correctly noted that, "the nonregulated defendants do not invite us to find that the PUC has de facto authority to regulate their conduct. Some seem to be claiming only a tangential benefit from PUC regulation-a stay or preemption of actions against them-unencumbered by the burdens of PUC regulation." We conclude that section 1759 does not preempt these lawsuits in superior court against the nonregulated water providers and the industrial defendants. [FN13]

FN13 The nonregulated water providers and the industrial defendants argue that, in the alternative, the Court of Appeal should have ordered the trial courts to stay the actions under the doctrine of primary jurisdiction, pending resolution of the PUC's water quality investigation. Because the PUC issued its final opinion in that investigation after the filing of the briefs, we need not address that claim.

In the final opinion on water quality, the PUC noticed its intention to initiate a future limited investigation into whether utilities complied with the PUC standards prior to the establishment of DHS standards. (Cal.P.U.C. Dec. No. 00-11-014, *supra,* 2000 Cal.P.U.C. Lexis 722 at pp. 16-17.) In their supplemental briefs, the industrial de-

fendants urge us to order a stay as to claims for damages caused by water provided before the adoption of DHS standards, pending completion of the future PUC investigation. We decline to do so for obvious reasons. That claim was never made to the superior court or Court of Appeal and can be decided more appropriately by the superior court.

Conclusion

In the four actions, the damage claims alleging violations of federal and state drinking water standards against the regulated utilities are not preempted. Thus, we reverse the judgment of the Court of Appeal insofar as it found preemption as to those claims. Regarding the remaining claims against *283 the regulated utilities, we affirm the judgment of the Court of Appeal. We further affirm the judgment of the Court of Appeal insofar as it held that the causes of action against the nonregulated water providers and industrial defendants are not preempted. We remand the case to that court for further proceedings consistent with this opinion.

George, C. J., Kennard, J., Baxter, J., Brown, J., and Moreno, J., concurred. **KLINE, J.** [FN*]

FN* Presiding Justice of the Court of Appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

I concur and write separately to explain why I believe regulation of water quality is among the "official duties" of the Public Utilities Commission (PUC or commission). (Pub. Util. Code, § 1759.) [FN1] Some of my reasons go beyond those described by the majority and relate more specifically to the commission's authority to promulgate water quality standards stricter than those of the California Department of Health Services (DHS), an issue central to the jurisdictional dispute.

FN1 All statutory references are to the Public Utilities Code unless otherwise indicated.

Plaintiffs in these actions maintain that the 1976 amendment to section 770-which eliminated the prohibition on the PUC applying its water quality standards to regulated utilities and provided instead that any such standards it may apply shall not be "inconsistent" with DHS standards-means that PUC water quality standards may not differ *in any way* from those promulgated by DHS, which would bar the commission from imposing standards higher than those of DHS. Plaintiffs' construction of the amendment renders it meaningless. If, as plaintiffs argue, the amendment means the PUC cannot apply its own standards, but only those of DHS, the amendment would have no different effect than the language it replaced, and the Legislature would have performed an idle act. Given the context in which the Legislature acted, the only sensible interpretation is that "inconsistent" means less rigorous, so that the purpose of the amendment to section 770 is analogous to that of the federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.) (federal SDWA), which prohibits the states from enacting water quality standards less stringent than those established by the federal government, but permits them to impose more stringent requirements. (42 U.S.C. § 300g.)

Because, as the majority says, the Legislature established only that DHS water quality standards are "the *minimum* standards for the PUC to use in performing its regulatory function" (maj. opn., *ante*, at p. 271, italics added), the commission is free to subject regulated water utilities to stricter standards than are imposed by DHS. *284

The title of the PUC investigation in this case [FN2] reflects the commission's concern that the DHS standards it now applies may not adequately protect the public; and the PUC made clear during the proceedings that it was considering the promulgation of higher standards. As the commission stated, "we do not intend to reduce MCLs [maximum contaminant levels], Action Levels or similar standards which are terms of art in the lexicon of [Safe Drinking Water Act] law and regulation. Drinking water standards, including established MCLs, are minimum water quality requirements and we cannot and shall not tamper with those requirements. We do not intend to duplicate the processes employed by DHS and [the federal Environmental Protection Agency] to develop those standards. We do intend to employ the knowledge of these agencies as we pursue this investigation. The evidence adduced in this proceeding may support the development of additional operating prac-

tices for regulated utilities. If so, we would expect that such new rules *either will fill an identifiable void, if any there is, in the DHS regulatory scheme or will be practices stricter than those of DHS and/or they will be practices particularly suited to the regulation of investor-owned water utilities.* In any event, before we can determine what actions, if any, might better promote safe drinking water service by regulated water utilities, we must have a clear understanding of the safety status of existing regulation. Therefore, we need to receive evidence on the questions posed in the OII [Order Instituting Investigation]." FN3 (Cal.P.U.C. Interim Opinion Denying Motions Challenging Jurisdiction to Conduct Investigation 09-03-013 (June 10, 1999) Dec. No. 99-06-054 [1999 Cal.P.U.C. Lexis 312 at pp. 73-74], italics added. (Interim PUC Opinion).) As the majority has noted, in its final opinion on water ***285** quality the PUC ordered a subsequent investigation and/or rulemaking proceeding to consider, among other things, whether DHS's "action levels," which are neither mandatory nor enforceable, should be mandatory for regulated utilities. (Maj. opn. *ante*, at p. 271, fn. 9.) Such a PUC rule would impose water quality standards higher than those imposed by DHS.

FN2 "Investigation on the Commission's own motion into whether existing standards and policies of the Commission regarding drinking water quality adequately protect the public health and safety with respect to contaminants such as Volatile Organic Compounds, Perchlorate, MTBEs, and whether those standards and policies are being uniformly complied with by Commission regulated utilities." (Cal.P.U.C. Order Instituting Investigation No. 98-03-013 (Mar. 12, 1998) [1998 Cal.P.U.C. Lexis 73].)

FN3 These statements appear to represent a substantial policy change for the PUC, as the commission has heretofore consistently and rather summarily rebuffed consumer complaints that the DHS standards it applies are inadequate. For example when, in 1966, the PUC was asked to order "optimum" fluoridation of drinking water, the commission held: "With respect to the purity and safety of drinking water, the Commission will not question the findings and recommendations of the California Department of Health, which is charged with such responsibility." (*City of San Jose v. San Jose Water District* (1966) 66 Cal.P.U.C. 694, 698.)Similarly, in 1972, the PUC again rejected complaints concerning the quality of a purveyor's water: "The State Board of Public Health [DHS] has the authority ... to suspend or revoke a utility's water permit at any time if it determines that the water is or may become unpure or unwholesome. Under [the Health and Safety Code], and in accordance with General Order 103, it is not appropriate for the Commission to determine this question. Petitioners should direct their allegations on this question to the [DHS]." (*Washington Water & Light Co.* (1972) 73 Cal.P.U.C. 284, 303; see also *Pool v. Mokelumne River Power & Water Co.* (1918) 15 C.R.C. 38, 39 ["[t]he question of the healthful quality of the water is one to be passed on by the State Board of Health."].)

The substance of the PUC proceedings demonstrates that the commission is discharging its responsibility under section 761 to inquire whether the "practices" of or "service[s]" provided by defendant regulated water utilities are "unsafe," and, if so, to fix the problem by "prescrib[ing] rules for the performance of any service or the furnishing of any commodity ... supplied by any public utility." In short, the PUC inquiry into the adequacy of DHS standards, and any higher standards it may impose, are or would be in the performance of its "official duties" (§ 1759) to protect the public health and safety.

Significantly, DHS, which actively participated in the commission proceedings, never suggested that the PUC's expressed interest in whether it needed to exercise its authority to subject regulated water utilities to water quality standards higher than those of DHS would, if acted upon, offend the federal SDWA or the state Safe Drinking Water Act (Health & Saf. Code, § 116275 et seq.) (state SDWA), and the DHS expressed no other objection to PUC assertion of authority to impose water quality standards higher than its own. On the contrary, DHS explained why it might be appropriate for the PUC to subject the almost 200 water utilities it regulates to higher standards than does DHS. According to DHS, " 'the increase in population growth and demand for drinking water throughout the state has diminished the options

utilities have to reserve and select high quality sources of drinking water. The impact of groundwater contamination from industrial and agricultural practices has been significant in some areas of the state. Public water systems are no longer able to forego the use of contaminated drinking water sources, including those associated with Superfund sites, since that water may be needed to meet increased demand.' " (Interim PUC Opinion, *supra*, 199 Cal.P.U.C. Lexis 312 at p. 76.) Moreover, as DHS specifically acknowledged, "[t]here are some contaminants that were known to exist in drinking water sources *but were never regulated.*" (*Ibid.*, italics added.)

DHS's conduct in the PUC proceeding demonstrates that it does not believe the state SDWA (or the memorandum of understanding DHS originally entered into with the PUC in 1987) would prevent the PUC from imposing water quality standards higher than its own, or that such standards, including those pertaining to contaminants for which there now are no enforceable DHS standards, would be "inconsistent" with DHS standards. As the primary agency charged with implementing the state SDWA, DHS's ***286** view is entitled to judicial respect. The questions whether an administrative agency properly applies legislative standards and acts within authority conferred by the Legislature are, of course, ultimately decided by the courts (*Quackenbush v. Mission Ins. Co.* (1996) 46 Cal.App.4th 458, 466[54 Cal.Rptr.2d 112]), but an administrative agency's "interpretation of a statute it routinely enforces is entitled to great weight and will be accepted unless its application of legislative intent is clearly unauthorized or erroneous." (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1027[56 Cal.Rptr.2d 109, 920 P.2d 1314], citing *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 109[172 Cal.Rptr. 194, 624 P.2d 244].)

Neither does PUC's General Order 103 bar the PUC from imposing higher water quality standards in the future. While at present this order only requires compliance with federal and state water quality standards, the phrase "except as otherwise ordered by the Commission," must be interpreted as reserving the right to impose the higher standards the commission is allowed to impose under section 770. In any event, as the PUC had the authority to adopt General Order 103, so too does it retain power to repeal or amend it so that it is consistent with the imposition of PUC water quality standards higher than those promulgated by DHS.

For the foregoing reasons, as well as those set forth by Justice Chin for the majority, I agree that the PUC has independent regulatory authority to promulgate water quality standards applicable to the water utilities it regulates and that such standards may be the same as or stricter (but not less strict) than those promulgated by DHS under the state SDWA. There may be circumstances in which a superior court award of damages for injuries sustained by the provision of water standards or other rules applied by the PUC might interfere with the PUC's performance of its "official duties," and therefore violate section 1759, [FN4] but, as the majority has explained, they are not presented by this case. ***287**

FN4 For example, under section 735 the PUC has authority to receive and rule on claims for damages resulting from the violation of any of the provisions of sections 494 (relating to common carrier rates and fares) or 532 (relating to the rates, tolls, rentals and other charges imposed by public utilities), even though a suit seeking such damages could alternatively be instituted "in any court of competent jurisdiction." Section 1759 would clearly bar a superior court from entertaining a claim for damages for violation of section 494 or 532 that had previously been submitted to and rejected by the commission.

Hartwell Corp. v. Superior Court
27 Cal.4th 256, 38 P.3d 1098, 115 Cal.Rptr.2d 874, 32 Envtl. L. Rep. 20,477, 02 Cal. Daily Op. Serv. 1064, 2002 Daily Journal D.A.R. 1295

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NORMAN O. HOUGE, Respondent,
v.
PATRICK H. FORD, Appellant.
L. A. No. 23250.

Supreme Court of California
June 24, 1955.

HEADNOTES

(1) Contracts § 153--Interpretation--Construction in Favor of One Party.
Rule requiring interpretation of contract against party causing uncertainty to exist (Civ. Code, § 1654) applies only when uncertainty is not removed by application of other rules of interpretation; it does not apply when plain wording of contract, explained by reference to circumstances under which it was made and matter to which it relates, leaves no doubt as to its meaning. (Civ. Code, § 1647.)
See **Cal.Jur.2d,** Contracts, § 149; **Am.Jur.,** Contracts, § 252.
(2) Attorneys § 100--Contracts for Compensation--Construction.
Where attorney is employed to "protect or collect" client's legacy, the right to which is doubtful because terms of will make such legacy contingent on client's continued employment in trust business, and attorney is vested with authority to settle matter for not less than stated sum, parties have in mind that attorney's services may result either in possible protection of client's legacy by establishing his right thereto, free from condition of continuous employment, in final decree of distribution or possible settlement of disputed claim, and that attorney's obligation to render legal services would be terminated at such time as he might accomplish either objective as set forth in contract; in such circumstances words "protect or collect" are used with reference to two alternative possibilities, and "or" may not be construed in any way other than in its ordinary and popular sense. (Civ. Code, § 1644.)

(3) Statutes § 133--Construction--"Or"Contracts § 144--Interpretation-- "Or."
Construction of word "or" as meaning "and" is sanctioned only when such construction is found necessary to carry out obvious intent of Legislature in statute or obvious intent of parties in contract, when such intent may be gleaned from context.

(4) Statutes § 133--Construction--"Or"Contracts § 144--Interpretation-- "Or."
In its ordinary sense, function of word "or" is to mark alternative such as "either this or that."

(5) Contracts § 127--Interpretation--Intention of Parties.
Object and meaning of parties' contract must be determined by their intent at time of its execution, and cannot be extended beyond its plain import by circumstances which occurred after its execution and which were not within their contemplation at time of execution.

(6) Attorneys § 102--Contracts for Compensation--Contingent Fees.
Attorney's obligation under contingent fee contract to "protect" client's legacy was fully performed when he had taken necessary steps to obtain final decree of distribution establishing client's rights in trust estate, especially where client, on date decedent's estate was closed, executed assignment transferring to attorney 40 per cent of his "right, title and interest" in legacy and declared that it was executed pursuant to foregoing contract, and client, who subsequently became dissatisfied with amount of income distributed to beneficiaries of trust, could not thereafter claim that attorney was still obligated to perform legal services, on client's demand, to force accounting by or removal of trustee.
See **Cal.Jur.2d,** Attorneys at Law, § 188 et seq.; **Am.Jur.,** Attorneys at Law, § 163 et seq.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Philbrick McCoy, Judge. Reversed with directions.

Action for declaratory relief. Judgment for plaintiff reversed with directions.

COUNSEL

Patrick H. Ford, in pro. per., Macbeth & Ford and Moira D. Ford for Appellant.

Harry A. Daugherty and Lyman A. Garber for Respondent.

SPENCE, J.

Defendant Ford, an attorney, appeals from an adverse judgment in a declaratory relief action brought by plaintiff, his former client, for the purpose of settling controverted *708 claims relative to a contingent fee contract, which was followed by an assignment. The trial court construed the original contract in line with plaintiff's contention that defendant had failed to complete the agreed legal services; and upon that basis, it concluded that the contract and the assignment were of no further force and effect. Defendant maintains that the court erred in its construction of the parties' contract, and in its adjudication that the above-mentioned instruments were of no further force and effect. The record supports defendant's position.

Carl Hugo Johanson died in 1939. The residue of his estate-consisting primarily of stock in the Panama Glove Company, a corporation, and certain patents and contracts, relating thereto-was bequeathed in trust to his widow, his attorney Oscar Houge, and his "faithful employee" Helen Smith. The will directed the trustees to keep the income from the securities and the income "from patents and [related] contracts" in separate accounts. The income from the securities was to be paid 50 per cent to the testator's widow, 35 per cent to Miss Smith, and 15 per cent to one Weber, another employee, "as long as he continued to work for the Glove Company." The patent income was to be paid 50 per cent to the testator's widow, 20 per cent to Miss Smith, 5 per cent to Weber, and 25 per cent to the attorney Oscar Houge. Upon the death of the testator's widow, two-thirds of such portion of the income which she was entitled to receive under the trust was to be paid to the remaining beneficiaries in certain proportions.

The trust was to terminate on the death of both the testator's widow and Miss Smith. At that time the corpus was to be distributed, with one-third going to the testator's church. As to the remaining two-thirds of the corpus, the will provided for distribution as follows: To Oscar Houge during his lifetime an undivided 25 per cent in all the patents and contracts relating thereto in the trust estate; but if at the time of distribution of the trust estate, he should not be living, then said 25 per cent should go to "his son, Norman O. Houge (plaintiff herein), provided he is still engaged in devoting his time to the successful operation of the promotion of the sale and operation of the machinery and equipment and methods described in said patents"; and as to "all the rest, residue and remainder of the trust estate not specifically heretofore distributed," 21 per cent was to go to a named beneficiary and "the rest ... to Norman O. Houge provided *709 he is still engaged in working for the businesses of the trust estate and promoting its best interests."

Plaintiff anticipated that he would be called into military service, and he voluntarily quit his employment in the trust's business. Then fearing that he might not secure reemployment there, plaintiff discussed with defendant the effect of such absence from the business on his interests under the will and the possibility of a forfeiture because of his failure to meet the employment condition. Defendant advised plaintiff that it would probably be necessary to take legal action to protect plaintiff's interest in the trust estate. Accordingly, the parties on February 6, 1941, entered into the following "attorney and client" contract: "The undersigned client (plaintiff) hereby employs the undersigned attorney (defendant) to render legal service in connection with the following matter, to wit: Drawing contracts and taking other necessary legal steps to protect or collect legacy of client under estate of Carl Hugo Johanson now pending in L.A. Superior Court. As consideration the client agrees to pay said attorney a fee as follows: ... Contingent: Forty (40) percent of the amount recovered preserved or protected by the legal services rendered. ... Attorney is vested with authority to compromise and settle this matter, in his discretion, except that no settlement shall be made for less than $10,000.00."

On February 18, 1941, nine days after the above contract was signed, the testator's widow, Mrs. Johanson, died. In March, 1941, plaintiff was drafted into the Army. Upon his discharge, he was refused further employment in the trust's business. In October, 1944, plaintiff's father, Oscar Houge, died. Oscar Houge had been the executor of the Johanson will, as well as a trustee and a life-income beneficiary of the trust estate. In 1946, the subsequently appointed administrator with the will annexed submitted a final account

and petition for distribution in the Johanson estate, wherein attempt was made to eliminate plaintiff from taking any distributive share therein because of his failure to meet the condition of continuous employment in the trust's business. On plaintiff's behalf, defendant filed objections, and the issue of plaintiff's alleged forfeiture of his legacy went to a contested trial in 1947. While the trial court indicated from the bench an unfavorable ruling on plaintiff's claim, defendant was able ultimately to obtain a decision in plaintiff's favor upon the signing of the findings and conclusions. *710

The decree of distribution in the Johanson estate was entered in 1948, vesting plaintiff's interest in the trust free of the employment condition and giving plaintiff a twofold status: (1) as an income beneficiary of the trust; and (2) as a remainderman of the corpus of the trust, upon its termination. The Johanson will had not given plaintiff a share in the trust income, but apparently his claim thereto was successfully advanced by defendant following the death of Mrs. Johanson and Oscar Houge, two of the life-income beneficiaries, with plaintiff succeeding to the share of his deceased father as such income beneficiary. An appeal was taken from the 1948 decree by Helen Smith, the surviving trustee, and then dismissed. Thus in early 1950 the decree, establishing plaintiff's distributive rights in both the income and corpus of the trust estate, became final-nine years after the execution of the 1941 contract by plaintiff and defendant. The trust was then to continue, but to terminate upon the death of Helen Smith, the sole surviving trustee. On March 6, 1950, a stipulation leading to the closing of the Johanson estate was signed.

On this same last-mentioned date-March 6, 1950-plaintiff, at defendant's request, executed the following assignment: "For Value Received, pursuant to written contract dated February 6, 1941, the undersigned, Norman O. Houge, hereby assigns, sets over, and transfers to Patrick H. Ford, forty (40) percent of his right, title, and interest in and to the corpus and beneficial right in the trust created by the will of Carl Johanson (L.A. Superior Court, Probate No. 191032) of which Helen Smith is now the trustee." By virtue of this assignment, defendant has received to date approximately $1,000.

Sometime in 1951 plaintiff became dissatisfied with the sums distributed to him out of the patent income, and he attempted to persuade defendant to take some legal action to compel the trustee to increase the amount of income distributed to the beneficiaries of the trust. In particular, plaintiff assailed the trustee's failure to cause the Glove Company, which was controlled by the trust, to declare dividends, which, if issued, would have come into the trust estate. Accordingly, plaintiff urged defendant to seek an accounting from the trustee and, if necessary, to petition for her removal. Defendant advised against such action, contending that it would be unwise in that it would seriously diminish the small income then being produced by the trust if the trustee used trust income to *711 defend herself. Ultimately, in November, 1952, in discussing the matter with defendant, plaintiff cited their contractual arrangement and insisted that defendant was thereby obligated to initiate such further legal proceedings as plaintiff desired. Defendant, on the other hand, maintained that plaintiff's legacy was fully vested by the final decree of distribution, that their 1941 contract was thereby completely performed, and that he was under no further obligation to plaintiff. Plaintiff then brought this action for declaratory relief.

The principal point in controversy is the proper construction to be placed on the parties' contract for the purpose of determining their rights and obligations. Defendant contends that his services under the contract ended when the decree for distribution had become final and the Johanson estate had been distributed to the trustee; that the contingent fee arrangement entitled him to 40 per cent of everything plaintiff received by virtue of that final decree; and that the assignment merely confirmed the proportionate division of plaintiff's share in the trust estate, whether income or corpus. On the other hand, plaintiff contends that the contract imposed upon defendant a continuing duty, obligating him not only to exert every effort to secure a favorable decree of distribution, but also to take such further action during the entire existence of the trust as might appear necessary to plaintiff to obtain both income and corpus; and that the latter obligation would require defendant to institute legal proceedings based upon alleged illegal acts of the trustee, and for the purpose of obtaining further distribution of income.

(1) Plaintiff relies upon section 1654 of the Civil Code, and contends that as defendant prepared the contract, any possible doubt as to its meaning should

be resolved against defendant. That section, however, applies by its terms only "In cases of uncertainty not removed by the preceding rules ..." (see 12 Cal.Jur.2d, § 149, p. 363, and cases cited); and in our opinion, the plain wording of the contract, when "explained by reference to the circumstances under which it was made, and the matter to which it relates" (Civ. Code, § 1647) leaves no doubt as to its meaning.

