

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 11, 2013

AMENDED IN SENATE MARCH 12, 2013

**SENATE BILL**

**No. 141**

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**Introduced by Senator Correa**

**(Principal coauthor: Senator Leno)**

**(Coauthors: Senators Cannella, Hernandez, Lara, and Steinberg)**

**(Coauthors: Assembly Members Ammiano, Garcia, and Wieckowski)**

January 29, 2013

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An act to amend Sections ~~66021.6, 68130.7, and 69508.5~~ of, and to add Section ~~68130.6 to, 69508.5, 76140, and 89705~~ of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 141, as amended, Correa. Postsecondary education benefits: children of deported or voluntarily departed parents.

(1) ~~The Donahoe Higher Education Act sets forth, among other things, the missions and functions of California's public segments of higher education and their respective institutions of higher education. Provisions of the act apply to the University of California only to the extent that the Regents of the University of California, by appropriate resolution, act to make a provision applicable. Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, the California State University, under the