(2) It will be recalled that defendant was employed by plaintiff to "protect or collect" plaintiff's legacy "under estate of Carl Hugo Johanson." Plaintiff's right to any legacy was doubtful because the terms of the Johanson will made such legacy contingent on plaintiff's continuous employment *712 in the trust business, and plaintiff had already discontinued such employment with a view to entering the military service. Plaintiff obviously had in mind a possible settlement in cash, as he authorized defendant to settle for not less than $10,000. Under these circumstances, it is entirely clear that the parties had in mind that defendant's services might result either in (1) the possible protection of plaintiff's legacy by establishing his right thereto, free from the condition of continuous employment, in the final decree of distribution in the Johanson estate; or (2) the possible settlement in cash of his disputed claim; and that defendant's obligation to render legal services under the contract would be terminated at such time as he might accomplish either objective as set forth in the contract. Thus, the words "protect *or* collect" were obviously used advisedly and with reference to the two alternative possibilities; and there is no reason here for construing the word "or" in any way other than in its "ordinary and popular sense." (Civ. Code, § 1644.)(3) The cases cited by plaintiff to sustain his claim that the word "or" should be construed here as meaning "and" do not sustain his position. Resort to such unnatural construction of the word "or" is sanctioned only when such construction is found necessary to carry out the obvious intent of the Legislature in a statute or the obvious intent of the parties in a contract, when such intent may be gleaned from the context in which the word is used. (*Arnold v. Hopkins*, 203 Cal. 553, 563 [265 P. 223]; *Heidlebaugh v. Miller*, 126 Cal.App.2d 35, 38 [271 P.2d 557].) (4) In its ordinary sense, the function of the word "or" is to mark an alternative such as "either this or that" (*Barker Bros., Inc. v. Los Angeles*, 10 Cal.2d 603, 606 [76 P.2d 97];*People v. Smith, ante*, pp. 77, 79 [279 P.2d 33]); and such was the plain meaning of the word "or" as used by the parties here in the phrase "protect *or* collect."

It should be further recalled that at the time the 1941 contract was made, neither plaintiff nor defendant contemplated the possibility of the receipt by plaintiff of any income from the trust during the life of the trust. The Johanson will did not make plaintiff an income beneficiary, and plaintiff's whole concern was directed at the establishment of his right to a share of the corpus at the termination of the trust, which right was made contingent by the will upon plaintiff's continuous employment in the trust business. It was only after the deaths of Mrs. Johanson and of plaintiff's father, *713 who were two of the trustees and life income beneficiaries, that defendant succeeded in establishing not only plaintiff's claim to a share of the corpus at the termination of the trust, but, in addition, plaintiff's right to participate in the income of the trust during the life thereof by reason of the intervening death of plaintiff's father. And as plaintiff testified, it was only after the 1947 trial and following defendant's explanation, that plaintiff became aware that he might have a right to participate in the income during the life of the trust.

(5) The object and meaning of the parties' contract must be determined by their intent at the time of its execution, and it cannot be extended beyond its plain import by circumstances which occurred after its execution, and which were not within their contemplation at the time of execution. Plaintiff testified that at the time of making the contract in 1941, he had no idea of instituting any action to force an accounting by the trustees or the removal of the trustees. Yet it is plaintiff's present claim that long after defendant had established plaintiff's rights by the final decree of distribution in 1950, defendant was still obligated to perform legal services by bringing an action, on plaintiff's demand, to force an accounting by, or the removal of, the trustee.

(6) We are of the opinion that defendant's obligation under the contract to "protect" plaintiff's legacy was fully performed when he had taken the necessary steps to obtain a final decree of distribution establishing plaintiff's rights in the trust estate. Moreover, such was the view of the parties, for when the Johanson estate was closed in 1950, plaintiff executed an assignment transferring to defendant 40 per cent of all plaintiff's "right, title and interest" in plaintiff's

legacy. This assignment declares on its face that it was executed pursuant to the 1941 contract. Defendant successfully performed legal services on plaintiff's behalf over a period of nine years, and the assignment recognized the validity of their contract for a 40 per cent contingent fee. No claim of fraud or undue influence is asserted in the making of the contract or the assignment. The only claim made by plaintiff is that there was a partial failure of consideration because of defendant's failure to perform further legal services, which we have held he was under no obligation to perform.

Plaintiff cites and relies upon *Dalzell v. State Bar*, 6 Cal.2d 433 [57 P.2d 1300], but that case is clearly distinguishable. It involved a 25 per cent contingent fee contract to "collect" *714 an "undivided interest in the property of Florence Ferguson Shoemaker, according to the decree of distribution in her estate." (P. 434.) The attorney successfully brought an action and obtained judgment for approximately $18,000. In payment of the judgment, he received various sums totalling in excess of $12,000, of which he wrongfully retained in excess of $7,000, and remitted only $4,950 to his clients. He was disciplined because of his "unwarranted overcharge of his clients and because of his failure to account to them over a period of several years." (P. 438.) No comparable contract or circumstances are before us here.

From what has been said, it follows that the trial court erred in concluding that defendant had not completely performed his obligation under the 1941 contract when he had secured the favorable final decree of distribution establishing plaintiff's right to his legacy. The trial court further erred in declaring that the 1941 contract and the assignment made pursuant thereto were of no further force and effect.

The judgment is reversed, with directions to the trial court to enter judgment in favor of defendant Ford in accordance with the views herein expressed.

Gibson, C. J., Shenk, J., Carter, J., Traynor, J., and Schauer, J., concurred.
Respondent's petition for a rehearing was denied July 20, 1955. *715

Cal.
Houge v. Ford
44 Cal.2d 706, 285 P.2d 257

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166 Cal.App.4th 1121, 83 Cal.Rptr.3d 518, 236 Ed. Law Rep. 922, 08 Cal. Daily Op. Serv. 12,151, 2008 Daily Journal D.A.R. 14,438
Review Granted Previously published at: 166 Cal.App.4th 1121 (Cal.Const. art. 6, s 12; Cal. Rules of Court, Rules 8.500, 8.1105 and 8.1110, 8.1115, 8.1120 and 8.1125)
(Cite as: 83 Cal.Rptr.3d 518)

Court of Appeal, Third District, California.
Robert MARTINEZ et al., Plaintiffs and Appellants,
v.
REGENTS OF the UNIVERSITY OF CALIFORNIA et al., Defendants and Respondents.
No. C054124.

Sept. 15, 2008.
Certified for Partial Publication.[FN*]

FN* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts II and III of the DISCUSSION.

As Modified on Denial of Rehearing Oct. 7, 2008.
Review Granted Dec. 23, 2008.

Background: United States citizens paying nonresident tuition at state colleges and universities brought action challenging state statute allowing certain illegal aliens to pay less-expensive resident tuition. The Superior Court, Yolo County, No. CV052064,Thomas Edward Warriner, J., entered judgment of dismissal. Citizens appealed.

Holdings: The Court of Appeal, Sims, Acting P.J., held that:
(1) state statute making illegal aliens eligible for less-expensive resident tuition was preempted by federal statute precluding illegal aliens from preferential treatment on the basis of residence for postsecondary education benefits, and
(2) state statute was preempted by federal statute precluding illegal aliens from eligibility for State benefits unless State law affirmatively provides for such eligibility.

Reversed.

West Codenotes
PreemptedWest's Ann.Cal.Educ. Code § 68130.5

*521 Immigration Reform Law Institute and Kris W. Kobach; Ropers, Majeski, Kohn & Bentley and Michael J. Brady, Redwood City, for Plaintiffs and Appellants.

Sharon L. Browne and Ralph W. Kasarda, Sacramento, for Pacific Legal Foundation, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Charles F. Robinson and Christopher M. Patti, Oakland; Howard Rice Nemerovski Canady Falk & Rabkin, Ethan P. Schulman and Robert D. Hallman, San Francisco, for Defendants and Respondents.

Munger, Tolles & Olson, Bradley S. Phillips, Fred A. Rowley, Jr., Gabriel P. Sanchez, Mark R. Yohalem, Los Angeles; Lawyers' Committee for Civil Rights, Robert Rubin, San Francisco; Mexican American Legal Defense and Educational Fund, Cynthia Valenzquela, Nicholas Espiritu and Kristina Campbell, for Alicia A., Gloria A., Marcos A., Mildred A., Enrique Boca, Nicole Doe, Collin Campbell, Alex Ortiz, Linda Lin Qian, Cesar Rivadeneyra, Jennifer Seidenberg, Improving Dreams, Equality, Access and Success at U.C. Davis, Improving Dreams, Equality, Access and Success of UCLA and National Immigration Law Center as Amici Curiae on behalf of Defendants and Respondents.

SIMS, Acting P.J.

*1127 United States citizens who pay *nonresident* tuition for enrollment at California's public universities/colleges brought a lawsuit attacking a state statute (Ed.Code, § 68130.5 [FN1]) which allows certain illegal *522 aliens [FN2] to pay the less-expensive *resident* tuition to attend these *1128 universities/colleges. Plaintiffs [FN3] FILED A CLASS ACTION lawsuit against defendants regents (regents) oF the University of California (UC), Trustees (Trustees) of the California State University System (CSU), Board of Governors (Board) of the California Community Colleges (CCC), UC President Robert C. Dynes (Dynes), CSU Chancellor Charles B. Reed (Reed), and CCC Chancellor Marshall Drummond (Drummond). Plaintiffs label their pleading as a class action complaint for damages; injunctive relief; declaratory relief; federal preemption; and violation of

the U.S. Constitution (14th Amend.), California Constitution (art. I, § 7), federal statute (8 U.S.C. §§ 1621, 1623; 42 U.S.C. § 1983), and the Unruh Civil Rights Act (Civ.Code, § 51). Plaintiffs appeal from a judgment of dismissal following the trial court's sustaining of defendants' demurrers without leave to amend.

FN1. Undesignated statutory references are to the Education Code.

Section 68130.5 provides: "Notwithstanding any other provision of law: [¶] (a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges: [¶] (1) High school attendance in California for three or more years. [¶] (2) Graduation from a California high school or attainment of the equivalent thereof. [¶] (3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year. [¶] (4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

"(b) A student 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."

FN2. Defendants prefer the term "undocumented immigrants." However, defendants do not cite any authoritative definition of the term and do not support their assertion that the terms "undocumented immigrant" and "illegal alien" are interchangeable. We consider the term "illegal alien" less ambiguous. Thus, under federal law, an "alien" is "any person not a citizen or national of the United States." (8 U.S.C. § 1101(a)(3).) A "national of the United States" means a U.S. citizen or a noncitizen who owes permanent allegiance to the United States. (8 U.S.C. § 1101(a)(22).) Under federal law, "immigrant" means every alien except those classified by federal law as nonimmigrant aliens. (8 U.S.C. § 1101(a)(15).) "Nonimmigrant aliens" are, in general, temporary visitors to the United States, such as diplomats and students who have no intention of abandoning their residence in a foreign country. (8 U.S.C. § 1101(a)(15)(F), (G); *Elkins v. Moreno* (1978) 435 U.S. 647, 664-665, 98 S.Ct. 1338, 1349, 55 L.Ed.2d 614, 627-628 [under pre-1996 law, held the question whether nonimmigrant aliens could become domiciliaries of Maryland for purposes of in-state college tuition was a matter of state law].) The federal statutes at issue in this appeal refer to "alien[s] who [are] not lawfully present in the United States." (8 U.S.C. §§ 1621(d), 1623.) In place of the cumbersome phrase "alien[s] who [are] not lawfully present," we shall use the term "illegal aliens."

FN3. The named plaintiffs are Robert Martinez, Cory McMahon, Onson Luong, Scott Nass, Justin Rabie, Mark Hammes, Steven Hammes, David Hammes, Ash Caloustian, Aaron Dallek, Soleil Teubner, Mara McDermott, Adam Anderson, Demyan Drury, Casey Meguro, Chaning Jang, Kyle Dozeman, Kellan Didier, James Deutsch, Patrick Bilbray, Briana Bilbray, Brian Bilbray, Corey Robertson, Daniel Alameda,

Dan Goldberg, Tim Kozono, Joseph Konrad, David Taylor, Suzanne Kattija-Ari, Justine Smith, Amanda Hildebrand, Aaron Malone-Stratton, Pamela Stratton, Michal [*sic*] Bulmash, Jimmy Davault, III, Matt Bittner, Antwann Davis, Arrington Dennison, Kathryn Jelsma, Emily Grant, Peter Shea, and Adam Thomson.

Numerous legal issues are addressed in this case. However, the most significant issue is whether California's authorization of in-state tuition to illegal aliens violates a federal law, title 8 of the United States Code (U.S.C.) section 1623, which provides as pertinent:

"Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

The respondents argue the federal statute is not violated for two reasons:

*523 1. Respondents say in-state tuition is not a "benefit" within the meaning of the federal law. For reasons we shall explain, we conclude in-state tuition, which is some $17,000 per year cheaper than out-of-state tuition at UC, is a "benefit" conferred on illegal aliens within the meaning of the federal law.

*1129 2. Respondents argue in-state tuition is not granted "on the basis of residence within a state" as required by federal law. Respondents point to the fact that in-state tuition for illegal aliens is based on a student's having attended a California high school for three or more years and on the student's having graduated from a California high school or having attained "the equivalent thereof." (§ 68130.5, fn. 1 *ante*.) As we shall explain, the three-year attendance requirement at a California high school is a surrogate residence requirement. The vast majority of students who attend a California high school for three years are residents of the state of California. Section 68130.5 thwarts the will of Congress manifest in title 8 U.S.C. section 1623.

We shall conclude the trial court erred in determining the complaint failed as a matter of law. We shall reverse the judgment of dismissal and allow the case to proceed in the trial court.[FN4]

FN4. Pacific Legal Foundation filed an amicus curiae brief in favor of plaintiffs. An amicus curiae brief in favor of defendants was filed by Alicia A., Gloria A., Marcos A., Mildred A., Enrique Boca, Nichole Doe, Collin Campbell, Alex Ortiz, Linda Lin Qian, Cesar Rivadeneyra, Jennifer Seidenberg; Improving Dreams, Equality, Access and Success at U.C. Davis; Improving Dreams, Equality, Access and Success of UCLA; and National Immigration Law Center.

We deny as unnecessary Pacific Legal Foundation's requests for judicial notice (made in their amicus curiae brief) of records of the California Postsecondary Education Commission as assertedly showing that taxpayers, some of whom cannot afford to send their own children to college, subsidize the college education of students who pay in-state tuition. "The higher tuition charged nonresident students tends to distribute more evenly the cost of operating and supporting the University of California between residents and nonresidents attending the university [and] appears to be a reasonable attempt to achieve a partial cost equalization by collecting lower tuition fees from those persons who, directly or indirectly, have made some contribution to the economy of the state...."(*Kirk v. Regents of University of California* (1969) 273 Cal.App.2d 430, 444, 78 Cal.Rptr. 260.)

BACKGROUND

The complaint, filed December 14, 2005, alleged as follows:

Plaintiffs are U.S. citizens from states other than

California and are students, or tuition-paying parents of students, enrolled after January 1, 2002, in a course of study for an undergraduate or graduate degree at a California public university or college, who allege they have been illegally denied exemption from nonresident tuition under section 68130.5,[FN5]*524 which gives the benefit of resident tuition to illegal aliens.

FN5. The complaint alleges plaintiffs are U.S. citizens who have been classified under California law as "nonimmigrant aliens." This allegation does not make sense. U.S. citizens are not "aliens" at all. (8 U.S.C. § 1101(a)(3) ["The term 'alien' means any person not a citizen or national of the United States"].) Nothing in California law defines "alien" differently. Plaintiffs contend they were illegally denied exemption from nonresident tuition under section 68130.5. Section 68130.5 states that a student, other than a "nonimmigrant alien" within the meaning of title 8 U.S.C section 1101(a)(15), is exempt from paying nonresident tuition if he or she meets the requirements, e.g., high school attendance in California for three years, graduation from a California high school, etc. Plaintiffs allege this statute characterizes out-of-state U.S. citizens as "nonimmigrant aliens." In reviewing a demurrer, we do not accept as true allegations of legal conclusions. Section 68130.5 defines "nonimmigrant alien" with reference to federal law. Under the federal law, "nonimmigrant aliens" are generally aliens admitted to this country for temporary periods, including students, diplomats and their servants, etc., who intend to return to their homeland. (8 U.S.C. § 1101(a)(15).) Thus, given the allegation that plaintiffs are U.S. citizens, plaintiffs are not nonimmigrant aliens. We assume for purposes of this appeal that plaintiffs were denied an exemption from nonresident tuition not because they were considered nonimmigrant aliens, but because they did not attend a California high school for three years and attain a California high school diploma or equivalent.

*1130 Plaintiffs do not claim they attended a California high school, as required to qualify for the section 68130.5 benefit. Rather, plaintiffs claim the attendance requirement is a de facto residence requirement, preempted by federal immigration law, which illegally discriminates against plaintiffs by denying them a benefit provided to illegal aliens.

The complaint alleged defendants engaged in an "Illegal Alien Tuition Scheme," granting illegal aliens a tuition exemption denied to nonresident U.S. citizens in violation of federal law. The complaint alleged defendants knew section 68130.5 violated and was preempted by federal law.

The complaint alleged upon information and belief that, during the Fall 2005 term, undergraduate tuition and fees were:

-For UC, $6,769 for a resident undergraduate, and $24,589 for nonresident undergraduates ($17,304 tuition plus other fees);

-For CSU, a campus average of $3,164 for resident undergraduates, and $13,334 for nonresident undergraduates;

-For CCC, $26 per unit for residents and $135 per unit for nonresidents, with the average student taking 15 units per semester.

Although section 68130.5 states it does not apply to UC unless the Regents make it applicable (§ 68134 ["No provision of this part shall be applicable to the University of California unless the Regents of the University of California, by resolution, make such provision applicable"]), plaintiffs' complaint alleged the Regents adopted section 68130.5 in Standing Order 110.2-after lobbying for legislation (§ 68130.7 [FN6]) limiting their legal exposure (as well as the exposure of the other defendants) in the event of lawsuits.

FN6. Section 68130.7 provides: "If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money dam-

> ages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief."

*1131 The complaint also set forth legislative history and plaintiffs' legal conclusions regarding statutory interpretation, which we address in our discussion.

The complaint set forth 10 counts, as follows:

1. *Violation of Title 8 U.S.C. section 1623.*[FN7] Plaintiffs alleged it is an illegal *525 alien's residence in California that entitles him or her to attend a California high school, and therefore section 68130.5 imposes a *de facto* durational residency requirement. Because section 68130.5 does not give the same benefit to U.S. citizens without regard to residence, the California statute violates and is preempted by title 8 U.S.C. section 1623 (fn. 7, *ante*) under the Supremacy Clause of the United States Constitution. (U.S. Const., art. VI, § 2.) Plaintiffs alleged under this and all counts that they "have been injured by having paid nonresident tuition while illegal aliens have been unlawfully exempt...."

> FN7. Title 8 U.S.C. section 1623 provides: "(a) In general. Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. [¶] (b) Effective date. This section shall apply to benefits provided on or after July 1, 1998."

2. *Violation of Title 8 U.S.C. section 1621.*[FN8] Exemption from nonresident tuition confers a benefit in violation of title 8 U.S.C. section 1621 (fn. 8, **1132 ante*), and the California Legislature failed to provide affirmatively for such eligibility as specified in title 8 U.S.C. section 1621(d).

> FN8. Title 8 U.S.C. section 1621 provides: "(a) In general. Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not-[¶] (1) a qualified alien (as defined in section 1641 of this title), [¶] (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.] or [¶] (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for less than one year, [¶] is not eligible for any State or local public benefit (as defined in subsection (c) of this section).
>
> "(b) [Exceptions for specified health care, emergency disaster relief, health assistance, and program services necessary for protection of life or safety].
>
> "(c)(1) [¶] State or local public benefit definition. Except as provided in paragraphs (2) and (3), for purposes of this subtitle the term 'State or local public benefit' means.... [¶] (B) any retirement, welfare, health, disability, public or assisted housing, *postsecondary education,* food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
>
> "[¶] ... [¶]
>
> "(d) State authority to provide for eligibility of illegal aliens for state and local public benefits. A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien

would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after [August 22, 1996], which affirmatively provides for such eligibility." (Italics added.)

3. *Title 42 U.S.C. Section 1983:* Defendants Dynes, Reed, and Drummond, in their capacities as President or Chancellors, acting under color of state law, deprived out-of-state U.S. citizens the exemption from nonresident tuition granted to illegal aliens, in violation of the Fourteenth Amendment and title 8 U.S.C. section 1623.

4. *Equal Protection (U.S. Const.):* Plaintiffs are similarly situated with illegal alien beneficiaries of section 68130.5, because neither class is lawfully domiciled in California, yet plaintiffs are discriminated against in tuition rates.

5. *Privileges and Immunities Clause (U.S. Const.):* Section 68130.5 violates the privileges and immunities clause of the Fourteenth Amendment, denigrating U.S. citizens by treating them worse than illegal aliens.

6. *Field Preemption:* In addition to express preemption under title 8 U.S.C. section 1623, section 68130.5 is preempted by "field preemption," in that Congress occupies the field of immigration law, and section 68130.5 stands as an obstacle to Congress's objective.

*526 7. *Equal Protection (Cal. Const.):* Section 68130.5 violates California's equal protection clause (Cal. Const., art. I, § 7), by denying out-of-state U.S. citizens an exemption from nonresident tuition that is granted to illegal aliens.

8. *Unruh Civil Rights Act:* Defendants violated section 68062 [FN9] (which precludes illegal aliens from establishing residence in California) and discriminated against plaintiffs based on geographic origin as out-of-state U.S. citizens, in violation of Civil Code section 51.[FN10] Plaintiffs sought *1133 actual damages or statutory damages (Civ.Code, § 52) of $4,000 for each class member for each offense (each offense consisting of each unlawful tuition bill paid by each class member) plus $25,000 for each class member.

FN9. Section 68062 provides: "In determining the place of residence the following rules are to be observed: [¶] (a) There can only be one residence. [¶] (b) A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose. [¶] ... [¶] (f) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child. [¶] ... [¶] (h) *An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.) from establishing domicile in the United States.*" (Italics added.)

FN10. Civil Code section 51, subdivision (b), provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

9. *Injunctive Relief:* Plaintiffs sought a preliminary and permanent injunction, enjoining defendants from denying to plaintiffs the exemption from nonresident tuition to which they are entitled by title 8 U.S.C. section 1623 (fn. 7, *ante*), enjoining defendants from enforcing section 68130.5 with respect to exempting illegal aliens from nonresident tuition, and enjoining defendants from discriminating against plaintiffs in favor of illegal aliens.

10. *Declaratory Relief:* Plaintiffs sought a judicial declaration that the illegal alien tuition scheme is preempted by federal law and violates the federal statutes, equal protection, the privileges and immunities clause, and the Unruh Act.

In addition to injunctive and declaratory relief, the complaint's prayer sought tuition reimbursement.

Defendants filed demurrers.

The demurrer of the Trustees, Reed, the Board, and Drummond (collectively Trustees/Board) argued (1) plaintiffs lacked standing to challenge section 68130.5 because they do not qualify for an exemption from nonresident tuition and cannot establish any compensable injury; (2) the federal laws do not create a private right of action in plaintiffs; (3) any damage claims should be dismissed because plaintiffs failed to submit a claim in compliance with the Government Claims Act (Gov.Code, § 900 et seq.); and (4) the Board and Drummond were improper parties.

The demurrer of the Regents and Dynes (collectively Regents) argued:

(1) The exemption from nonresident tuition is not a "benefit" within the meaning of the federal law; section 68130.5 does not confer the exemption on the basis of residence; to the extent the state statute confers a benefit on illegal aliens it is expressly authorized by title 8 U.S.C. section 1621(d), which allows a state affirmatively to provide for such eligibility; and *527 Congress did not intend a complete ouster of state power.

(2) The title 42 U.S.C. section 1983 claim failed because the complaint did not allege deprivation of any right protected by the Constitution or laws of the United States.

*1134 (3) The equal protection claim failed because section 68130.5 does not discriminate on the basis of alienage and is rationally related to a legitimate government purpose.

(4) The privileges and immunities claim failed because section 68130.5 does not discriminate on the basis of citizenship, and resident tuition is not a privilege.

(5) The Unruh Act claim failed because the Unruh Act does not prohibit discrimination based on geographic origin, and a state may charge higher tuition for out-of-state students than to state residents and others.

(6) The ninth count for injunctive relief failed because a request for injunctive relief is not a cause of action.

(7) The tenth count for declaratory relief failed because a cause of action for declaratory relief may not simply restate other causes of action.

In addition to the two demurrers, the Regents and Dynes filed a motion to strike from the complaint the request for tuition reimbursement; plaintiffs filed requests for judicial notice; and various persons (some of whom sought to proceed under fictitious names) filed a motion for leave to intervene.

After a hearing, the trial court took judicial notice of some but not all of plaintiffs' materials, sustained defendants' demurrers without leave to amend, denied as moot the motion to strike, denied the intervention motion, and denied as moot the motion to proceed under fictitious names. The trial court sustained the Regents' demurrer without leave to amend on all counts, except the third count alleging a federal civil rights violation (42 U.S.C. § 1983), as to which the court overruled the demurrer on the ground the count was based not on federal preemption (as asserted in the Regents' demurrer), but on alleged violation of title 8 U.S.C. sections 1621 and 1623. However, the court dismissed the third count (federal civil rights violation) as to all defendants on the ground stated in the demurrer of the Trustees/Board-that the federal immigration statutes (8 U.S.C. §§ 1621, 1623) conferred no private right of action in plaintiffs and therefore could not support a federal civil rights claim. As to other grounds for demurrer asserted by the Trustees/Board, the trial court rejected defendants' argument that plaintiffs lacked standing (a ruling not challenged by defendants in their response to this appeal), sustained the demurrer without leave to amend as to the first three counts, and concluded it *1135 was unnecessary to rule on other grounds given the court's sustaining of the Regents' demurrer without leave to amend.

Plaintiffs objected to the proposed judgment on the ground the third count (42 U.S.C. § 1983) remained outstanding. The trial court overruled the objection and entered a judgment of dismissal, from which

plaintiffs appeal.

DISCUSSION

I. *Standard of Review*

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, ... [t]he reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of *528 law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken.' [Citation.]' However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]" (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317.)

The rules of federal statutory interpretation are much the same as those used when construing California statutes; our primary function is to give effect to legislative intent. (*Johnson v. United States* (2000) 529 U.S. 694, 710, fn. 10, 120 S.Ct. 1795, 146 L.Ed.2d 727; *Black v. Dept. of Mental Health* (2000) 83 Cal.App.4th 739, 747, 100 Cal.Rptr.2d 39.)

II.-III.[FN**]

FN** See footnote *, *ante*.

IV. *Claimed Conflict between State Statutes*

Although not pleaded as a cause of action, plaintiffs argue defendants, by giving illegal aliens resident tuition under section 68130.5, violated section 68062 (fn. 9, *ante*), which bars illegal aliens from establishing residency for tuition purposes. Plaintiffs characterize this claim as one of illegal and unconstitutional discrimination because *Regents of University of California v. *1136 Superior Court* (1990) 225 Cal.App.3d 972 at page 981, 276 Cal.Rptr. 197(*Bradford*), supposedly said a violation of section 68062 would constitute discrimination against citizens of sister states. However, this contention is really a claimed conflict between state statutes, which does not help plaintiffs, because section 68130.5, as the later-enacted statute, would prevail. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1038, 56 Cal.Rptr.3d 814, 155 P.3d 226.)

Bradford, supra, 225 Cal.App.3d at pages 980 through 981, 276 Cal.Rptr. 197, held section 68062, subdivision (h), precludes illegal aliens from qualifying as California residents for college tuition purposes, and as so construed, did not violate equal protection. *Bradford, supra,* 225 Cal.App.3d at pages 981 through 982, 276 Cal.Rptr. 197, observed a state cannot exclude illegal aliens from free public elementary and secondary schools (*Plyler v. Doe* (1982) 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786), but said the heart of *Plyler v. Doe* was that the "stigma of illiteracy" would mark these children for the rest of their lives. (In contrast, it was said in *Lister v. Hoover* (7th Cir.1983) 706 F.2d 796, 797, 805, a due process case, that the interest in lower *college* tuition is slight.)

Plaintiffs read too much into *Bradford, supra,* 225 Cal.App.3d 972, 276 Cal.Rptr. 197, which said, in upholding the constitutionality of section 68062, that the state's legitimate interests in denying resident tuition to illegal aliens (i.e., policy matters for legislative determination) included the interest in avoiding discrimination against citizens of sister states. (*Id.* at p. 981, 276 Cal.Rptr. 197.)

Bradford does not invalidate section 68130.5.

To the extent that section 68130.5, as a de facto residence statute, could be said to conflict with section 68062, the result would be, at most, an implied repeal of section 68062 as the earlier-enacted statute-a result which does not advance *529 plaintiffs' case. Thus, when two state statutes are so inconsistent that there is no possibility of concurrent operation, the doctrine of implied repeal provides that the most recently enacted statute expresses the will of the Legislature. (*Professional Engineers in California Government v. Kempton, supra,* 40 Cal.4th at p. 1038, 56

Cal.Rptr.3d 814, 155 P.3d 226.) That defendants do not claim an implied repeal does not, as urged by plaintiffs, determine the matter.

We conclude plaintiffs fail to show they could amend the complaint to allege a viable claim that section 68130.5 constitutes discrimination in violation of section 68062.

*1137 V. *Federal Preemption*

A. *General Principles*

Preemption has been explained in various ways. The United States Supreme Court has said:

"[S]tate law is pre-empted under the Supremacy Clause, U.S. Const, Art. VI, cl 2,[FN14] in three circumstances. First, Congress can define explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.

> FN14. The Supremacy Clause provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." (U.S. Const., art. VI, cl.2.)

"Second, in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively. Such an intent may be inferred from a 'scheme of federal regulation ... so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' or where an Act of Congress 'touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.' [Citation.] Although [the United States Supreme Court] has not hesitated to draw an inference of field pre-emption where it is supported by the federal statutory and regulatory schemes, it has emphasized: 'Where ... the field which Congress is said to have preempted' includes areas that have 'been traditionally occupied by the States,' congressional intent to supersede state laws must be ' "clear and manifest." ' [Citations.]

"Finally, state law is pre-empted to the extent that it actually conflicts with federal law. Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements [citation], or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' [Citations.]" (*English v. General Electric Co.* (1990) 496 U.S. 72, 78-79, 110 S.Ct. 2270, 2275, 110 L.Ed.2d 65, 74.)

The United States Supreme Court in *De Canas v. Bica* (1976) 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43 held that a California statute (Labor Code, § 2805), prohibiting an employer from knowingly employing illegal aliens at *1138 the expense of lawful resident workers, was not unconstitutional as a regulation of immigration and was not preempted by the Immigration and Nationality Act. *De Canas* articulated three tests to be used in determining whether a state statute related to immigration is preempted.

*530 First, the court must determine whether the state statute is a "regulation of immigration" (i.e., a determination of who should or should not be admitted into the country and the conditions under which a legal entrant may remain). (*De Canas v. Bica, supra,* 424 U.S. at p. 356, 96 S.Ct. 933.) If the state statute regulates immigration, it is preempted because the power to regulate immigration is exclusively a federal power. (*Ibid.*) That aliens are subjects of a state statute does not necessarily constitute a "regulation of immigration." (*Ibid.; People v. Salazar-Merino* (2001) 89 Cal.App.4th 590, 598-599, 107 Cal.Rptr.2d 313 [Pen.Code, § 114, imposing criminal penalties for using a false document to conceal true citizenship or resident alien status, was not preempted by federal immigration law].)

Second, even if the state statute does not regulate immigration, it is preempted if Congress manifested a clear purpose to effect a complete ouster of state power, including state power to promulgate laws not in conflict with federal laws, with respect to the sub-

ject matter which the statute attempts to regulate. (*De Canas v. Bica, supra,* 424 U.S. at p. 357, 96 S.Ct. 933.) An intent to preclude state action may be inferred where the system of federal regulation is so pervasive that no opportunity for state activity remains. (*Ibid.*) Third, a state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Id.* at p. 363, 96 S.Ct. 933.) A statute is preempted under this third test if it conflicts with federal law, making compliance with both state and federal law impossible. (*Ibid.; Toll v. Moreno* (1982) 458 U.S. 1, 102 S.Ct. 2977, 73 L.Ed.2d 563 [state university's policy of denying in-state status to domiciled nonimmigrant aliens holding G-4 visas, violated supremacy clause]; *League of United Latin American Citizens v. Wilson* (C.D.Cal.1997) 997 F.Supp. 1244, 1253, 1256(*LULAC II*) [held that Congress in federal legislation enacted in 1996 occupied the field of regulation of public postsecondary education benefits to aliens, thereby preempting portions of California initiative measure Proposition 187, including a provision denying public postsecondary education to illegal aliens]; *League of United Latin American Citizens v. Wilson* (C.D.Cal.1995) 908 F.Supp. 755(*LULAC I*) [other federal immigration law preempted portions of Proposition 187].)

***1139** B. *Preemption by Title 8 U.S.C. Section 1623*

Plaintiffs' principal argument is that title 8 U.S.C. section 1623 preempts section 68130.5. We agree they have stated a cause of action. The demurrer should have been overruled.

As indicated, title 8 U.S.C. section 1623 (fn. 7, *ante*) provides, "Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

Title 8 U.S.C. section 1623 was enacted in September 1996, as part of the IIRIRA.[FN15] (Pub.L. No. 104-208, Div. C (Sept. 30, 1996) § 505, 110 Stat. 3009-672.)

FN15. This was shortly after enactment of title 8 U.S.C. section 1621 (fn. 8, *ante*), which we discuss *post.* Defendants agree title 8 U.S.C. section 1623 narrowed the authorization previously conferred on states by the earlier statute to make exceptions to the federal restrictions.

***531** Section 68130.5 (enacted by Stats.2001, ch. 814, § 2) makes illegal aliens eligible for in-state tuition without affording in-state tuition to out-of-state U.S. citizens without regard to California residence.

Defendants argue there is no preemption problem, because section 68130.5 does not confer a "benefit" based on "residence" within the meaning of title 8 U.S.C. section 1623. We disagree.

1. *Section 68130.5 Confers a "Benefit"*

Defendants argue the term "benefit" in title 8 U.S.C. section 1623 is limited, because the federal statute refers to "amount," which means monetary payments, and in-state tuition does not involve the payment of any money to students. However, defendants cite no authority supporting their illogical assumption that "amount" must mean monetary payment to the beneficiary. The complaint alleges the benefit of in-state tuition is a calculable amount, and it would certainly appear to be so. We therefore reject defendants' argument that "benefit" in title 8 U.S.C. section 1623 means only the payment of money to the person being benefited.

***1140** Even assuming for the sake of argument that title 8 U.S.C. section 1623 could be considered ambiguous as to the meaning of " benefit," the conference committee report, which is an authoritative source of Congressional intent (*Eldred v. Ashcroft* (2003) 537 U.S. 186, 210, fn. 16, 123 S.Ct. 769, 154 L.Ed.2d 683), stated, "This section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education." (Conf. Report 104-828, H.R. 2202, § 507 (Sept. 24, 1996).) Thus, "benefit" in title 8 U.S.C. section 1623 includes in-state tuition.

Defendants also argue "benefit" in title 8 U.S.C. section 1623 should be given the same meaning as "benefit" in title 8 U.S.C. section 1621, which defendants interpret as being limited to money paid to students. Again, we disagree.

Thus, title 8 U.S.C. section 1621 defines "benefit" in part as "any retirement, welfare, health, disability, public or assisted housing, *postsecondary education,* food assistance, unemployment benefit, *or* any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government *or* by appropriated funds of a State or local government." (8 U.S.C. § 1621(c)(1)(B), italics added.)

Defendants maintain the term "postsecondary education" in title 8 U.S.C. section 1621 is modified by the language "for which payments or assistance are provided," such that Congress proscribes spending public funds for an illegal alien's college education but has not proscribed eligibility for an exemption from nonresident tuition, which involves no payment or direct financial assistance.

However, since the terms in title 8 U.S.C. section 1621 are separated by the word "or" (postsecondary education benefit "or" other similar benefit for which payments or assistance are provided by an agency or by appropriated funds), defendant's modification theory is implausible. Even assuming for the sake of argument that "postsecondary education" is modified by the language "for which payments or assistance are provided," in-state tuition constitutes assistance, and defendants fail to show otherwise.

Defendants apply their own gloss to the word "assistance," asserting it must be "direct financial assistance." To the extent*532 this position considers the term "assistance" to be limited to direct financial aid, we observe the exclusion of illegal aliens from student financial aid is already covered in 20 U.S.C. section 1091, which states, "In order to receive any grant, loan, or work assistance under [provisions concerning student financial aid], a student *1141 must ... [¶] be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, [or] a citizen of any one of the Freely Associated States." (20 U.S.C. § 1091(1)(5).) In California, illegal aliens are barred from receiving financial assistance in the form of, e.g., Cal. Grant awards. (§§ 69433.9, 69535.)

Moreover, one of the cases cited by defendants defeats their position. Thus, *California Rural Legal Assistance v. Legal Services Corp.* (9th Cir.1990) 917 F.2d 1171, said that the provision of legal services did not constitute "financial assistance" within the meaning of a federal statute (8 U.S.C. § 1255a) imposing a five-year ban on "financial assistance" to amnesty aliens (aliens who were allowed to legalize their status under the amnesty provisions of the Immigration Reform and Control Act of 1986). (*Id.* at pp. 1172, 1175-1176.) *CRLA* expressly reached its conclusion because the federal statute used the more narrow language "financial assistance" rather than the broader term "assistance." (*Id.* at p. 1176.) Thus, *CRLA* does not help defendants here, where the federal statute (8 U.S.C. § 1621) uses the broader term "assistance."

Defendants' other cited authorities do not support their position. Defendants quote from *Equal Access Education v. Merten* (E.D.Va.2004) 305 F.Supp.2d 585(*Merten*), which said the federal law (of which title 8 U.S.C. sections 1621 and 1623 are a part) addressed "only post-secondary monetary assistance paid to students or their households...."(*Id.* at p. 605.) However, defendants take the quote out of context. *Merten* was not deciding the meaning of assistance in title 8 U.S.C. section 1621; it was rejecting the plaintiffs' argument that Virginia's policy of denying college admission to illegal aliens was preempted by a different federal statute (8 U.S.C. § 1642). *Merten* said, "the scheme PRWORA [title 8 U.S.C. § 1601 et seq.] creates pertains to benefits not at issue here. In the area of post-secondary education, PRWORA addresses only post-secondary monetary assistance paid to students or their households, not admissions to college or university." (*Merten, supra,* at p. 605.) *Merten* went on to make a point (cited to us in plaintiffs' reply brief) that the reasonable inference to draw from title 8 U.S.C. section 1623 is that public colleges need not admit illegal aliens at all, but if they do, the aliens cannot receive in-state tuition unless

out-of-state U.S. citizens receive in-state tuition. (*Merten, supra,* 305 F.Supp.2d at p. 606.) Again, however, *Merten* was deciding an issue about preemption concerning admissions, not tuition. Thus, *Merten* has no bearing on the case before us.

***1142** Defendants cite *Doe v. Wilson* (1997) 57 Cal.App.4th 296 at page 299, 67 Cal.Rptr.2d 187, which said newly-enacted title 8 U.S.C. section 1621 prohibited California from expending public funds to provide prenatal care to illegal aliens, and the state could enforce emergency regulations adopted to comply with the federal legislation. Nothing in *Doe v. Wilson* limits the scope of the federal law.

Defendants cite a law review article construing the federal law as excluding in-state tuition. (Ruge & Iza, *Higher Education*533 For Undocumented Students: The Case for Open Admission and In-State Tuition Rates for Students Without Lawful Immigration Status* (2005) 15 Ind. Int'l. & Comp. L.Rev. 257, 267.) The law review article reflects nonauthoritative opinion, and we do not agree with it on this point.

We conclude section 68130.5 confers a "benefit" within the meaning of title 8 U.S.C. sections 1621 and 1623.

2. *Section 68130.5 is Based on Residence*

Defendants argue section 68130.5 does not condition eligibility for in-state tuition "on the basis of residence within a State" as stated in title 8 U.S.C. section 1623. We disagree.

The meaning of "residence" may vary according to the context, but "residence" generally requires both physical presence and an intention to remain. (*Martinez v. Bynum* (1983) 461 U.S. 321, 330-331, 103 S.Ct. 1838, 1844, 75 L.Ed.2d 879, 888 [state residency requirement for admission to tuition-free public schools did not violate federal equal protection clause]; 27B Cal.Jur.3d (2004) Domicile, §§ 2-3, pp. 617-619.) State domicile is a matter of state law. (*Elkins v. Moreno, supra,* 435 U.S. 647, 662, fn. 16, 98 S.Ct. 1338, 1347, 55 L.Ed.2d 614, 626.)

Under section 68062 (fn. 9, *ante*), illegal aliens are barred from establishing California residency for college/university in-state tuition purposes if they are precluded by federal law (8 U.S.C. § 1101) from establishing domicile in the United States. (*Bradford, supra,* 225 Cal.App.3d at p. 980, 276 Cal.Rptr. 197 ["section 68062, subdivision (h), precludes undocumented alien students from qualifying as residents of California for tuition purposes"]; *American Assn. of Women v. Board of Trustees* (1995) 31 Cal.App.4th 702, 706, 38 Cal.Rptr.2d 15 [*Bradford* is binding on both UC and CSU].) *Bradford, supra,* 225 Cal.App.3d at page 981, 276 Cal.Rptr. 197, recognized legitimate state interests in denying resident tuition to illegal aliens, including "the state's interests in not ***1143** subsidizing violations of law; in preferring to educate its own lawful residents; in avoiding enhancing the employment prospects of those to whom employment is forbidden by law; in conserving its fiscal resources for the benefit of its lawful residents; in avoiding accusations that it unlawfully harbors illegal aliens in its classrooms and dormitories; in not subsidizing the university education of those who may be deported; in avoiding discrimination against citizens of sister states and aliens lawfully present; in maintaining respect for government by not subsidizing those who break the law; and in not subsidizing the university education of students whose parents, because of the risk of deportation if detected, are less likely to pay taxes." (*Ibid.*)

Bradford predated the enactment of section 68130.5, which on its face allows illegal aliens to qualify for resident tuition, purportedly without establishing residence.

"Residence" within the meaning of the California tuition statutes means, "the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose."(§ 68062, subd. (b), fn. 9, *ante.*) The student must couple physical presence in California with objective evidence of intent to make California the home for other than a temporary purpose. (Cal.Code Regs., tit. 5, § 54020 [community colleges].) The residence of an unmarried minor child is generally the residence of the parent with whom the child maintains his or her place of abode. (§ 68062, subds. (f)-(i).) This ***534** includes an unmarried minor alien, unless the child or parent is precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.) from establishing United States domi-

cile. (§ 68062, subds. (h)-(i).)

A "resident" is "a student who has residence, pursuant to [section 68062] in the state for more than one year immediately preceding the residence determination date."(§ 68017.) A "nonresident" is a student who does not have residence in the state for more than one year preceding the determination date. (§ 68018.)

"A student classified as a nonresident shall be required, except as otherwise provided in this part, to pay, in addition to other fees required by the institution, nonresident tuition."(§ 68050.) The governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, unless otherwise provided by law. (§ 68051.) Section 68052 (which does not apply to community colleges) states that, under no circumstance shall the level of nonresident tuition plus required fees fall below the marginal cost of instruction, unless state revenues and expenditures are substantially imbalanced due to unforeseen factors. (§ 68052.) At CSU, "Except as otherwise specially provided, an admission fee and rate of tuition *1144 fixed by the trustees shall be required of each nonresident student. The rate of tuition to be paid by each nonresident student ... shall not be less that three hundred sixty dollars ($360) per year. The rate of tuition paid by each nonresident student who is a citizen and resident of a foreign country and not a citizen of the United States, except as otherwise specifically provided, shall be fixed by the trustees and shall not be less than ... ($360) per year."(§ 89705.) The trustees may waive or reduce the fees of foreign citizens subject to limitations. (§§ 89705-89707.) Community college districts may exempt from nonresident tuition: Students taking six or fewer units, a limited number of citizen-residents of foreign countries with financial need, and students displaced by Hurricane Katrina. (§ 76140.)

Numerous exceptions to nonresident status exist-e.g., a student who remains in California after the parent has moved elsewhere (§ 68070); a self-supporting student actually present in California for more than a year with intention of acquiring residence (§ 68071); a student under the care of adults domiciled in California (§ 68073); a member of or a dependent of a member of the armed forces of the United States stationed in California on active duty (§§ 68074-68075); a graduate of a California school operated by the United States Bureau of Indian Affairs (§§ 68077, 68082); and amateur student athletes training in Chula Vista for the Olympics (§ 68083). Some exceptions to residence determinations are left to the discretion of the school's governing board, e.g., a state employee or child of such employee "may be entitled to resident classification, as determined by the governing boards, until he or she has resided in the state the minimum time necessary to become a resident" (§ 68079), and agricultural laborers and their dependent children may be classified as residents for community college purposes if labor was performed in California for at least two months per year in the preceding two years (§ 68100). Additionally, tuition and fees are excused at particular institutions for various persons, including the surviving spouse or child of a law enforcement officer or firefighter killed in the line of duty while a California resident (§ 68120), surviving dependents of California residents killed in the September 11, 2001, terrorist attacks (§ 68121).

*535 Defendants argue the plain language of section 68130.5, on its face, does not condition the exemption from nonresident tuition on the basis of residence. However, the question is whether the statute confers a benefit on the basis of residence, not whether the statute admits such a benefit is being conferred.

Section 68130.5, footnote 1, *ante*, allows illegal aliens to pay resident tuition for college (beginning with the 2001-2002 academic year) if they attended a California high school for three years and either graduated from a California high school or attained "the equivalent thereof." (Arguably, *1145 a high school diploma from a state other than California would be "equivalent" to graduation from a California high school, but for purposes of this appeal, it does not matter.)

The statute purports to impose other conditions, i.e., (1) an affidavit promising to apply for legalized status if the student ever becomes eligible for such status, and (2) enrollment at an accredited institution of higher education not earlier than the fall of 2001. However, these supposed conditions add nothing. Enrollment is necessarily a prerequisite to having to

pay tuition at all. And, despite defendants' assertion that section 68130.5 requires students to take steps to legalize their status, the statute does not do so. It merely requires students to promise to take steps to legalize their status if they ever become eligible for legalization. This is an empty, unenforceable promise contingent upon some future eligibility that may or may not ever occur.

Indeed, the "condition" of attaining a California high school diploma or its equivalent does not add much, because it would seem such diploma or equivalent would generally precede admission to a California college or university regular program. (See e.g., § 76000 [CCC]; Cal.Code Regs., tit. 5, § 40751 et seq. [CSU].) Nevertheless, we will consider the diploma/equivalency a condition of in-state tuition under section 68130.5.

Thus, the only real conditions imposed by section 68130.5 are that the student (1) attend a California high school for three years, and (2) graduate or attain the equivalent.

A reasonable person would assume that a person attending a California high school for three years also lives in California. Such an assumption would be reasonable, given that a school district is generally linked to residence. Thus, section 48200 states, "Each person between the ages of 6 and 18 years not exempted ... is subject to compulsory full-time education. Each person subject to compulsory full-time education [and not exempted] ... shall attend the public full-time day school or continuation school or classes ... of the school district in which the residency of either the parent or legal guardian is located...." This statute "embodies the general rule that parental residence dictates a pupil's proper school district." (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57, 11 Cal.Rptr.3d 546 [under § 48200, which tied school district enrollment to parental residence, district was required to enroll pupils residing at property, even though property was located only partly within the district's geographic boundaries].)

*1146 We therefore consider the language of section 68130.5 ambiguous as to whether it affords a benefit to illegal aliens based on residence.

Defendants argue section 68130.5 is not based on residence, because other statutes allow non-California residents (children from adjoining states or an adjoining country) to attend school in California. (§§ 48050-48051.) However, those statutes*536 require the parents or the other state to reimburse the California school district for the total cost of educating the pupil. Thus, section 48050 [FN16] authorizes a school district to admit as pupils to an elementary school or a high school, children living in an adjoining state, as long as an agreement is reached for the school district of the other state to reimburse the California school district for the entire cost of educating the pupil. Section 48051 [FN17] authorizes residents of an adjoining foreign country (i.e., Mexico) to attend school in California, as long as they return home to Mexico every day, and as long as their parents or guardians reimburse the district for the cost of educating the person as provided in section 48052. [FN18]

FN16. Section 48050 provides: "The governing board of any school district may, with the approval of the county superintendent of schools, admit to the elementary and high schools of the district pupils living in an adjoining state which is contiguous to the school district. An agreement shall be entered into between the governing board and the governing board or authority of the school district in which the pupils reside providing for the payment by the latter of an amount sufficient to reimburse the district of attendance for the total cost of educating the pupil, including the total of the amounts expended per pupil for the current expenses of education, the use of buildings and equipment, the repayment of local bonds and interest payments and state building loan funds, capital outlay, and transportation to and from school.... The attendance of the pupils shall not be included in computing the average daily attendance of the class or school for the purpose of obtaining apportionment of state funds. In lieu of entering an agreement with the governing board or authority of the school district in which the pupil from the adjoining state resides, the governing board of the school district in this state may enter an agreement with the parent

or guardian of the pupil on the same terms as is provided in this section."

FN17. Section 48051 provides: "Any person, otherwise eligible for admission to any class or school of a school district of this state, whose parents are or are not citizens of the United States, whose actual and legal residence is in a foreign country adjacent to this state, and who regularly returns within a 24-hour period to said foreign country may be admitted to the class or school of the district by the governing board of the district."

FN18. Section 48052 provides: "The governing board of the district shall, as a condition precedent to the admission of any person, under Section 48051, require the parent or guardian of such person to pay to the district an amount not more than sufficient to reimburse the district for the total cost of educating the person, inc[l]uding the total of the amounts expended per pupil for the current expenses of education, the use of buildings and equipment, the repayment of local bonds and interest payments and state building loan funds, capital outlay, and transportation to and from school.... The attendance of the pupils shall not be included in computing the average daily attendance of the class or school for the purpose of obtaining apportionment of state funds. The school district shall not be eligible for nonimmigrant or noncitizen reimbursement under the provisions of Chapter 11 (commencing with Section 42900) of Part 24 of Division 3 of this title, Article 2 (commencing with Section 56865) of Chapter 6 of Part 30 of this division for these students."

*1147 We reject defendants' reliance on these statutes. Defendants ask us to believe that the Legislature enacted section 68130.5 to subsidize the college education of students who were not entitled to free or subsidized education in California's elementary/secondary schools. That makes no sense.

Along the same lines, defendants argue section 68130.5 does not benefit only illegal aliens, because the statute gives in-state tuition to students who are *not* illegal aliens. Examples include a U.S. citizen who attended high school in California but lived in another state after high school before enrolling in a California college/university; such a person would not be considered a California resident unless he or *537 she has resided in California for at least one year before the residence determination date. (§§ 68017-68018.) However, it could also be said such a student receives the benefit of section 68130.5 based on prior California residence. Other examples given by defendants are (1) a student who attended boarding school in California while maintaining a residence in another state; (2) a minor financially dependent on parents who reside in another state (since a minor's residence is derived from that of his or her parents); (3) a lawful immigrant dependent student whose parents have returned to another country; and (4) an "undocumented" student whose parents were granted permanent residency through an amnesty program and who is awaiting acceptance of his or her own application for permanent residency.

However, even assuming these examples involve persons lawfully present in this country, the circumstance that section 68130.5 may benefit some people who are not illegal aliens does not save the statute from plaintiffs' preemption claims if the statute benefits illegal aliens in contravention of federal law. Moreover, we suspect, and a liberal construction of plaintiffs' complaint is that plaintiffs allege, the vast majority of students attending California high schools for three years live in California. Indeed, an Enrolled Bill Report of the Office of the Secretary For Education (which is part of the record on appeal and which is subject to judicial notice under *Kaufman, supra,* 133 Cal.App.4th at pp. 40-42, 34 Cal.Rptr.3d 520) estimated that 5,000 to 6,000 "undocumented" students would qualify for section 68130.5's exemption from nonresident tuition, while "the number of boarding school and border area students in California who are expected to qualify for a nonresident tuition exemption under the provisions of this bill [AB 540] is expected to be *less than 500.*" FN19 (Enrolled Bill Report on Assem. Bill No. 540, *1148 Off. of the Sec. for Ed. (2001-2002 Reg. Sess.) Oct. 3, 2001, p. 5, italics added.) Since this case comes to us at the demurrer stage, we do not refer to these figures as proven facts but merely observe that, if true, they would undermine defendants' insinuation that

the statute was not designed to benefit illegal aliens.

> FN19. The amicus curiae brief supporting defendants, filed by Alicia A. et al., asserts that in 2005-2006, 1,500 UC students qualified for section 68130.5 in-state tuition, of which only 390 students were undocumented. Plaintiffs assert the total number of illegal aliens paying in-state tuition throughout the college and university systems is over 25,000. We need not resolve factual disputes at this demurrer stage.

The wording of the California statute, requiring attendance at a California high school for three or more years, creates a de facto residence requirement. Or, as plaintiffs put it, if section 68130.5 requires an illegal alien to attend a California high school for three years in order to qualify for the exemption from nonresident tuition, then the state has effectively established a surrogate criterion for residence.[FN20] That section 68130.5 also incidentally benefits a few students other than resident illegal aliens is, in our view, irrelevant. Section 68130.5 manifestly thwarts the will of Congress expressed in title 8 U.S.C. section 1623, that illegal aliens who are residents of a state not receive a postsecondary education benefit that is not available to citizens of the United States. Thus, we reject defendants' reliance on the ***538** presumption of constitutionality of legislation. (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1086, 17 Cal.Rptr.3d 225, 95 P.3d 459.)

> FN20. We ask the same question that we posed to defendants' counsel at oral argument: "Could the Legislature enact a statute granting in-state tuition to every illegal alien whose parents maintained a post office box in California, without violating title 8 U.S.C. section 1623?" We think the answer is, "No."

Defendants argue the Legislature expressly stated, in an uncodified section of the bill enacting section 68130.5: "This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code."(Stats.2001, ch. 814, § 1.) Defendants cite *Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 63 Cal.Rptr.2d 467, 936 P.2d 473, which said, "courts must give legislative findings great weight and should uphold them unless unreasonable or arbitrary...."(*Id.* at p. 569, 63 Cal.Rptr.2d 467, 936 P.2d 473.) However, the Legislature's statement in this case was not a finding of fact, but a legal conclusion. As defendants acknowledge, the Legislature's interpretation is not dispositive. Indeed, the cited case also said in the same paragraph that "the deference afforded to legislative findings does 'not foreclose [a court's] independent judgment of the facts bearing on an issue of constitutional law.' " (*Id.* at p. 569, 63 Cal.Rptr.2d 467, 936 P.2d 473.) Ultimately, statutory interpretation is a judicial function. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244, 62 Cal.Rptr.2d 243, 933 P.2d 507.)

Moreover, the remainder of the uncodified section reflects an intent to benefit illegal aliens living in California:

"(a) The Legislature hereby finds and declares all of the following:

***1149** "(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives *and who are likely to remain,* but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

"(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

"(3) A fair tuition policy for all high school pupils *in California* ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.[FN21]

> FN21. The parties dispute whether, and to what extent, this policy applies to illegal aliens unable to obtain lawful, gainful jobs in California. *Kirk v. Regents of University of California, supra,* 273 Cal.App.2d 430, 78 Cal.Rptr. 260, said the State has a valid interest in providing tuition benefits "to

> those who have demonstrated by ... residence a bona fide intention of remaining here and who, by reason of that education, will be prepared to make a greater contribution to the state's economy and future." (*Id.* at p. 444, 78 Cal.Rptr. 260.) However, *Kirk* did not involve illegal aliens.

"(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, *including undocumented immigrant* students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

"(5) [Statement that the statute does not confer benefits based on residence.]

"(b) It is the intent of the Legislature that:

"(1) A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit interpreting Section 68130.5....

"(2) This act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act." (Stats.2001, ch. 814, § 1, italics added.)

*539 A 2002 amendment deleted subdivision (b)(1) of the uncodified section, regarding remedy, and added codified section 68130.7: "If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the *1150 California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief." (Stats.2002, ch. 19, §§ 1-2.)

That section 68130.5 was enacted to benefit illegal aliens living in California is also apparent in the cognizable legislative history of section 68130.5, which includes references to prior attempts at similar legislation. We disregard plaintiffs' citation of newspaper articles attributing statements to legislators. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1065, 31 Cal.Rptr.2d 358, 875 P.2d 73 [existence of newspaper article was irrelevant, and truth of its contents was not judicially noticeable].) We disregard plaintiffs' citation of a letter from James E. Holst, General Counsel to the UC Regents, because the trial court denied judicial notice of this letter (Exhibit O to RJN) due to lack of evidence it was considered by the Legislature, and we have rejected plaintiffs' challenge to this ruling. We shall consider the following legislative history that was the subject of judicial notice by the trial court.

Thus, the Higher Education Committee Analysis of Assembly Bill No. 540 (which became section 68130.5) summarized the bill as follows: "Qualifies long-term California *residents,* as specified, regardless of citizenship status, for lower 'resident' fee payments at the [CCC] and the [CSU]." (Concurrence in Sen. Amends., Assem. Bill No. 540 (2001-2002 Reg. Sess.) as amended Sept. 7, 2001, p. 1, italics added, cited by the parties as Higher Education Com. Analysis.) The same summary appears elsewhere in the legislative history. (Sen. Rules Com., Off. of Sen. Floor Analyses, Assem. Bill No. 540 (2001-2002 Reg. Sess.) Sept. 7, 2001, p. 1.) This description, which admits an intent to benefit residents, is telling. Defendants' assertion-that the summary merely illustrates the common understanding that most California high school graduates reside in the state-does not help defendants' position.

We disagree, however, with plaintiffs' further, unnecessary assertion that the legislative analysis indicated the majority of students to be benefitted consider California their home. What the analysis said was, "According to the author, many of the students that would benefit under this measure are children of parents who have been granted amnesty by the federal government and are waiting for their own applications for citizenship to be accepted by the Immigration and Naturalization Service [INS]. The majority of these students consider California their home and

are expected to become citizens." (Concurrence in Sen. Amends., Assem. Bill No. 540, *supra*, at p. 3.) Thus, the analysis referred to a majority of a specific class-children of parents who have amnesty.

***1151** The analysis also said:

"Previous legislation: This measure is similar to AB 1197 (Firebaugh) of 1999 which was passed by the Committee on Higher Education, Assembly, and Senate, ***540** but vetoed by the Governor. AB 1197 had a provision requiring the students to be in the process of obtaining citizenship in order to benefit from the in-state tuition. This is not a part of the current legislation.

"In his veto message, Governor Davis cited the [IIRIRA], by which undocumented aliens are ineligible to receive postsecondary education benefits based on state residence unless a citizen or national of the U.S. would be eligible for the same benefits without regard to their residence ([title 8 U.S.C.] Section 1623).[FN22]

> FN22. The trial court sustained a defense objection to the complaint's Exhibit D: legislative history of the prior bill, which included the contents of the Governor's veto message expressing the view that the prior bill (which contained substantially the same language that was later enacted) would conflict with federal law unless the state gave the same benefit to out-of-state residents. The trial court said there was no evidence that the contents of the veto message of the prior bill was before the Legislature when it enacted section 68130.5 in Assembly Bill No. 540. However, the above-quoted language from the legislative history of Assembly Bill No. 540 adequately conveyed the contents of the veto message concerning the prior bill.

"In response to the veto message, the Chief Legislative Counsel issued an opinion that AB 1197 did not violate federal law since it did not tamper with a student's residency status under federal law and because it excluded from out-of-state tuition exemptions foreign students as specified in the United States Code."(Concurrence in Sen. Amends., Assem. Bill No. 540, *supra*, at pp. 3-4.)

Thus, the bill which became section 68130.5 was a second attempt to overcome a perceived conflict with federal law. Yet the content of section 68130.5 is not significantly different from the content of Assembly Bill No. 1197, which would have granted in-state tuition if the student (1) attended a California high school for at least three years; (2) graduated from a California high school; (3) enrolled in college within one year of high school graduation or on or before January 1, 2001; and (4) initiated an application to legalize his or her immigration status. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d Reading of Assem. Bill No. 1197 (1999-2000 Reg. Sess.) as amended Jan. 4, 2000; p. 2.) Defendants say, without citation, that the later bill omitted a provision in the earlier bill expressly making eligible those aliens precluded from establishing California residency by section 68062.

Also consistent with our interpretation of section 68130.5 (though not cognizable legislative history of intent at the time section 68130.5 was enacted) is ***1152** the legislative history of subsequently-enacted section 68130.7 (fn. 6, *ante*), limiting defendants' legal exposure. A Senate Rules Committee analysis of Assembly Bill No. 1543 (which became § 68130.7) stated, "Current law (AB 540, Firebaugh and Maldonado, Chapter 814, Statutes of 2001), which took effect January 1, 2002, qualifies specified long-term *California residents,* regardless of citizenship status, for lower 'resident' fee payments....". (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d Reading of Assem. Bill No. 1543 (2001-2002 Reg. Sess.) as amended Jan. 24, 2002, p. 1, italics added.)

We conclude section 68130.5 does, and was intended to, benefit illegal aliens on the basis of residence in California.

3. *Section 68130.5 is Preempted by Title 8 U.S.C. Section 1623*

Since California does not afford the same benefit to U.S. citizens from other states "without regard to" California residence, section 68130.5 conflicts with title 8 U.S.C. section 1623, which states, "an alien

***541** who is not lawfully present in the United States shall not be eligible on the basis of residence within a State ... for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

As indicated, state law is preempted to the extent that it actually conflicts with federal law, where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (*English v. General Electric Co., supra,* 496 U.S. at pp. 78-79, 110 S.Ct. 2270, 2275, 110 L.Ed.2d 65, 74; *De Canas v. Bica, supra,* 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43; *LULAC II, supra,* 997 F.Supp. at p. 1253.)

Section 68130.5 does not regulate immigration and therefore is not expressly preempted as a regulation of immigration. (*De Canas v. Bica, supra,* 424 U.S. at p. 356, 96 S.Ct. 933.)

However, Congress in title 8 U.S.C. section 1623 expressly limited the state's power to give in-state tuition to illegal aliens, and in that sense Congress manifested a clear purpose to oust state power with respect to the subject matter which the state statute attempts to regulate. (*Id.* at p. 357, 96 S.Ct. 933.) Though not binding on us, we observe that a federal district court concluded with respect to title 8 U.S.C. section 1621 (fn. 8, *ante*), which we discuss *post,* that Congress has occupied the field of regulation of public postsecondary education benefits to aliens (and ***1153** thus invalidated portions of California initiative measure Proposition 187). (*LULAC II, supra,* 997 F.Supp. at p. 1256.) The *LULAC* cases concluded that some provisions (i.e., requiring college admissions officers to report students suspected of being in the country illegally) were preempted because they amounted to determinations of who may and may not remain in this country (*LULAC I, supra,* 908 F.Supp. at p. 774), while other provisions (e.g., denying public postsecondary education to illegal aliens) were preempted because Congress had occupied the field of regulation of public postsecondary education (*LULAC II, supra,* 997 F.Supp. at p. 1256).

It is impossible *for defendants* to comply with both state and federal requirements, because section 68130.5 conflicts with title 8 U.S.C. section 1623, in that the state statute allows the benefit to U.S. citizens from other states only if they attend a California high school for three years. Thus, the state statute does not afford the same benefit to U.S. citizens "without regard to" California residence, as required by title 8 U.S.C. section 1623.

Plaintiffs argue it is also impossible *for illegal aliens* to enjoy the benefits of section 68130.5 while complying with federal law. If they attend a California public university/college, they remain unlawfully present in the United States in violation of federal immigration law. "Federal law forbids aliens to enter the United States without applying for admission. (8 U.S.C. §§ 1101(a)(4), 1181(a), 1201.) Those who nonetheless succeed in doing so, or in overstaying their visas, are subject to arrest and deportation. (*Id.,* §§ 1251, 1252, 1357.)" (*Bradford, supra;* 225 Cal.App.3d at p. 979, 276 Cal.Rptr. 197.) Defendants respond that a finding of impossibility would preempt *all* legislation conferring *any* benefits on illegal immigrants, even emergency medical care. Defendants cite *Lozano v. City of Hazleton* (M.D.Pa.2007) 496 F.Supp.2d 477 at page 498, as stating the single illegal act of entering this country without legal authorization does not strip individuals of all rights. We question ***542** plaintiffs' claim that the federal appellate court granted review. In any event, the case does not help defendants because title 8 U.S.C. section 1623 expressly forbids the particular right at issue in this case unless it is given to U.S. citizens without regard to residence (which section 68130.5 does not do).

Plaintiffs add that encouraging illegal aliens to stay in the United States is a potential criminal violation. (8 U.S.C. § 1324(a)(1)(A)(iv); *United States v. Oloyede* (4th Cir.1992) 982 F.2d 133, 137; *Incalza v. Fendi* (9th Cir.2007) 479 F.3d 1005, 1009-1010 [8U.S.C. § 1324a(a)(2), forbidding employers from knowingly employing illegal aliens, provides good cause for terminating employment, as defined by California labor law].) We ***1154** presume for purposes of this appeal that title 8 U.S.C. section 1324 would not apply if section 68130.5 comported with title 8 U.S.C. sections 1621 and 1623.

Section 68130.5 also falls within the principle of implied preemption in that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (*De Canas v. Bica, supra,* 424 U.S. at p. 357, 96 S.Ct. 933.) The Congressional objective was stated in title 8 U.S.C. section 1601:

"The Congress makes the following statements concerning national policy with respect to welfare and immigration:

"(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

"(2) It continues to be the immigration policy of the United States that-[¶] (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and [¶] (B) the availability of public benefits not constitute an incentive for immigration to the United States.

"[¶] ... [¶]

"(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."

Defendants quote from *Day v. Bond* (10th Cir.2007) 500 F.3d 1127(*Day I*), where the court stated-in the course of concluding out-of-state students lacked standing for an equal protection claim-that a Kansas statute (with language similar to the California statute) involved "a nondiscriminatory prerequisite for benefits under [the statute], regardless of citizenship of the students." (*Id.* at p. 1135.) That statement does not help defendants on the issues of preemption and residence. Nor is defendants' position assisted by their assertion that nine states other than California (Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington) have statutes similar to section 68130.5.

Defendants cite case law holding federal law did *not* preempt state statutes. (*Reyes v. Van Elk, Ltd.* (2007) 148 Cal.App.4th 604, 617-618, 56 Cal.Rptr.3d 68 [federal immigration law did not preempt state prevailing wage law or statutes making immigration status irrelevant to liability under labor, housing, and civil rights laws]; *Farmers Bros. Coffee v. Workers' Compensation Appeals Bd.* (2005) 133 Cal.App.4th 533, 540, 35 Cal.Rptr.3d 23 [federal immigration law did not preempt workers' compensation law].) However, those cases *1155 indicated the state statutes-which were designed for purposes such as discouraging unscrupulous employers from hiring illegal aliens-were consistent with the ultimate goal of federal immigration law to control illegal immigration. (*Reyes, supra,* 148 Cal.App.4th at pp. 617-618, 56 *543 Cal.Rptr.3d 68; *Farmers, supra,* 133 Cal.App.4th at p. 540, 35 Cal.Rptr.3d 23.) The same cannot be said of section 68130.5.

Defendants argue our interpretation (that section 68130.5 conflicts with title 8 U.S.C. section 1623) effectively deletes from the federal statute the phrase "on the basis of residence within a State," thereby violating the principle of statutory construction to give effect to every word. To the contrary, our conclusion gives realistic effect to that phrase in the federal statute, resulting in preemption of the state statute which confers a benefit on the basis of residence.

Defendants cite a law review article that undocumented children are caught in a fierce and complicated debate; the federal government does little to deport them; and it makes little sense to maintain obstacles to their pursuit of a college education. These policy arguments are beyond the scope of this court's authority in this appeal. Such arguments should be directed to Congress.

We conclude plaintiffs have stated a viable claim that title 8 U.S.C. section 1623 preempts section 68130.5. Although this conclusion suffices to require reversal of the judgment, we consider the parties' other contentions to determine what other claims will be at issue upon remand.

C. *Preemption by Title 8 U.S.C. Section 1621*

Plaintiffs argue section 68130.5 is also preempted by title 8 U.S.C. section 1621. We agree they stated a viable claim.

As indicated, title 8 U.S.C. section 1621 (fn. 8, *ante*) provides in part: "(a) In general. Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an [illegal alien] is not eligible for any State or local public benefit (as defined in subsection (c) of this section) ... [¶] (c) ... 'State or local public benefit' means [¶] ... [¶] (B) any ... postsecondary education ... benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government. [¶] ... [¶] (d) ... A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after [August 22, 1996], which affirmatively provides for such eligibility."

***1156** Title 8 U.S.C. section 1621 was enacted in August 1996 (shortly before title 8 U.S.C. section 1623) as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRA or PRWORA). (puB.L. 104-193, (aug. 22, 1996) § 411, 110 stat. 2268.)

As indicated, a federal district court has held that the PRA preempted portions of California initiative measure Proposition 187 denying certain services to illegal aliens, including provisions that excluded illegal aliens from public schools (elementary/secondary and postsecondary) and a provision requiring denial of public postsecondary education benefits to illegal aliens. (*LULAC II, supra,* 997 F.Supp. 1244; *LULAC I, supra,* 908 F.Supp. 755.)

As we have explained in our discussion of title 8 U.S.C. section 1621, "benefit" in title 8 U.S.C. section 1621 includes exemption from nonresident tuition.

Title 8 U.S.C. section 1621 expressly preempts states from giving postsecondary education benefits to illegal aliens-unless the state enacts a statute which "affirmatively provides" for such eligibility.***544** The parties refer to this as a "savings clause" or "safe harbor." The existence of a savings clause in federal legislation does not necessarily preclude a conclusion of conflict preemption. (*Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 926, 12 Cal.Rptr.3d 262, 88 P.3d 1.) However, to the extent the federal law expressly authorizes state legislation, Congress cannot have intended impliedly to preclude such action. (*People v. Edward D. Jones & Co.* (2007) 154 Cal.App.4th 627, 639, 65 Cal.Rptr.3d 130.)

What is the meaning of "affirmatively provides"? Plaintiffs argue it means the California Legislature must expressly refer to title 8 U.S.C. section 1621 and illegal aliens; otherwise, the word "affirmatively" is superfluous. Defendants argue "affirmatively" merely means explicitly rather than implicitly; no "magic words" are required; and section 68130.5 affirmatively provides for eligibility by referring to "person[s] without lawful immigration status." We agree with plaintiffs that something more is required.

Since "affirmatively provides" is ambiguous, we refer to the cognizable federal legislative history-a conference report which stated, "Only the affirmative enactment of a law by a State legislature and signed by the Governor after the date of enactment of this Act, that references this provision [title 8 U.S.C. section 1621], will meet the requirements of this section. The phrase 'affirmatively provides for such eligibility' means that the State law enacted must specify that illegal aliens are eligible for State or local benefits." (H.R.Rep. No. 104-725, 2nd Sess., p. 1 (1996).)

***1157** We conclude the conference report supports plaintiffs' position that not only must the state law specify that illegal aliens are eligible, but the state Legislature must also expressly reference title 8 U.S.C. section 1621 (which was not done in the case of section 68130.5).

We agree with plaintiffs that the federal law's requirements are not a trivial formality. The federal law forces any state that is contemplating the provision of benefits to illegal aliens to spell out that intent publicly and explicitly. Doing so places the public on notice that their tax dollars are being used to support illegal aliens. It is a matter of democratic accountability, forcing state legislators to take public responsibility for their actions.

Here, the California Legislature in enacting section 68130.5 did not expressly reference title 8 U.S.C. section 1621. Moreover, even accepting defendants' view that "affirmatively" merely means explicitly rather than implicitly and does not require the statute to use the words "illegal aliens," section 68130.5 does its best to conceal the benefit to illegal aliens. Although section 68130.5 does indicate that illegal aliens are eligible, it does so in a convoluted manner. The statute starts out by saying a student "other than a nonimmigrant alien [as defined under federal law]" is exempt from nonresident tuition. This sounds like the California statute does not benefit aliens. Section 68130.5 then says that a person "without lawful immigration status" must swear he or she has filed an application to legalize his/her immigration status or will file "as soon as he or she is eligible to do so." This almost sounds like the student will become legalized. The reality, in contrast, is that it could very well be that these students will never be eligible for legal status. Thus, while we do not hold that title 8 U.S.C. section 1621 requires the state statute to use the words "illegal aliens," we conclude the language of section 68130.5 does not clearly put the public on notice that tax dollars are being used to benefit illegal aliens.

***545** Additionally, while the uncodified section of the enactment stated section 68130.5 allows "undocumented immigrant students" to be exempt from nonresident tuition, the same uncodified section went on to disavow any conferring of benefits on the basis of residence within the meaning of title 8 U.S.C. section 1623. (Stats.2001, ch. 814, § 1; [FN23] Stats.2002, ch. 19, § 1.)

> FN23. The uncodified section stated the enactment "allows all persons, including undocumented immigrant students who meet the requirements" to be exempt from nonresident tuition, but also stated the enactment "does not confer postsecondary education benefits on the basis of residence within the meaning of [8 U.S.C. Section 1623]...." (Stats.2001, ch. 814, § 1, (4)-(5).)

We conclude the California Legislature has not met the requirements of title 8 U.S.C. section 1621's "safe harbor" or "savings clause." We need not address plaintiffs' further suggestion that "affirmatively provides" in title ***1158** 8 U.S.C. section 1621 requires the state statute to use the words "illegal alien" or "alien who is not lawfully present in the United States."

Accordingly, plaintiffs have stated a cause of action that section 68130.5 is preempted by title 8 U.S.C. section 1621.

VI. *Equal Protection*

We next address whether plaintiffs stated a viable claim that section 68130.5 violates the Equal Protection Clause of the Fourteenth Amendment (count four) and the California Constitution (art. I, § 7) (count seven), by denying to plaintiffs the postsecondary education benefits granted to illegal aliens living in California. Plaintiffs claim they are similarly situated with the illegal aliens in that neither class is recognized under law as "domiciled" in the state of California, yet illegal aliens are allowed a benefit denied to U.S. citizens from sister states. We shall conclude plaintiffs should be allowed leave to amend regarding equal protection.

Even assuming for the sake of argument that strict scrutiny applies, as urged by plaintiffs, plaintiffs provide no legal analysis of the legal term of art "domicile," and section 68130.5 does not, on its face, allow illegal aliens a benefit denied to U.S. citizens from sister states. U.S. citizens, like illegal aliens, can obtain the benefit of section 68130.5 by attending a California high school for three years and obtaining a high school diploma or its equivalent.

We observe the high school attendance requirement of section 68130.5 is not troubling in and of itself, because a state may favor its own residents. " '[A] State has a legitimate interest in protecting and preserving ... the right of its own bona fide residents to attend [its colleges and universities] on a preferential tuition basis.' [Citation.]" (*Martinez v. Bynum, supra,* 461 U.S. at pp. 327-328, 103 S.Ct. at p. 1842, 75 L.Ed.2d at p. 886, orig. brackets.) Although a state cannot exclude illegal aliens from free public elementary and secondary schools (*Plyler v. Doe, supra,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786), school

districts "may require that illegal alien children, like any other children, actually reside in the school district before admitting them to the schools. A requirement of de facto residency, uniformly applied, would not violate any principle of equal protection.' [¶] A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement with respect to attendance in public free schools does not violate the Equal Protection Clause of the Fourteenth Amendment. [Fn. omitted.]" (*Martinez v. Bynum, supra,* 461 U.S. at ***546** pp. 328-329, 103 S.Ct. at pp. 1842-1843, 75 L.Ed.2d at pp. 886-887.) Similarly, *Bradford, supra,* 225 ***1159** Cal.App.3d at pages 980 through 981, 276 Cal.Rptr. 197, held there was no equal protection violation in section 68062, subdivision (h), which precluded illegal aliens from qualifying as California residents for tuition purposes. *Bradford, supra,* at pages 981 through 982, 276 Cal.Rptr. 197, observed the heart of *Plyler v. Doe, supra,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (requiring states to educate illegal aliens at the elementary and secondary school levels) was that the "stigma of illiteracy" would mark these children for the rest of their lives.

Plaintiffs claim they alleged that some California colleges/universities have implemented section 68130.5 to deny eligibility to all U.S. citizens. Defendants respond plaintiffs did not allege this "as applied" challenge in their complaint and may not do so for the first time on appeal. However, plaintiffs, in their brief opposing the demurrer said: "Defendants argue that § 68130.5 withstands equal protection scrutiny because some U.S. citizens at some institutions of higher education have received benefits under the former [*sic*]." Plaintiffs added a footnote that, "Defendants are flatly wrong in arguing that there is no equal protection violation because in-state tuition benefits are being provided to certain non-resident U.S. citizens. By their own admission, Defendants are denying such benefits to non-resident U.S. citizens. [Citation to discovery response.] Evidence of this will be provided at trial."

The cited discovery response does not support the allegation. However, at the demurrer stage, plaintiffs are not required to prove their allegations. Plaintiffs should be allowed leave to amend if they show a reasonable possibility that defects can be cured by amendment. (*Aubry v. Tri-City Hospital Dist., supra,* 2 Cal.4th at pp. 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317.)

We conclude that, on remand, the trial court shall give plaintiffs the opportunity to amend their complaint as to the equal protection claim. We need not address plaintiffs' argument that the state cannot have a rational basis for subsidizing the higher education of persons who by virtue of their illegal alien status may be unable to work legally in the state.

VII. *Privileges and Immunities*

Plaintiffs maintain their fifth count stated a viable claim that section 68130.5 contravenes the Privileges and Immunities Clause of the Fourteenth Amendment, Section One, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Plaintiffs' theory, as alleged in the complaint, was that, "By making illegal aliens who possess no lawful domicile in the state of California eligible for in-state tuition rates, while denying this benefit to U.S. citizens whose lawful domicile is outside California, the state of California has ***1160** denigrated U.S. citizenship and placed U.S. citizen Plaintiffs in a legally disfavored position compared to that of illegal aliens." The complaint cited section 5 of the Fourteenth Amendment, which provides, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." The complaint alleged Congress exercised this power by enacting title 8 U.S.C. section 1623.

The trial court dismissed this count based on *Kirk v. Regents, supra,* 273 Cal.App.2d 430, 78 Cal.Rptr. 260, which said, "the privileges and immunities clause does not guarantee [a student from Ohio who married a California resident and moved to California] the right to attend the university***547** for the same fee as that charged to persons who have met the one-year residence requirement." (*Id.* at pp. 444-445, 78 Cal.Rptr. 260.)

Given the complaint's allegations, this reason is invalid.

That in-state tuition is conferred by state rather than federal law does not defeat the privileges and immunities claim here, where plantiffs allege a violation of their rights under federal law, 8 U.S.C. section 1623.

Defendants' response on this point is that section 68130.5 applies equally to U.S. citizens and illegal aliens. We have rejected this view in our discussion of preemption.

Accordingly, the demurrer should be overruled as to the privileges and immunities claim. We need not address plaintiffs' invocation of a different constitutional provision regarding privileges and immunities which was not alleged in the complaint.

VIII. *Due Process Taking of Property*

Plaintiffs contend defendants' illegal and discriminatory conduct operated as an illegal extraction of excessive tuition from plaintiffs and constituted a taking of property without due process of law under the federal and California Constitutions. No such claim was asserted in the complaint, and we see no reason for leave to amend.

Plaintiffs fail to show they could amend the complaint to add a viable takings claim. They cite authority for the general proposition that a plaintiff deprived of a property right without due process is entitled to compensation under the Fourteenth Amendment and the California Constitution. Plaintiffs cite *Lister v. Hoover, supra,* 706 F.2d 796, for the supposed proposition that the right to lower tuition constituted a property interest. However, the only issue in *Lister* was whether due process required the University of Wisconsin ***1161** to give written reasons for its denial of student requests to be classified as state residents for tuition purposes. (*Id.* at p. 797.) In *Lister,* no one disputed that the plaintiffs' claimed entitlement to lower tuition constituted a property interest; the question was what process was due. (*Id.* at p. 798.) The reviewing court said the interest was slight, and due process did not require the university to give written reasons for its denial. (*Id.* at pp. 797, 805.)

Plaintiffs' citation of authority that they have a contractual relationship with defendants adds nothing to their constitutional claims.

We conclude plaintiffs fail to show they should be given leave to amend to assert a due process claim based on the taking of their property.

IX. *Unruh Act*

Plaintiffs contend they adequately pleaded a claim under the Unruh Civil Rights Act (Civ.Code, § 51 et seq.), in that they are American citizens from states other than California who are being discriminated against on the basis of national origin (reverse discrimination) and geographic origin. We shall conclude plaintiffs fail to show grounds for reversal regarding the Unruh Act claim.

Civil Code section 51, subdivision (b), provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

***548** Section 68130.5 does not discriminate against plaintiffs on the basis of national origin. Plaintiffs are denied the exemption from nonresident tuition, *not* because they are U.S. citizens, but because they have not attended high school in California. However, plaintiffs claim the effect of section 68130.5 is reverse discrimination against U.S. citizens from states other than California (geographic origin) and in favor of illegal aliens.

The Unruh Act must be construed liberally to carry out its purpose of compelling recognition of the equality of all persons receiving services offered by business establishments. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167, 59 Cal.Rptr.3d 142, 158 P.3d 718.) Although Civil Code section 51 does not mention geographic origin, the enumerated categories in the Unruh Act are " 'illustrative rather ***1162** than restrictive.' " (*Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, 839, 31 Cal.Rptr.3d 565, 115 P.3d 1212.) Nevertheless, the enumerated categories set forth the type of categories that will fall within the scope of the statute. (*Id.* at p.

841, 31 Cal.Rptr.3d 565, 115 P.3d 1212.) The common element of the enumerated categories and those added by judicial construction is they " 'involve personal ... characteristics-a person's geographic origin, physical attributes, and personal beliefs.' " (*Id.* at pp. 841, 842-843.) *Koebke* held the version of the Unruh Act in effect at that time extended to prohibit discrimination in favor of married couples and against domestic partners. (*Ibid.*) Thus, *Koebke* did not, as plaintiffs claim, extend the Unruh Act to geographic origin. Cases are not authority for propositions not decided. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620, 71 Cal.Rptr.2d 830, 951 P.2d 399.)

Plaintiffs' position finds indirect support in *Bradford, supra,* 225 Cal.App.3d 972, 276 Cal.Rptr. 197, which held-before enactment of section 68130.5-that section 68082 (fn. 9, *ante*) precluded illegal aliens from qualifying as California residents for tuition purposes. (*Id.* at p. 980, 276 Cal.Rptr. 197.) Among the state's legitimate interests in denying resident tuition to illegal aliens was the interest "in avoiding discrimination against citizens of our sister states...."(*Id.* at p. 981, 276 Cal.Rptr. 197.)

However, *Bradford* was not an Unruh Act case. We disregard plaintiffs' unsupported assertion, raised for the first time in the reply brief, that the doctrine of collateral estoppel bars defendants, who were parties in the *Bradford* case, from denying that discrimination has occurred.

Defendants argue the Unruh Act prohibits only "arbitrary discrimination," and defendants' actions in applying a statute (§ 68130.5) enacted by the Legislature cannot be considered arbitrary discrimination, since the Legislature has specifically permitted public colleges and universities to charge non-resident tuition and to exempt certain persons from the requirement of paying nonresident tuition.

Defendants have the better argument, particularly since section 68130.7 (fn. 6, *ante*) limits the remedy available in the event of invalidation of section 68130.5. The money damages available under the Unruh Act (Civ.Code, §§ 52, 52.1, subd. (b)) are barred by section 68130.7 (fn. 6, *ante*), which prohibits monetary damages if a court finds section 68130.5 unlawful.

We conclude plaintiffs fail to show grounds for reversal regarding the Unruh Act claim (count eight).

***1163** X. *Discrimination-(Cal. Const., Art. I, § 31)*

Although not alleged in the complaint, plaintiffs claim they argued at the ***549** hearing on the demurrer (no transcript appears in the record on appeal) that they have a viable claim under California Constitution, article I, section 31, which was adopted by Proposition 209 in 1996, and which provides in part that "[t]he State [expressly including the public university system] shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or *national origin* in the operation of public employment, *public education,* or public contracting." (Italics added.) This self-executing provision states the remedies are the same as are otherwise available for violations of California antidiscrimination law. (Cal. Const., art. I, § 31, subds. (g)-(h).)

Plaintiffs argue illegal aliens who receive the in-state tuition benefit under section 68130.5 are by necessity foreign nationals, and therefore they receive preference based on their national origin. Plaintiffs also argue they themselves are the objects of reverse discrimination based on their national origin, i.e., American citizens from out-of-state.

However, plaintiffs fail to persuade us that "national origin" includes alienage/citizenship.[FN24]

> FN24. Even plaintiffs' amicus curiae, Pacific Legal Foundation (PLF) is not persuaded. PLF filed an amicus curiae brief in support of plaintiffs on other grounds but argued plaintiffs are wrong about article 1, section 31, and national origin does not include citizenship.

Proposition 209 was intended to reinstitute in California an interpretation of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000a et seq.) that preference to any group constitutes inherent inequality, however it is rationalized. (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 561, 101 Cal.Rptr.2d 653, 12 P.3d 1068.) In interpreting

title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), the United States Supreme Court concluded "national origin" did not include alienage/citizenship. (*Espinoza v. Farah Mfg. Co.* (1973) 414 U.S. 86, 88, 94 S.Ct. 334, 336, 38 L.Ed.2d 287, 291.) "The term 'national origin' on its face refers to the country where a person was born, or more broadly, the country from which his or her ancestors came." (*Ibid.*)"Congress did not intend the term 'national origin' to embrace citizenship requirements." (*Id.* at p. 89, 94 S.Ct. 334.) "Certainly it would be unlawful for an employer to discriminate against aliens because of race, color, religion, sex, or national origin-for example, by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry. Aliens are protected from illegal discrimination ***1164** under the Act, but nothing in the Act makes it illegal to discriminate on the basis of citizenship or alienage." (*Id.* at p. 95, 94 S.Ct. 334.)

Plaintiffs cite federal cases allowing American citizens to pursue title VII claims alleging they were terminated from employment solely because they were born in the United States. However, plaintiffs fail to discuss these cases. None of these cases said "national origin" included alienage/citizenship, and none helps plaintiffs. Thus, the parties in *Chaiffetz v. Robertson Research Holding, Ltd.* (5th Cir.1986) 798 F.2d 731-an American employee of a Texas subsidiary of a British parent corporation-agreed that "national origin" in title VII includes American citizens. (*Id.* at p. 732-733.) The appellate court held the district court erroneously found a legitimate, nondiscriminatory reason for the dismissal. (*Ibid.*) The appellate court reversed on that ground but added that the district court did not need to consider on remand the plaintiff's equal protection claim under title 42 U.S.C. section 1981 because, although that statute covers alienage, in America discrimination against Americans can never be discrimination ***550** based on a alienage. (*Id.* at p. 735.) Plaintiffs do not discuss this latter point. *Bilka v. Pepe's Inc.* (N.D.Ill.1985) 601 F.Supp. 1254, held an employee could pursue a claim of national origin discrimination, where the American employee alleged he was fired for teaching the Mexican workers English and talking about unions, though the court expressed no view as to whether being fired for having "American ideas" was the same as being fired for being born American. (*Id.* at p. 1258, fn. 7.)*Thomas v. Rohner-Gehrig & Co.* (N.D.Ill.1984) 582 F.Supp. 669, held a complaint alleging that the plaintiffs were discharged by their employer (a Swiss-owned company incorporated in New York) solely because they were born in the United States, sufficiently stated a title VII cause of action based on national origin discrimination. (*Id.* at pp. 674-675.) Thus, none of these cases helps plaintiffs here.

We conclude plaintiffs fail to show a viable claim for violation of California Constitution, article I, section 31.

XI. *Injunctive and Declaratory Relief*

Plaintiffs summarily argue they adequately pleaded claims for injunctive and declaratory relief. Given our foregoing conclusions, we agree.

In summary, the demurrer was improperly sustained as to the preemption and privileges and immunities claims, and leave to amend should be granted as to the equal protection claim.

***1165** DISPOSITION

The judgment is reversed. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

We concur: RAYE and HULL, JJ.

Cal.App. 3 Dist.,2008.
Martinez v. Regents of University of California
166 Cal.App.4th 1121, 83 Cal.Rptr.3d 518, 236 Ed. Law Rep. 922, 08 Cal. Daily Op. Serv. 12,151, 2008 Daily Journal D.A.R. 14,438

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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; DAVID PAUL BRADFORD, Real Party in Interest.
No. B051229.

Court of Appeal, Second District, Division 2, California.
Nov. 28, 1990.

SUMMARY

An employee of a campus of the University of California brought an action against the university after he was asked to resign when he proved unwilling to comply with a superior court ruling in a previous action enjoining the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes. The employee filed a motion requesting a summary ruling that Ed. Code, § 68062, subd. (h) (alien can be resident student for tuition purposes unless precluded by Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) from establishing domicile in the United States), precludes undocumented alien students from qualifying as residents of California for tuition purposes, and that the subdivision, as so interpreted, is constitutional. The trial court ruled in favor of the employee, and the university petitioned for writ relief. (Superior Court of Los Angeles County, No. C 607748, David P. Yaffe, Judge.)

The Court of Appeal denied the petition. It held that the trial court did not abuse its discretion in denying the university's motion to transfer the case to the county in which the superior court injunction was granted. It also held that Ed. Code, § 68062, subd. (h), precludes undocumented alien students from qualifying as residents of California for tuition purposes, and that the subdivision, as so construed, does not deprive such aliens of equal protection of the laws. (Opinion by Klein (B.), J., [FN†] with Gates, Acting P. J., and Fukuto, J., concurring.)

FN† Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 28--Constitutionality of Legislation--Effect of Finding of Unconstitutionality--Finding by Trial Court.
A trial court declaration that a state statute is unconstitutional does not bind state agencies or officials, since, under Cal. Const., art. III, § 3.5, a state agency is forbidden to refuse to enforce a statute thought to be unconstitutional unless an appellate court has so determined.
[See 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 57.]
(2) Courts § 25--Exclusive and Concurrent Jurisdiction--Priority and Retention of Jurisdiction--Denial of Motion to Transfer.
In an action against the University of California by a university employee who was asked to resign after he proved unwilling to comply with the ruling of a superior court, in an earlier action, permanently enjoining the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes, the trial court did not err in declining the university's request to transfer the action to the county of the previous action. One court of the state may not interfere with another court's exercise of its own jurisdiction, and where several courts have concurrent jurisdiction over a certain type of proceeding, the first one to assume and exercise such jurisdiction in a particular case acquires an exclusive jurisdiction. However, under the circumstances, there was no absolute bar to the trial court's jurisdiction and no abuse of discretion in its denial of the motion to transfer: the employee was not a party to the prior action; he was terminated in the county where he brought his action and the witnesses were located there; the university was content to submit the case to the trial court twice for adjudication on the merits; and the action was already several years old when the university moved to transfer it. Further, the employee could participate in the prior action only by the bizarre procedure of requesting leave to intervene in order to

petition to vacate the judgment.

(3) Aliens' Rights § 8--Classification of Undocumented Alien as Resident for University Tuition Purposes.
Ed. Code, § 68062, subd. (h) (alien can be resident student for tuition purposes unless precluded by Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) from establishing domicile in the United States), precludes undocumented alien students from qualifying as residents of California for tuition purposes, even though the federal immigration statute omits to mention undocumented persons in its classification scheme for immigrant and nonimmigrant aliens, and thus undocumented aliens do not fall into any class of nonimmigrant aliens required by the federal statute to maintain a residence abroad. Congress reserved no classification for such aliens, since in entering the country without applying for admission they have broken the law and are subject to arrest and deportation. Ed. Code, § 68062, subd. (h), was intended to permit only legally admitted alien students to qualify as residents for tuition purposes.
[See **Cal.Jur.3d,** Universities and Colleges, §§ 125, 126.]
(4) Aliens' Rights § 8--Classification of Undocumented Alien as Resident for University Tuition Purposes--Constitutionality of Statutory Prohibition.
In an action against the University of California by a university employee who was asked to resign after he proved unwilling to comply with the ruling of a superior court, in an earlier action, permanently enjoining the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes, the trial court properly granted the employee's motion for a summary ruling that Ed. Code, § 68062, subd. (h), as construed to preclude undocumented alien students from qualifying as residents of California for tuition purposes, was constitutional. There is no authority forbidding a state, on equal protection grounds, to provide services to its lawful residents that it denies to others. In comparison with the fundamental rights and privileges that are denied undocumented aliens by state and federal laws, the privilege to receive subsidized public university education is considerably less significant. Further, California also denies this subsidy to citizens of neighboring states and to aliens holding student visas; yet the state has substantial and legitimate reasons to favor both these groups over undocumented aliens, rather than the reverse.

[Validity of state laws denying aliens living in United States, rights enjoyed by citizens-Supreme Court cases, note, 47 **L.Ed.2d** 876.]
COUNSEL

James E. Holst, Christine Helwick, Gary Morrison, David M. Birnbaum, Melvin W. Beal, McKenna & Cuneo, Charles Pereyra-Suarez, Barbara J. Hensleigh, Alison E. Daw, McKenna & Fitting and Aaron M. Peck for Petitioners. *975

Robert Rubin, Peter Roos and Susan E. Brown as Amici Curiae on behalf of Petitioners.

No appearance for Respondent.

Knickerbocker & Reed and Richard L. Knickerbocker for Real Party in Interest.

KLEIN (B.), J. [FN*]

FN* Assigned by the Chairperson of the Judicial Council.

By law, California's public colleges and universities charge lower tuition for California residents than for nonresidents. (See Ed. Code, §§ 68050-68051.) At one time, students who were not United States citizens were classified by statute as nonresidents unless they were "lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States." (Former Ed. Code, §§ 68076-68077, repealed 1983.)

In 1982, however, in a suit by alien University of Maryland students whose parents were admitted to this country as employees of official international organizations, the Supreme Court of the United States ruled that when federal immigration law authorizes a particular classification of nonimmigrant aliens to establish domicile in the United States, a state university is precluded, under the supremacy clause, from refusing to regard them as residents. (*Toll v. Moreno* (1982) 458 U.S. 1 [73 L.Ed.2d 563, 102 S.Ct. 2977].)

Accordingly, in 1983 our Legislature amended the Education Code to eliminate the requirement that alien students seeking the benefits of resident tuition must show they were lawfully admitted for perma-

nent residence. (Stats. 1983, ch. 680, § 1, p. 2636.) A new rule was substituted: an alien student may be classified as a resident for tuition purposes "unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States." (Ed. Code, § 68062, subd. (h).)

The Chancellor of the California State University asked the Attorney General whether, under this new statute, "undocumented aliens"-i.e., noncitizens who lack valid visas, having entered or remained in the United States in violation of federal immigration law-are precluded from *976 qualifying as California residents for tuition purposes. In June 1984 the Attorney General published his formal opinion that undocumented aliens are, under the statute, considered nonresidents. (67 Ops.Cal.Atty.Gen. 241 (1984).)

Two months later several undocumented alien students filed an action in the Superior Court of Alameda County seeking to establish that Education Code section 68062, subdivision (h), as interpreted by the Attorney General, violated article I, section 7 of the California Constitution, which guarantees every person equal protection of the laws. In June 1985, after trial, the court ruled in the students' favor and permanently enjoined the University of California and the California State University and College System from treating all undocumented alien students as nonresidents for tuition purposes. [FN1]

FN1 The residency statutes, including section 68062, are applicable to the University of California only to the extent its Regents adopt them. (See Ed. Code, § 68134.) On September 21, 1984, the Regents adopted section 68062, subdivision (h), with the immaterial exception of the redundant phrase, "including an unmarried minor alien."

(1) A trial court declaration that a state statute is unconstitutional does not bind state agencies or officials. To the contrary, a state agency is forbidden to refuse to enforce a statute thought to be unconstitutional unless an appellate court has so determined. (Cal. Const., art. III, § 3.5.)Nonetheless, the university defendants elected to comply with the Alameda County injunction without testing its validity by taking an appeal.

Subsequently, the action which is the subject of the present petition was commenced, in the Superior Court of Los Angeles County, by David Paul Bradford. Bradford, an employee of the University of California at Los Angeles assigned to determine the residency status of students, was invited to resign after he evinced unwillingness to comply with the ruling of the Alameda County court. In his lawsuit, Bradford asked that the University of California be required to comply with Education Code section 68062, subdivision (h), as interpreted by the Attorney General.

The university moved for summary judgment or for summary adjudication of the dispositive issues. The trial court denied these motions on January 10, 1990. The university renewed its motions, again asking the trial court to rule summarily that Education Code section 68062 (hereafter section 68062) does not require the university to consider alien students' immigration status in determining whether they are residents. Bradford filed his own motion requesting a summary ruling that section 68062 was correctly interpreted by the Attorney General and is constitutionally valid. *977

On May 30, 1990, the trial court ruled against the university and in favor of Bradford.

The university immediately altered its tactics and filed a motion to dismiss the action or, in the alternative, to transfer it to the Superior Court of Alameda County for consolidation with the earlier litigation, in which final judgment had been entered five years earlier.

The trial court denied this motion on June 22, 1990. In the course of argument on the motion, the court summarized its view as follows: "You have this action pending in this court. You litigate it through to a decision against you, and then, at that point, you claim that the court should yield its jurisdiction because there's another action that is still pending, in essence, up in Alameda County .... It doesn't seem to me that there is any sound rule of judicial policy that would permit a litigant to do that."

The university then filed the present petition for a writ of mandate or prohibition to overturn the trial court's May 30 or June 22 rulings, or both. At the Supreme Court's direction, we issued an alternative writ.

1. The trial court did not abuse its discretion in declining the university's request to transfer the action to Alameda County.

(2) In urging that the trial court is powerless to entertain this action because the Alameda County action dealt with the same subject matter, the university relies on the well-established principle that one court of the state may not interfere with another court's exercise of its own jurisdiction. (E.g., *Anthony v. Dunlap* (1857) 8 Cal. 26 [District Court of the Fifth Judicial District has no power to enjoin enforcement of a judgment entered in the Sixth Judicial District].) The university further invokes the rule of priority of jurisdiction: where several courts have concurrent jurisdiction over a certain type of proceeding, the first one to assume and exercise such jurisdiction in a particular case acquires an exclusive jurisdiction. (E.g., *Browne v. Superior Court* (1940) 16 Cal.2d 593 [107 P.2d 1, 131 A.L.R. 276] [guardian administering the affairs of a conservatee under instructions of the Superior Court of Santa Barbara County should not be subjected to instructions on the same subject by the Superior Court of the City and County of San Francisco].)

Whether an action would work a true interference with another court's jurisdiction, and whether one court should yield priority of jurisdiction to another, are, of course, questions which can be determined only from an examination of the particular case. Here, myriad reasons supported the trial *978 court in its decision not to dismiss the action or transfer it to the Superior Court of Alameda County. Bradford was not a party to the Alameda County action; Bradford and his counsel are located in Los Angeles; Bradford's employment was terminated in Los Angeles, and the witnesses are there; the university was content to submit the case to the Los Angeles court twice for adjudication on the merits; the university filed its motion to dismiss or transfer only after the Los Angeles court twice rejected its position on the merits and sustained Bradford's position (see *California Fed. Sav. & Loan Assn. v. Superior Court* (1987) 189 Cal.App.3d 267 [234 Cal.Rptr. 413]); the action was already several years old when the university moved to dismiss or transfer it; the Los Angeles action cannot affect the Alameda County injunction against the California State University, which is not a party to Bradford's action; the theoretical danger that either trial court might hold the university in contempt for obeying the other trial court's injunction, and that the appellate courts would permit such an absurdity, is realistically nonexistent; the Alameda action came to final judgment five years ago (see *Browne v. Superior Court, supra,* 16 Cal.2d at p. 597); Bradford could participate in the Alameda case only by the bizarre procedure of requesting leave to intervene in order to petition to vacate the judgment; the university did not appeal the Alameda County injunction; the Alameda court's decision is of little legal significance because only an appellate court can make a binding ruling; the issue raised should be settled by an appellate court; and it makes no discernible difference whether it is decided in the First or the Second Appellate District. In addition, at oral argument on this writ petition, the university expressed its wish that this court decide the merits of the tuition issue.

Under these circumstances, we find no absolute bar to the trial court's jurisdiction, and no abuse of discretion in its denial of the university's motion to dismiss or transfer the case.

2. Section 68062 precludes undocumented alien students from being classified as residents for tuition purposes.

Section 68062, subdivision (h), provides that an alien can be a resident student for tuition purposes "unless precluded by the Immigration and Nationality Act ... from establishing domicile in the United States."

(3) The university advances a clever formal proof that this statute does not classify undocumented aliens as nonresidents. Federal immigration law classifies all noncitizens into two groups: immigrant aliens and nonimmigrant aliens. (8 U.S.C. § 1101(a)(3), (15).) All aliens are immigrants except those who fall into one of 14 classes of nonimmigrants. (*Id.,**979 § 1101(a)(15)(A)-(J).) Examples of the 14 classes of nonimmigrant aliens are diplomats, tourists, business travelers, students, foreign press correspondents, passengers in transit, and ships' crews. In certain of these classifications (e.g., tourists, business travelers, and students) the nonimmigrant is required to maintain a residence in a foreign country with no intention of abandoning it. (*Id.,* § 1101(a)(15)(B), (F).) Other classes of nonimmigrants are not required to maintain a residence abroad. For

example, foreign residence is not required for officers and employees of recognized international organizations or members of their immediate families, as in *Toll v. Moreno, supra*; there the students' parents were employed by the Inter-American Development Bank and the International Bank for Reconstruction and Development. (See 8 U.S.C. § 1101(a)(15)(G)(iv).) Aliens who maintain a foreign residence they do not intend to abandon cannot also be residents of California, for a person can have only one residence. (Ed. Code, § 68062, subd. (a); Gov. Code, § 244, subd. (b).)

The immigration statute omits to mention undocumented persons in this classification scheme. Hence, the university contends, undocumented aliens do not fall into any class of nonimmigrant aliens required by the federal statute to maintain a residence abroad. Not being required to maintain a residence abroad, the argument continues, undocumented aliens are free to establish their residence in California. Therefore undocumented aliens are not "precluded by the Immigration and Nationality Act from establishing domicile in the United States." *Quod erat demonstrandum.*

This reasoning is Daedalian but unpersuasive. Federal law forbids aliens to enter the United States without applying for admission. (8 U.S.C. §§ 1101(a)(4), 1181(a), 1201.)Those who nonetheless succeed in doing so, or in overstaying their visas, are subject to arrest and deportation. (*Id.*, §§ 1251, 1252, 1357.) Similar sanctions await those who procure admission by fraud. (*Id.*, §§ 1182(a)(19), 1251.) It is unremarkable that Congress, in organizing various classifications of lawfully admitted nonimmigrant aliens, reserved no classification for aliens who have entered or remained in this country unlawfully. We do not interpret the federal immigration statutes, therefore, as authorizing, or not precluding, the establishment of domicile here by those whose very presence is unlawful. It would be senseless so to interpret section 68062, subdivision (h).

We find distinguishable a 1980 decision holding an undocumented alien qualified to receive benefits under a statute that provides compensation for crime victims who are "residents of California." (*Cabral v. State Bd. of Control* (1980) 112 Cal.App.3d 1012 [169 Cal.Rptr. 604].) That case, unlike *980 the present one, arose under a statute which contains no definition of the term "resident."

The legislative history of subdivision (h) firmly supports our interpretation of section 68062. The pertinent legislative documents are surveyed in the Attorney General's published opinion, which is attached as an appendix to this opinion. These committee summaries, staff analyses, and official digests demonstrate that subdivision (h) was intended to permit only legally admitted alien students to qualify as residents for tuition purposes.

Accordingly, we hold that section 68062, subdivision (h), precludes undocumented alien students from qualifying as residents of California for tuition purposes.

3. So construed, subdivision (h) is constitutional.

(4) The university contends the statute, as construed by the Attorney General and by this court-deprives undocumented alien students of the equal protection of the laws. The university and amici curiae argue the law discriminates against the poor, senselessly deprives good students of a postsecondary education, and furthers no substantial state interest.

It would serve no purpose to recite in detail the familiar principles governing an equal protection analysis. (See, e.g., *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 798-799 [187 Cal.Rptr. 398, 654 P.2d 168]; *Curtis v. Board of Supervisors* (1972) 7 Cal.3d 942, 951-952 [104 Cal.Rptr. 297, 501 P.2d 537]; *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578-579 [79 Cal.Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194]; see *Plyler v. Doe* (1982) 457 U.S. 202, 216-218 [72 L.Ed.2d 786, 798-800, 102 S.Ct. 2382].) We are unaware of any authority forbidding a state, on equal protection grounds, to provide services to its lawful residents that it denies to others. California law withholds from undocumented aliens fundamental political, economic, and social privileges. They cannot vote, cannot work, and are ineligible for public assistance, free medical care, and unemployment compensation. (See Cal. Const., art. II, § 2; *De Canas v. Bica* (1976) 424 U.S. 351 [47 L.Ed.2d 43, 96 S.Ct. 933]; Welf. & Inst. Code, §§ 11104, 14007.5; Unemp. Ins. Code, § 1264; Cal. Code Regs., tit. 22, §§ 50301, 50302

Federal law, too, discriminates against undocumented

aliens in the most basic way: it forbids their entry into the country and authorizes their arrest and deportation. Even undocumented aliens given preferred status under federal law-those authorized under the Immigration Reform and Control *981 Act of 1986 to become lawful temporary residents and thereafter permanent residents-are disqualified for five years from most federal programs of financial assistance to the needy. (8 U.S.C.§ 1255a(h).) If federal financial assistance may be withheld from newly legalized aliens who, under the 1986 amnesty law, " 'are to be welcomed as full and productive members of our nation' " (*California Rural Legal Assistance, Inc. v. Legal Services Corporation* (9th Cir. 1990) 917 F.2d 1171, 1178), surely the state is not constitutionally required to subsidize the university education of other aliens who have never legalized their status.

In comparison with these fundamental rights and privileges denied undocumented aliens by state and federal laws, the privilege withheld here-subsidized public university education-is considerably less significant. Further, California also denies this subsidy to citizens of neighboring states and to aliens holding student visas; yet the state has substantial and legitimate reason to favor both these groups over undocumented aliens, rather than the reverse.

The state's legitimate interests in denying resident tuition to undocumented aliens are manifest and important. We will name just a few: the state's interests in not subsidizing violations of law; in preferring to educate its own lawful residents; in avoiding enhancing the employment prospects of those to whom employment is forbidden by law; in conserving its fiscal resources for the benefit of its lawful residents; in avoiding accusations that it unlawfully harbors illegal aliens in its classrooms and dormitories; in not subsidizing the university education of those who may be deported; in avoiding discrimination against citizens of sister states and aliens lawfully present; in maintaining respect for government by not subsidizing those who break the law; and in not subsidizing the university education of students whose parents, because of the risk of deportation if detected, are less likely to pay taxes.

Plyler v. Doe, supra, 457 U.S. 202, relied on by the university, is distinguishable. That decision invalidated a Texas statute that authorized local school districts to exclude undocumented aliens from public elementary and secondary schools. The court found undocumented aliens are not, under federal equal protection analysis, a suspect class, nor is education a fundamental right. (457 U.S. at p. 223 [72 L.Ed.2d at p. 803].) It concluded, however, that Texas had failed to show that denial of free public education to young children furthered any substantial state interest. (*Id.,* at p. 230 [72 L.Ed.2d at pp. 807-808].) The heart of the opinion is found in the following passage: "[The statute] imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy *982 will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." (*Id.,* at p. 223 [72 L.Ed.2d at p. 803].) There is, of course, a significant difference between an elementary education and a university education.

In reaching our decision, we interpret California's statutes and Constitution. We are not empowered to pass on the wisdom of legislation. Accordingly, we do not evaluate the contention of amici curiae that charging undocumented aliens nonresident tuition is shortsighted and cruel. Nor do we adjudge Bradford's response that a university education is also beyond the financial means of many hardworking, deserving citizens.

The alternative writ is discharged, and the petition for writ of mandate or prohibition is denied.

Gates, Acting P. J., and Fukuto J.; concurred.
Petitioners' application for review by the Supreme Court was denied March 28, 1991. Mosk, J., and Broussard, J., were of the opinion that the application should be granted. *983

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Opinion No. 84-101--June 1, 1984

SUBJECT:EDUCATION CODE SECTION 68062(h) AND UNDOCUMENTED ALIENS--Educ. C § 68062(h) does not permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education.

Requested by: CHANCELLOR, CALIFORNIA STATE UNIVERSITY

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Clayton P. Roche, Deputy

The Honorable Ann Reynolds, Chancellor of the California State University, has requested an opinion on the following question:

Does section 68062, subdivision (h) of the Education Code permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education?

CONCLUSION

The legislative history of Education Code section 68062, subdivision (h), demonstrates that the Legislature did not intend to, and the subdivision does not, permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education.

ANALYSIS

Section 68000 *et. seq.* of the Education Code [FN1] set forth "uniform student residency requirements." The Legislature enacted these provisions with the intent that California's "public institutions of higher education shall apply uniform rules, as set *984 242 ATTORNEY GENERAL'S OPINIONS [VOLUME 67 forth... [therein] in determining whether a student shall be classified as a resident or nonresident." (§ 68000.) [FN2]The significance of these rules is that a student who is classified as a "nonresident" must pay nonresident tuition in addition to other required fees. (§ 68050.)To be classified as a "resident," a student must have been a resident "in the state for more than one year immediately preceding the residency determination date" established for the institution. (§§ 68017, 68023.) The rules set forth for the determination of residence are generally those set forth in sections 243-245 of the Government Code for the determination of legal residence or domicile. (See §§ 68060-68062.) Some exceptions to residency requirements are also set forth. (See §§ 68070- 68082.)

FN1 All section references are to the Education Code unless otherwise indicated.

FN2 These rules are applicable to the University of California only to the extent adopted by the Regents. (§ 68134.)

The question presented herein is whether section 68062, subdivision (h), permits undocumented aliens to establish residence for tuition purposes so they may avoid the payment of the nonresident tuition. That subdivision provides:

"(h) An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, *et. seq.*) from establishing domicile in the United States." [FN3]

FN3 Subdivision (i) then states:

"The residence of an unmarried minor shall be derived from his or her parents pursuant to the provisions of subdivisions (f) and (g)."

For our purposes herein we understand the term "undocumented alien" to mean an alien who cannot prove that he or she is in the United States legally. (See, e.g., Plyler v. Doe (1981) 457 U.S. 202, 206, fn. 2.) Accordingly, "undocumented alien" usually refers to illegal aliens.

Subdivisions (h) and (i) were added to section 68062 by chapter 680, Statutes of 1983. That chapter also repealed section 68076, which had been the provision of law for determining the ability of alien students to establish residency status for tuition purposes. Section 68076 provided:

"A student who is an adult alien shall be entitled to resident classification *if he has been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States;* provided, that he has had residence in the state for more than one year after such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution." (Emphasis added.)

It is thus seen that prior to January 1, 1984, the effective date of section 68062, subdivision (h), an adult alien [FN4] could establish residence only if he or she was "lawfully admitted to the United States" and such lawful admission was "for permanent residence" in accordance with all laws of the United States, viz, the Immigration and Nationality Act, 8 U.S.C.A. § 1101, *et seq.* Consequently, under prior law, there was clearly no provision for an undocumented alien or an illegal alien to establish residence *985 JUNE 1984] ATTORNEY GENERAL'S OPINIONS 243 for tuition purposes. The wording of the prior law had its roots in the Immigration and Nationality Act. As succinctly set forth in a relatively recent law review note:

"Under the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503 (1976), an 'alien' is defined as 'any person not a citizen or national of the United States.' *Id.* § 1101(a)(3). Two classes of aliens exist under the Act: immigrant or resident aliens, and nonimmigrant aliens. Immigrant aliens are those admitted to permanent residence. *Id.* § 1151(a). Nonimmigrant aliens are generally admitted only for temporary periods and include students, tourists, diplomats, and temporary workers. *Id.* § 1101(a)(15). Aliens may also be admitted under the parole power of the Attorney General. *Id.* § 1182(d)(5)." (Note: Equal Treatment of Aliens, 31 Stan. L. Rev. 1069, fn. 2.)

FN4 The statute appears to have been silent with respect to unmarried minor aliens.

Consequently, the thrust of section 68076 was that immigrant aliens could establish residence but nonimmigrant aliens, *although lawfully admitted,* could not. The latter category of aliens were here for temporary or presumptively not permanent residence. And, as already noted, undocumented aliens clearly were excluded under the statutory language.

With this background we now undertake the task of construing the 1983 legislation. Two basic approaches have been suggested. In support of the conclusion that undocumented or illegal aliens may establish residence under subdivision (h) of section 68062, it is urged that the subdivision is clear on its face. It is pointed out that the law no longer provides that an alien must have been "lawfully admitted"; that it merely uses the unmodified noun "alien" in conjunction with the proviso that the alien must not be "precluded by the Immigration and Nationality Act... from establishing domicile in the United States." It is further pointed out that nothing in the Immigration and Nationality Act expressly precludes an illegal alien from establishing a domicile. (See Cabral v. State Bd. of Control (1980) 112 Cal. App. 3d 1012, 1016-1017, fn. 5.) Finally, it is pointed out that under the case law, aliens, both legal (if not in nonimmigrant categories specifically requiring an intent to retain a foreign domicile) and illegal or undocumented; may establish a domicile of choice. (See Toll v. Moreno (1982) 458 U.S. 1, nonimmigrant alien holding G-4 VISA may establish domicile in United States; Plyler v. Doe, *supra,* 457 U.S. 202, 227, fn. 22, "illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within a State"; Cabral v. State Bd. of Control, *supra,* 112 Cal. App. 3d 1012, illegal aliens could establish residence (domicile) for purposes of Victims of Violent Crimes Act; Rzeszotarski v. Rzeszotarski (D.C.App. 1972) 296 A.2d 431, 435, husband's "lack of status" under immigration laws irrelevant to issue of domicile for purposes of obtaining divorce; Seren v. Douglas (Colo.App. 1971) 489 P.2d 601, student could establish intent to be domiciliary of state for tuition purposes as soon as student visa expired.)

In support of the conclusion that subdivision (h) of section 68062 does not permit an illegal or undocumented alien to establish residence for tuition purposes, it is urged that the sole reason for the repeal of section 68076 and the enactment of subdivision (h) of section 68062, was to conform California law to the recent decision of the United States Supreme Court in Toll v. Moreno, *supra,* 458 U.S. 1.*986 244 ATTORNEY GENERAL'S OPINIONS [VOLUME 67

That case held that nonimmigrant aliens (i.e., those not admitted for permanent residence) holding a G-4 visa (officers or employees of certain international organizations and their families) were not precluded by the Immigration and Nationality Act from establishing a domicile in the United States. Accordingly, the Supreme Court held that under the Supremency Clause (U.S. Const., art. VI, cl. 2), the State of Maryland, which predicated in-state status for tuition purposes at the University of Maryland on domicile, could not bar "G-4 [FN5] aliens (and their dependents) from acquiring in- state status." (*Id.,* at p. 17.)

FN5 G-4 visas are issued to nonimmigrant aliens who are officers or employees of certain international organizations and to members of their immediate families. (8 U.S.C. § 1101(a)(15)(G)(iv).)

In reaching its decision with respect to the ability of G-4 visa holders and their dependents to establish domicile in the United States, the Court relied upon its prior decision in the same litigation to that effect, Elkins v. Moreno (1978) 435 U.S. 647.In that case the Court noted that, with respect to some nonimmigrant categories, Congress had specifically provided that such aliens were admitted on the condition that they did not intend to abandon their foreign residence, e.g., visitors to the United States, students, aliens in "immediate and continuous transit," vessel crewman "who intends to land temporarily," and temporary workers having a residence in a foreign country; that, accordingly, such nonimmigrants could not establish a domicile in the United States, absent an adjustment of status. From such specific provisions, the court implied an ability of other nonimmigrant aliens, such as G-4 VISA holders, to be capable of becoming domiciliaries of Maryland. (*Id.*, at pp. 665-668.)Thus in Toll v. Moreno, *supra*, the Court stated:

"The Immigration and Nationality Act of 1952, 66 Stat. 163, as amended, 8 U.S.C. § 1101*et. seq.* (1976 ed. and Supp. IV), represents 'a comprehensive and complete code covering all aspect of admission of aliens to this country, whether for business or pleasure, or as immigrants seeking to become permanent residents.' Elkins v. Moreno, 435 U.S., at 664.*The Act recognizes two basic classes of aliens, immigrant and nonimmigrant.* 19With respect to the nonimmigrant class, the Act establishes various categories, the G-4 category among them. For many of these nonimmigrant categories, Congress has precluded the covered alien from establishing domicile in the United States. *Id.*, at 665.20But significantly, Congress has allowed G-4 aliens -- employees of various international organizations, and their immediate families -- to enter the country on terms permitting the establishment of domicile in the United States. *Id.*, at 666.In light of Congress' explicit decision not to bar G-4 aliens from acquiring domicile, the State's decision to deny 'in-state' status to G-4 aliens, solely on account of the G-4 alien's federal immigration status, surely amounts to an ancillary 'burden not contemplated by Congress' in admitting these aliens to the United States. ..." (*Id.*, at pp. 13-14, emphasis added. Fns. omitted.)

The argument in support of the second position, that is, that section 68062, subdivision (h), does *not* permit undocumented aliens to establish residence for tuition *987 JUNE 1984] ATTORNEY GENERAL'S OPINIONS 245 purposes, points out the underscored language above as being the source of the language contained in subdivision (h) that an alien may establish residence "unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101*et. seq.*) from establishing domicile in the United States." The argument then urges that such fact fortifies the basic contention that subdivision (h) was enacted merely to conform California law with the Supreme Court's decision in Toll v. Moreno. Accepting this as true, the argument proceeds to point out that the terminology of both Toll v. Moreno and subdivision (h) refers to the establishment of domicile *in the United States*, not domicile in the state. Accordingly, as we understand the argument, subdivision (h) requires a determination of domicile under federal law, viz, the Immigration and Nationality Act. The argument urges that that act contemplates the establishment of "lawful domicile" when domicile is a relevant consideration under the act. (See, e.g., Lok v. I.N.S. (2d Cir. 1982) 681 F.2d 107, 109-110.)Therefore, the argument concludes, an undocumented or illegal alien is precluded under the federal act from establishing a domicile *in the United States.* [FN6]

FN6 An alternate conclusion to be drawn from the wording of subdivision (h) which occurs to us is that the Immigration and Nationality Act, as construed by the Supreme Court, insofar as it either precludes or permits the establishment of a domicile, does so *only with respect to nonimmigrant, or legal, documented aliens.*Accordingly, the language of section 68062, subdivision (h), was intended to refer solely to documented aliens. In short, the federal act does not purport to deal with the question of the establishment of a domicile on the part of undocumented aliens. See Cabral v. State Bd. of Control, *supra*, 112 Cal. App. 3d 1012, 1017, at fn. 5. This approach is more consistent with the argument that the 1983 legislation was merely intended to conform Cali-

fornia law with Toll v. Moreno.

Without any further evidence of legislative intent, both arguments for and against construing section 68062, subdivision (h), as permitting undocumented aliens to qualify as residents for tuition purposes in California colleges and universities are fairly evenly balanced. The literal wording of the statute arguably permits the construction that they may qualify. However, taking into consideration (1) the prior laws in California, and (2) the timing of the 1983 amendments with the decision in Toll v. Moreno, *supra*, 458 U.S. 1, such arguably evinces an intent on the part of the Legislature to deal only with the problem of nonimmigrant, and hence legal, aliens such as G-4 visa holders and their dependents.

In construing a statute, the primary consideration is to attempt to ascertain the intent of the Legislature in order to effectuate the purpose of the law. Although normally a statute which is clear and unambiguous is to be construed according to its plain meaning, this is not the case if to do so will lead to absurd results or will be contrary to the manifest intent of the Legislature. Accordingly, we need not concern ourselves herein with whether section 68062, subdivision (h), is or is not ambiguous. We may construe the enactment in accordance with the discernible intent of the Legislature even if the statute is unambiguous. [FN7] In so doing, we can consider the *988 246 ATTORNEY GENERAL'S OPINIONS [VOLUME 67 historical circumstance of the statute and its legislative history, including legislative committees' analyses of the legislation as it went through the enactment process. [FN8]

FN7

As stated by our Supreme Court in County of Sacramento v. Hickman (1967) 66 Cal. 2d 841, 849, fn. 6:

"6 We disagree, however, with respondent's sweeping assertion that in all cases 'ambiguity is a condition precedent to interpretation.' Although this proposition is generally true, 'The literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole.' (Silver v. Brown (1966) 63 Cal. 2d 841, 845 [48 Cal.Rptr. 609, 409 P.2d 689], and cases cited.)"

FN8 With respect to the foregoing general and specific rules of construction, see, e.g., Sand v. Superior Court (1983) 34 Cal. 3d 567, 570-571;People v. Black (1982) 32 Cal. 3d 1, 5;California Teachers Assn. v. San Diego Community College Dist. (1981) 28 Cal. 3d 692;Southern Cal. Gas Co. v. Public Utilities Com. (1979) 24 Cal. 3d 653, 658-659 (statements in legislative committee analyses); Southland Mechanical Constructors Corp. v. Nixen (1981) 119 Cal. App. 3d 417, 427-428 (statements in legislative committee analysis).

We have reviewed available records concerning Assembly Bill 2015 for the 1983 legislative session, which became chapter 680, Statutes of 1983. These include the Staff Analysis of the Senate Committee on Education (7/13/83); the Ways and Means Committee Summary prepared for the June 9, 1983, hearing; the Legislative Analyst's analyses, dated June 6 and August 19, 1983; the Staff Analysis of the Assembly Education Committee; the analysis of the Senate Democratic Caucus, dated 8/23/83; and the Enrolled Bill Report, dated 9/2/83.

A review of all these documents demonstrates unequivocally that the purpose of the bill was to bring California law in conformity with federal law, specifically the United States Supreme Court decision in Toll v. Moreno, *supra*, 458 U.S. 1, as to residence requirements for attendance at public colleges and universities, and also the Court's decision in Nyquist v. Mauclet (1977) 432 U.S. 1 as to student aid. [FN9] The documents are replete with statements to that effect. Thus, with respect to the "historical circumstances" of the enactment of chapter 680, Statutes of 1983, this confirms what has been urged in the arguments presented to us as to Toll v. Moreno.

FN9 Nyquist v. Mauclet, *supra*, 432 U.S. 1, held a New York law to be unconstitutional as a denial of equal protection which required "resident aliens" to have applied for citizenship in order to qualify for state financial assistance for higher education. The aliens involved in the suit were legally within the United States. Accordingly, the

suit did not involve nor rule upon undocumented or illegal aliens.

Chapter 680, Statutes of 1983 also amended section 69535 with respect to eligibility for student aid, requiring that "[a]ll Cal Grant recipients shall be residents of California, as determined... pursuant to the provisions of Part 41 (commencing with Section 68000)." Accordingly, as to aliens, the student aid provision now incorporates by reference section 68062.

More importantly, the foregoing documents and analyses demonstrate an intent on the part of the Legislature to *exclude* from the scope of section 68062*illegal* aliens. Thus, the Staff Analysis of the Assembly Education Committee stated, inter alia:

"DIGEST: This bill provides that the determination of residency for *legally admitted* alien students be the same for purposes of:

"attendance of [sic] a public postsecondary institution. ..." (Emphasis added.)

And, similarly the Ways and Means Committee Summary stated inter alia:

"*This bill* provides that the determination of residency for *legally admitted* alien students and out of state students be the same for purposes of:

"a. attendance at a public postsecondary institution. ..." (Second emphasis added.) ***989** JUNE 1984] ATTORNEY GENERAL'S OPINIONS 247

And finally, the Legislative Analyst's Digests of the bill (AB 2015) stated inter alia both on June 6, 1983 and August 19, 1983: [FN10]

"This bill deletes the requirements that aliens be U.S. citizens or legally admitted as permanent residents in order to be classified as a California resident for purposes of tuition or financial aid. The bill places aliens under the same residency requirements as other out-of-state students, except for alien students who are specifically precluded from establishing U.S. residency under federal immigration law. Alien students who would not be eligible for California residency under this bill include illegal aliens and students on temporary student visas." (Emphasis added.)

FN10 The bill was enacted on August 29, 1983 and sent to enrollment on such date.

Accordingly, the legislative history of section 68062, subdivision (h), demonstrates that it was intended only to implement federal law as declared by the United States Supreme Court in Toll v. Moreno, *supra*, 458 U.S. 1, and was not intended to encompass undocumented or illegal aliens. Thus, insofar as the arguments pro and con with reference to the question considered herein may have been said to have been evenly balanced before an examination of the legislative history of Assembly Bill 2015, 1983 Legislative Session, this history clearly tips the scales in favor of the conclusion that section 68062, subdivision (h), does not permit undocumented or illegal aliens to acquire residency for tuition purposes. [FN11]

FN11 It is possible that this interpretation of the statute raises constitutional issues of equal protection. (See Plyler v. Doe, *supra*, 457 U.S. 202.)We have not been asked and have not considered such questions.

We so conclude. ***990**

Cal.App.2.Dist.
Regents of University of California v. Superior Court
225 Cal.App.3d 972, 276 Cal.Rptr. 197, 64 Ed. Law Rep. 427

END OF DOCUMENT

California Community Colleges

REVISED 2004-2005 Board Of Governors Fee Waiver Application

This is an application to have your enrollment fees waived. This FEE WAIVER is for California residents only. If you need money to help with books, supplies, food, rent, transportation and other costs, please complete a FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA) right away. Contact the Financial Aid Office for more information. **The FAFSA is available at www.fafsa.ed.gov or at the Financial Aid Office.**

Name: _____ SSN# _____
Last First Middle Initial

Email (If available): _____ Telephone Number: (_____)_____

Home Address: _____ Date of Birth: _____/_____/_____
Street City Zip Code

Has the Admissions or the Registrar's Office determined that you are a California resident? ❑ Yes ❑ No

Note: Students who are exempted from paying nonresident tuition under Education Code Section 68130.5 (AB 540) are not California residents. If you are not a California resident you are not eligible for this fee waiver. Do not complete this application.

IMPLEMENTATION OF THE CALIFORNIA DOMESTIC PARTNER RIGHTS AND RESPONSIBILITIES ACT

Recent legislation (Assembly Bill 205) extends new rights, benefits, responsibilities and obligations to individuals in domestic partnerships registered with the California Secretary of State under Section 297 of the Family Code. If you are in a Registered Domestic Partnership (RDP), you will be treated as an Independent married student to determine eligibility for this Fee Waiver and will need to provide income and household information for your domestic partner. If you are a dependent student and your parent is in a Registered Domestic Partnership, you will be treated the same as a student with married parents and income and household information will be required for the parent's domestic partner.

****These new provisions apply to state funded student financial aid ONLY, and not to federal student financial aid.**

Are you or your parent in a Registered Domestic Partnership with the California Secretary of State under Section 297 of the Family Code? *(Answer "Yes" if you or your parent are separated from a Registered Domestic Partner but have NOT FILED a Notice of Termination of Domestic Partnership with the California Secretary of State's Office.)* ❑ Yes ❑ No

If you answered "Yes" to the question above treat the Registered Domestic Partner as a spouse. You are required to include your domestic partner's income and household information or your parent's domestic partner's income and household information in Questions 3, 6, 7, 8, 9, 10, 11, 12.

Student Marital Status: ❑ Single ❑ Married ❑ Divorced ❑ Separated ❑ Widowed ❑ Registered Domestic Partnership

DEPENDENCY STATUS

1. Were you born before January 1, 1981? ❑ Yes ❑ No
2. As of today, are you married or in a Registered Domestic Partnership? (Answer "Yes" if you are separated but not divorced or have not filed a termination notice to dissolve partnership.) ❑ Yes ❑ No
3. Do you have children who receive more than half of their support from you, or other dependents who live with you (other than your children and spouse) who receive more than half of their support from you, now and through June 30, 2005? ❑ Yes ❑ No
4. Are you an orphan or a ward of the court, or were you a ward of the court until your 18th birthday? ❑ Yes ❑ No
5. Are you a veteran of the U.S. Armed Forces? ❑ Yes ❑ No

- **If you answered "Yes" to any of the questions 1 - 5, you are considered an INDEPENDENT student and must provide income and household information about yourself (and your spouse or RDP if applicable). Skip to Question #8.**
- **If you answered "No" to all questions 1 - 5, complete the following questions:**

6. If your parent(s) or his/her RDP filed or will file a 2003 U.S. Income Tax Return, were you, or will you be claimed on their tax return as an exemption by either or both of your parents? ❑ Won't File ❑ Yes ❑ No
7. Do you live with one or both of your parent(s) and/or his/her RDP? ❑ Yes ❑ No

- **If you answered "No" to questions 1 - 5 and "Yes" to either question 6 or 7, you must provide income and household information about your PARENT(S)/RDP. Please answer questions for a DEPENDENT student in the sections that follow.**
- **If you answered "No" or "Parent(s) won't file" to question 6, and "No" to question 7, <u>you are a dependent student for all student aid except this fee waiver.</u> You may answer questions as an INDEPENDENT student on the rest of this application, but please try to get your PARENT information and file a FAFSA so you may be considered for other student aid. You cannot get other student aid without your parent(s) information.**

METHOD A

8. Are you (the student ONLY) currently receiving monthly cash assistance from:
   TANF/CalWORKs? ❑ Yes ❑ No
   SSI/SSP (Supplemental Security Income/State Supplemental Program)? ❑ Yes ❑ No
   General Assistance? ❑ Yes ❑ No
9. If you are a dependent student, are your parent(s)/RDP receiving monthly cash assistance from TANF/CalWORKs or SSI/SSP as a primary source of income? ❑ Yes ❑ No

- **If you answered "Yes" to question 8 or 9 you are eligible for a FEE WAIVER. Sign the Certification at the end of this form. You are required to show current proof of benefits. Ask the Financial Aid Office for the FAFSA to be eligible for other financial aid opportunities.**

METHOD B

10. DEPENDENT STUDENT: How many persons are in your parent(s) household? (Include yourself, your parent(s), and anyone who lives with your parent(s) and receives more than 50% of their support from your parents, now and through June 30, 2005.) _____

11. INDEPENDENT STUDENT: How many persons are in your household? (Include yourself, your spouse, and anyone who lives with you and receives more than 50% of their support from you, now and through June 30, 2005.) _____

12. 2003 Income Information

	DEPENDENT STUDENT: PARENT(S)/ RDP INCOME	INDEPENDENT STUDENT: STUDENT (& SPOUSE'S/ RDP) INCOME
a. Adjusted Gross Income (If 2003 U.S. Income Tax Return was filed, enter the amount from Form 1040, line 34; 1040A, line 21; 1040EZ, line 4 or Telefile, line I).	$_____	$_____
b. All other Income (Include ALL money earned in 2003 that is not included in line (a) above. Include TANF benefits, disabilliy, Social Security, child support. Include Earned Income Credit (Form 1040 Line 63, 1040A Line 65 or 1040EZ Line 8) and Additional Child Tax Credit (Form 1040 Line 65 or 1040A Line 42) if applicable.	$_____	$_____
TOTAL Income for 2003 (Sum of a + b)	$_____	$_____

The Financial Aid Office will review your income and let you know if you qualify for a FEE WAIVER under Method B. If you do not qualify using this simple method, you should file a FAFSA.

SPECIAL CLASSIFICATIONS

13. Do you have certification from the California Department of Veterans Affairs or the National Guard Adjutant General that you are eligible for a dependent's fee waiver? Submit certification. ☐ Yes ☐ No

14. Are you eligible as a recipient of the Congressional Medal of Honor or as a child of a recipient, or a dependent of a victim of the September 11, 2001 terrorist attack? Submit documentation from the Department of Veterans Affairs or the CA Victim Compensation and Government Claims Board. ☐ Yes ☐ No

15. Are you eligible as a dependent of a deceased law enforcement/fire suppression personnel killed in the line of duty? Submit documentation from the public agency employer of record and income information. ☐ Yes ☐ No

- If you answered "Yes" to question 13, 14, or 15, you are eligible for a FEE WAIVER. Sign the Certification at the end of this form.

CERTIFICATION FOR ALL APPLICANTS: READ THIS STATEMENT AND SIGN BELOW

I hereby swear or affirm, under penalty of perjury, that all information on this form is true and complete to the best of my knowledge. If asked by an authorized official, I agree to provide proof of this information, which may include a copy of my and my spouse/registered domestic partner and/or my parent's/registered domestic partner's 2003 U.S. Income Tax Return(s). I also realize that any false statement or failure to give proof when asked may be cause for the denial, reduction, withdrawal, and/or repayment of my waiver. I authorize release of information regarding this application between the college, the college district, and the Chancellor's Office of the California Community Colleges.

Applicant's Signature *Date* *Parent Signature (Dependent Students Only)* *Date*

FOR OFFICE USE ONLY

☐ BOGFW-A ☐ TANF/CalWORKs ☐ GA ☐ SSI/SSP	☐ BOGFW-B ☐ BOGFW-C	☐ Special Classification ☐ Vet/National Guard Dep ☐ Medal of Honor/or 9/11 Dependent ☐ Dep of deceased law enforcement/fire personnel	RDP ☐ Student ☐ Parent	☐ Student is not eligible

Notes:

Certified by: Date:

(Revised 2/4/05)

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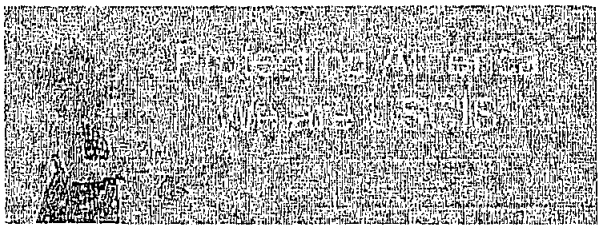

Have you filed with USCIS?

Yes

My case is pending

My case has been approved

My case has been denied

No, I haven't filed

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Case Status Online

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USCIS Announces $1.2 Million Citizenship Grant Program
March 12, 2009 - USCIS announced today that a competitive grant program is being offered through Grants.gov for a $1.2 million grant program to support citizenship preparation programs for legal permanent residents.

EB-5 Immigrant Investor Pilot Program Extended
March 12, 2009 - USCIS announces that the Immigrant Investor Pilot Program has been extended through September 30, 2009 due to yesterday's signing of the "Fiscal 2009 Omnibus Appropriations Bill."

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March 9, 2009 - Acting Deputy Director Michael Aytes writes in the DHS Leadership Journal on the honor of naturalizing American heroes as U.S. Citizens

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C
67 Ops. Cal. Atty. Gen. 241, 1984 WL 162066 (Cal.A.G.)

Office of the Attorney General
State of California

Opinion No. 84-101

June 1, 1984

THE HONORABLE ANN REYNOLDS
CHANCELLOR OF THE CALIFORNIA STATE UNIVERSITY

THE HONORABLE ANN REYNOLDS, CHANCELLOR OF THE CALIFORNIA STATE UNIVERSITY, has requested an opinion on the following question:

Does section 68062, subdivision (h) of the Education Code permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education?

CONCLUSION

The legislative history of Education Code section 68062, subdivision (h), demonstrates that the Legislature did not intend to, and the subdivision does not, permit undocumented aliens to establish residence for tuition purposes in California's public institutions of higher education.

ANALYSIS

Section 68000 et seq. of the Education Code [FN1] set forth "uniform student residency requirements." The Legislature enacted these provisions with the intent that California's "public institutions of higher education shall apply uniform rules, as set forth ... therein in determining whether a student shall be classified as a resident or nonresident." (§ 68000.) [FN2] The significance of these rules is that a student who is classified as a "nonresident" must pay nonresident tuition in addition to other required fees. (§ 68050.) To be classified as a "resident," a student must have been a resident "in the state for more than one year immediately preceding the residency determination date" established for the institution. (§§ 68017, 68023.) The rules set forth for the determination of residence are generally those set forth in sections 243-245 of the Government Code for the determination of legal residence or domicile. (See §§ 68060-68062.) Some exceptions to residency requirements are also set forth. (See §§ 68070-68082.)

The question presented herein is whether section 68062, subdivision (h), permits undocumented aliens to establish residence for tuition purposes so they may avoid the payment of the nonresident tuition. That subdivision provides:

> "(h) An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101, et seq.) from establishing domicile in the United States. [FN3]

For our purposes herein we understand the term "undocumented alien" to mean an alien who cannot prove that he or she is in the United States legally. (See, e.g., Plyler v. Doe (1981) 457 U.S. 202, 206, fn. 2.) Accordingly, "undocumented alien" usually refers to illegal aliens.

Subdivisions (h) and (i) were added to section 68062 by chapter 680, Statutes of 1983. That chapter also repealed section 68076, which had been the provision of law for determining the ability of alien students to establish residency status for tuition purposes. Section 68076 provided:

> "A student who is an adult alien shall be entitled to resident classification if he has been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States; provided, that he has had residence in the state for more than one year after such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution." (Emphasis added.)

*2 It is thus seen that prior to January 1, 1984, the effective date of section 68062, subdivision (h), an adult alien [FN4] could establish residence only if he or she was "lawfully admitted to the United States" and such lawful admission was "for permanent residence" in accordance with all laws of the United States, viz, the Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq. Consequently, under prior law, there was clearly no provision for an undocumented alien or an illegal alien to establish residence for tuition purposes.

The wording of the prior law had its roots in the Immigration and Nationality Act. As succinctly set forth in a relatively recent law review note:

> "Under the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503 (1976), an 'alien' is defined as 'any person not a citizen or national of the United States.' Id. § 1101(a)(3). Two classes of aliens exist under the Act: immigrant or resident aliens, and nonimmigrant aliens. Immigrant aliens are those admitted to permanent residence. Id. § 1151(a). Nonimmigrant aliens are generally admitted only for temporary periods and include students, tourists, diplomats, and temporary workers. Id. § 1101(a)(15). Aliens may also be admitted under the parole power of the Attorney General. Id. § 1182(d)(5)." (Note: Equal Treatment of Aliens, 31 Stan.L.Rev. 1069, fn. 2.)

Consequently, the thrust of section 68076 was that immigrant aliens could establish residence but nonimmigrant aliens, although lawfully admitted, could not. The latter category of aliens were here for temporary or presumptively not permanent residence. And, as already noted, undocumented aliens clearly were excluded under the statutory language.

With this background we now undertake the task of construing the 1983 legislation. Two basic approaches have been suggested. In support of the conclusion that undocumented or illegal aliens may establish residence under subdivision (h) of section 68062, it is urged that the subdivision is clear on its face. It is pointed out that the law no longer provides that an alien must have been "lawfully admitted"; that it merely uses the unmodified noun "alien" in conjunction with the proviso that the alien must not be "precluded by the Immigration and Nationality Act ... from establishing domicile in the United States." It is further pointed out that nothing in the Immigration and Nationality Act expressly precludes an illegal alien from establishing a domicile. (See Cabral v. State Bd. of Control (1980) 112 Cal.App.3d 1012, 1016-1017, fn. 5.) Finally, it is pointed out that under the case law, aliens, both legal (if not in nonimmigrant categories specifically requiring an intent to retain a foreign domicile) and illegal or undocumented, may establish a domicile of choice. (See Toll v. Moreno (1982) 458 U.S. 1, nonimmigrant alien holding G-4 VISA may establish domicile in United States; Plyler v. Doe, supra, 457 U.S. 202, 227, fn. 22, "illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within a State"; Cabral v. State Bd. of Control, supra, 112 Cal.App.3d 1012, illegal aliens could establish residence (domicile) for purposes of Victims of Violent Crimes Act; Rzeszotarski v. Rzeszotarski (D.C.App.1972) 296 A.2d 431, 435, husband's "lack of status" under immigration laws irrelevant to issue of domicile for purposes of obtaining divorce; Seren v. Douglas (Colo.App.1971) 489 P.2d 601, student could establish intent to be domiciliary of state for tuition purposes as soon as student visa expired.)

*3 In support of the conclusion that subdivision (h) of section 68062 does not permit an illegal or undocumented alien to establish residence for tuition purposes, it is urged that the sole reason for the repeal of section 68076 and the enactment of subdivision (h) of section 68062, was to conform California law to the recent decision of the United States Supreme Court in Toll v. Moreno, supra, 458 U.S. 1.

That case held that nonimmigrant aliens (i.e., those not admitted for permanent residence) holding a G-4 visa (officers or employees of certain international organizations and their families) were not precluded by the Immigration and Nationality Act from establishing a domicile in the United States. Accordingly, the Supreme Court held that under the Supremacy Clause (U.S.Const., art. VI, cl. 2), the State of Maryland, which predicated in-state status for tuition purposes at the University of Maryland on domicile, could not bar "G-4 [[FN5]] aliens (and their dependents) from acquiring in-state status." (Id., at p. 17.)

In reaching its decision with respect to the ability of G-4 visa holders and their dependents to establish domicile in the United States, the Court relied upon its prior decision in the same litigation to that effect, Elkins v. Moreno (1978) 435 U.S. 647. In that case the Court noted that, with respect to some nonimmigrant categories, Congress had specifically provided that such aliens were admitted on the condition that they did not intend to abandon their foreign residence, e.g., visitors to the United States, students, aliens in "immediate and continuous transit," vessel crewman "who intends to land temporarily," and temporary workers having a residence in a foreign country; that, accordingly, such nonimmigrants could not establish a domicile in the United States, absent an adjustment of status. From such specific provisions, the court implied an ability of other nonimmigrant aliens, such as G-4 VISA holders, to be capable of becoming domiciliaries of Maryland. (Id., at pp. 665-668.) Thus in Toll v. Moreno, supra, the Court stated:

> "The Immigration and Nationality Act of 1952, 66 Stat. 163, as amended, 8 U.S.C. § 1101 et seq. (1976 ed. and Supp. IV), represents 'a comprehensive and complete code covering all aspect of admission of aliens to this country, whether for business or pleasure, or as immigrants seeking to become permanent residents.' Elkins v. Moreno, 435 U.S., at 664. The Act recognizes two basic classes of aliens, immigrant and nonimmigrant.[19] With respect to the nonimmigrant class, the Act establishes various categories, the G-4 category among them. For many of these nonimmigrant categories, Congress has precluded the covered alien from establishing domicile in the United States. Id., at 665.[20] But significantly, Congress has allowed G-4 aliens-employees of various international organizations, and their immediate families-to enter the country on terms permitting the establishment of domicile in the United States. Id., at 666. In light of Congress' explicit decision not to bar G-4 aliens from acquiring domicile, the State's decision to deny 'in-state' status to G-4 aliens, solely on account of the G-4 alien's federal immigration status, surely amounts to an ancillary 'burden not contemplated by Congress' in admitting these aliens to the United States. ..." (Id., at pp. 13-14, emphasis added. Fns. omitted.)

*4 The argument in support of the second position, that is, that section 68062, subdivision (h), does not permit undocumented aliens to establish residence for tuition purposes, points out the underscored language above as being the source of the language contained in subdivision (h) that an alien may establish residence "unless precluded by the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) from establishing domicile in the United States." The argument then urges that such fact fortifies the basic contention that subdivision (h) was enacted merely to conform California law with the Supreme Court's decision in Toll v. Moreno. Accepting this as true, the argument proceeds to point out that the terminology of both Toll v. Moreno and subdivision (h) refers to the establishment of domicile in the United States, not domicile in the state. Accordingly, as we understand the argument, subdivision (h) requires a determination of domicile under federal law, viz, the Immigration and Nationality Act. The argument urges that that act contemplates the establishment of "lawful domicile" when domicile is a relevant consideration under the act. (See, e.g., Lok v. I.N.S. (2d Cir.1982) 681 F.2d 107, 109-110.) Therefore, the argument concludes, an undocumented or illegal alien is precluded under the federal act from establishing a domicile in the United States. [FN6]

Without any further evidence of legislative intent, both arguments for and against construing section 68062, subdivision (h), as permitting undocumented aliens to qualify as residents for tuition purposes in California colleges and universities are fairly evenly balanced. The literal wording of the statute arguably permits the construction that they may qualify. However, taking into consideration (1) the prior laws in California, and (2) the timing of the 1983 amendments with the decision in Toll v. Moreno, supra, 458 U.S. 1, such arguably evinces an intent on the part of the Legislature to deal only with the problem of nonimmigrant, and hence legal, aliens such as G-4 visa holders and their dependents.

In construing a statute, the primary consideration is to attempt to ascertain the intent of the Legislature in order to effectuate the purpose of the law. Although normally a statute which is clear and unambiguous is to be construed according to its plain meaning, this is not the case if to do so will lead to absurd results or will be contrary to the manifest intent of the Legislature. Accordingly, we need not concern ourselves herein with whether section 68062, subdivision (h), is or is not ambiguous. We may construe the enactment in accordance with the discernible intent of the Legislature even if the statute is unambiguous. [FN7] In so doing, we can consider the historical circumstance of the statute and its legislative history, including legislative committees' analyses of the legislation as it went through the enactment process. [FN8]

We have reviewed available records concerning Assembly Bill 2015 for the 1983 legislative session, which became chapter 680, Statutes of 1983. These include the Staff Analysis of the Senate Committee on Education (7/13/83); the Ways and Means Committee Summary prepared for the June 9, 1983, hearing; the Legislative Analyst's analyses, dated June 6 and August 19, 1983; the Staff Analysis of the Assembly Education Committee; the analysis of the Senate Democratic Caucus, dated 8/23/83; and the Enrolled Bill Report, dated 9/2/83.

*5 A review of all these documents demonstrates unequivocally that the purpose of the bill was to bring California law in conformity with federal law, specifically the United States Supreme Court decision in Toll v. Moreno, supra, 458 U.S. 1, as to residence requirements for attendance at public colleges and universities, and also the Court's decision in Nyquist v. Mauclet (1977) 432 U.S. 1 as to student aid. [FN9] The documents are replete with statements to that effect. Thus, with respect to the "historical circumstances" of the enactment of chapter 680, Statutes of 1983, this confirms what has been urged in the arguments presented to us as to Toll v. Moreno.

More importantly, the foregoing documents and analyses demonstrate an intent on the part of the Legislature to exclude from the scope of section 68062 illegal aliens. Thus, the Staff Analysis of the Assembly Education Committee stated, inter alia:

> "DIGEST: This bill provides that the determination of residency for legally admitted alien students be the same for purposes of:
>
> "attendance of [sic] a public postsecondary institution. ..." (Emphasis added.)

And, similarly the Ways and Means Committee Summary stated inter alia:

> "This bill provides that the determination of residency for legally admitted alien students and out of state students be the same for purposes of:
>
> "a. attendance at a public postsecondary institution. ..." (Second emphasis added.)

And finally, the Legislative Analyst's Digests of the bill (AB 2015) stated inter alia both on June 6, 1983 and August 19, 1983: [FN10]

> "This bill deletes the requirements that aliens be U.S. citizens or legally admitted as permanent residents in order to be classified as a California resident for purposes of tuition or financial aid. The bill places aliens under the same residency requirements as other out-of-state students, except for alien students who are specifically precluded from establishing U.S. residency under federal immigration law. Alien students who would not be eligible for California residency under this bill include illegal aliens and students on temporary student visas." (Emphasis added.)

Accordingly, the legislative history of section 68062, subdivision (h), demonstrates that it was intended only to implement federal law as declared by the United States Supreme Court in Toll v. Moreno, supra, 458 U.S. 1, and was not intended to encompass undocumented or illegal aliens. Thus, insofar as the arguments pro and con with reference to the question considered herein may have been said to have been evenly balanced before an examination of the legislative history of Assembly Bill 2015, 1983 Legislative Session, this history clearly tips the scales in favor of the conclusion that section 68062, subdivision (h), does not permit undocumented or illegal aliens to acquire residency for tuition purposes. [FN11]

We so conclude.

JOHN K. VAN DE KAMP
Attorney General

*6 CLAYTON P. ROCHE
Deputy Attorney General

[FN1]. All section references are to the Education Code unless otherwise indicated.

[FN2]. These rules are applicable to the University of California only to the extent adopted by the Regents. (§ 68134.)

[FN3]. Subdivision (i) then states:
"The residence of an unmarried minor shall be derived from his or her parents pursuant to the provisions of subdivisions (f) and (g)."

[FN4]. The statute appears to have been silent with respect to unmarried minor aliens.

[FN5]. G-4 visas are issued to nonimmigrant aliens who are officers or employees of certain international organizations and to members of their immediate families. (8 U.S.C. § 1101(a)(15)(G)(iv).)

[FN6]. An alternate conclusion to be drawn from the wording of subdivision (h) which occurs to us is that the Immigration and Nationality Act, as construed by the Supreme Court, insofar as it either precludes or permits the establishment of a domicile, does so only with respect to nonimmigrant, or legal, documented aliens. Accordingly, the language of section 68062, subdivision (h), was intended to refer solely to documented aliens. In short, the federal act does not purport to deal with the question of the establishment of a domicile on the part of undocumented aliens. See Cabral v. State Bd. of Control, supra, 112 Cal.App.3d 1012, 1017, at fn. 5. This approach is more consistent with the argument that the 1983 legislation was merely intended to conform California law with Toll v. Moreno.

[FN7]. As stated by our Supreme Court in County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 849, fn. 6:
"6 We disagree, however, with respondent's sweeping assertion that in all cases 'ambiguity is a condition precedent to interpretation.' Although this proposition is generally true, 'The literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole.' (Silver v. Brown (1966) 63 Cal.2d 841, 845 [48 Cal.Rptr. 609, 409 P.2d 689], and cases cited.)"

[FN8]. With respect to the foregoing general and specific rules of construction, see, e.g., Sand v. Superior Court (1983) 34 Cal.3d 567, 570-571; People v. Black (1982) 32 Cal.3d 1, 5; California Teachers Assn. v. San Diego Community College Dist. (1981) 28 Cal.3d 692; Southern Cal. Gas Co. v. Public Utilities Com. (1979) 24 Cal.3d 653, 658-659 (statements in legislative committee analyses); Southland Mechanical Constructors Corp. v. (1981) 119 Cal.App.3d 417, 427-428 (statements in legislative committee analysis).

[FN9]. Nyquist v. Mauclet, supra, 432 U.S. 1, held a New York law to be unconstitutional as a denial of equal protection which required "resident aliens" to have applied for citizenship in order to qualify for state financial assistance for higher education. The aliens involved in the suit were legally within the United States. Accordingly, the suit did not involve nor rule upon undocumented or illegal aliens.

Chapter 680, Statutes of 1983 also amended section 69535 with respect to eligibility for student aid, requiring that "[a]ll Cal Grant recipients shall be residents of California, as determined ... pursuant to the provisions of Part 41 (commencing with Section 68000)." Accordingly, as to aliens, the student aid provision now incorporates by reference section 68062.

[FN10]. The bill was enacted on August 29, 1983 and sent to enrollment on such date.

[FN11]. It is possible that this interpretation of the statute raises constitutional issues of equal protection. (See Plyler v. Doe, supra, 457 U.S. 202.) We have not been asked and have not considered such questions.

67 Ops. Cal. Atty. Gen. 241, 1984 WL 162066 (Cal.A.G.)
END OF DOCUMENT

EXHIBIT D

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February 6, 2009

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: 02-TC-21
Contra Costa Community College District
Tuition Fee Waivers

Dear Ms. Higashi:

I have received the Commission Draft Staff Analysis (DSA) issued on December 4, 2008, to which I respond on behalf of the test claimant.

Member of Armed Forces (Education Code Section 68075; California Code Regulations, Title 5, Sections 54042 & 54050)

The DSA (41) concludes that section 54042 is not a state-mandated new program or higher level of service. The DSA interprets the language of Section 54042 where the student "should" produce evidence as not requiring the student to produce evidence of the date of assignment to California. Section 54042 states as follows, "A student claiming application of section 68075 of the Education Code *must* provide a statement from the student's commanding officer or personnel officer that the student's assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California." (Emphasis added.)

The DSA's interpretation is inaccurate. Section 54042 requires a student to provide a statement from the student's commanding officer or personnel officer with the word "must." The second sentence of Section 54042, where the student "should" produce evidence, is an additional requirement arising from the first requirement in which the student needs to have a written statement. Therefore producing evidence of the date of assignment to California is required because it stems from the requirement to provide the written statement from the commanding officer or personnel officer.

The DSA (41) states that under current CCR Section 54050, a student who is a military member on active duty is entitled to resident classification for the purpose of determining the amount of tuition and fees, and the exemption from nonresident tuition is indefinite under the current regulation for undergraduates. However, it concluded that if the student is never reclassified as a resident, this may mean a lower level of service than under prior law, and therefore section 54050 does not impose a state mandated new program or higher level of service. This conclusion is ambiguous and unclear. "[M]ay mean a lower level of service than under prior law" does not state whether there is a lower or higher level of service.

Nonresident California High School Graduates (Education Code Section 68130.5, California Code Regulations, Title 5, Section 54045.5, subdivision (b) & Chancellor's Office Document)

The DSA (50) concluded that the following phrase in subdivision (b) of section 54045.5 is not a state mandate: "Any student seeking an exemption under subdivision (a) services . . . may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption." The DSA concluded that since the regulation does not expressly require the submission of additional documentation, any such documentation would be required at the discretion of the community college and therefore is not a state mandate.

The DSA (50, 51) also determined that the Chancellor's Office "Revised Guidelines and Information on AB540" ("Chancellor's Document") is an "executive order" within the meaning of Government Code Section 17516, which imposes several new requirements in addition to the statutes or regulations. It found that because neither the regulation nor the Chancellor's Document *require* additional documentation be provided, obtaining the additional documentation is not mandated by the state.

However, the district is practically compelled to pursue additional verification if it is in possession of conflicting information regarding any aspect of student eligibility.[1] If there is conflicting information on a student's questionnaire that results in the district not being able to determine the eligibility of the student, the district would be unable to comply with the state mandate that requires the district to weigh the questionnaire

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[1]California Community College Chancellor's Office Revised Guidelines and Information on AB540: Exemption from Nonresident Tuition, dated May 2002, note 17 on page 3:

If the district is in possession of conflicting information regarding any aspect of the student eligibility, the district should pursue additional verification (e.g. high school transcript, diploma, etc) to resolve discrepancies prior to granting this exemption." [emphasis added.]

information properly. The District's decision to grant or deny eligibility in the face of conflicting information would be arbitrary and a statutory violation. The Chancellor's Document language reinforces this when it states that the district should pursue additional verification to resolve discrepancies prior to granting this exception. Therefore, the district is practically compelled to obtain additional verification if the district is in possession of conflicting information.

Seeking Reimbursement from Students Whose Certification is Determined to be False (Chancellor's Office Document)

The DSA (52) found that seeking reimbursement from students when the certification is determined to be false is not mandated by the state. The DSA interprets the language of paragraph 38 on page 6 in the Chancellor's Document as stating that although the student is liable for the repayment of the funds, and the district is entitled to the funds, the district is not required to collect them. This interpretation is contradictory because the student's liability is only as good as the district's ability to collect. If the district is not required to collect the funds, then there is no point in holding the student liable in the first place because it is very unlikely that the student will voluntarily pay the fees without any action on the district's part. The district is practically compelled to implement procedures and conduct disciplinary proceedings for seeking reimbursement of fee waivers when a student's certification is found to be falsified, because otherwise the district would be unable to collect the fees to which it is entitled.

In addition, the district has a duty to have sound fiscal management practices and manage resources wisely under Education Code Section 41020(a)[2]. The failure to take action to collect funds it is now entitled to under the Chancellor's Document would violate these principles. Thus, by creating the districts' entitlement to these funds, the Chancellor's Document practically compels the districts to collect them.

Loss of Nonresident Tuition Fees (Education Code Sections 68074, 68075.5, 68076, 68077, 68078(b), 68082, 68083, 68084, 68130.5, and California Code of Regulations, Sections 54045, subdivisions (b) and (c), and 54045.5)

The DSA (53) relied on *County of Sonoma v. Commission on State Mandates*, 84 Cal.App.4th 1264 (2000), in finding that the loss of nonresident tuition fees for either classifying students as residents or exempting them from paying nonresident tuition did not impose reimbursable costs. However, *County of Sonoma* is not applicable because

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[2]California Education Code Section 41020, subdivision (a):

"It is the intent of the Legislature to encourage sound fiscal management practices among local educational agencies for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels."

this test claim has nothing to do with the legislature's power to determine budgets and shift funds which was the dispositive issue of that case.[3] Rather than taking away funding previously allocated to the districts, the test claim statutes prohibit the districts from imposing fees they were previously permitted to recover.

Districts are required to expend funds to educate students of the district. The loss of nonresident tuition fees for either classifying students as residents or exempting them from paying nonresident tuition does not merely shift funds, but also prohibits revenues from being collected. The tuition fee waivers restrict the ability to raise local revenue without giving the ability to turn away these students, therefore the loss of nonresident tuition fees is an increased cost within the meaning of Article XIII B, Section 6.

Education Code Section 76000 requires admission of qualified residents and permits the admission of nonresidents. By changing the classification of nonresidents to residents, the test claim statutes take away the district's right to turn away these students. As a result, the district has an additional burden and obligation to educate these students and must incur costs in addition to the loss of revenue from waiving the tuition fee for reclassified students. The overall educational services must be maintained for nonresidents at a reduced fee. Thus, the loss of nonresident tuition fees is reimbursable.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

Attachments

C: Per Mailing List Attached

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[3] County of Sonoma v. Commission on State Mandates, 84 Cal.App.4th 1264, 1289 (2000):

"Thus, the only issues properly before us are those bearing on the question of whether the decision to reallocate a portion of property tax revenues in the challenged years results in a state mandated cost for a new program or higher level of service such that subvention is required."

DECLARATION OF SERVICE

Re: Test Claim 02-TC-21
Contra Costa Community College District
Tuition Fee Waivers

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimants. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated February 10, 2009, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list dated 12/04/2008 for this test claim, and to:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

☐ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 6, 2009, at Sacramento, California.

Michael Indrajana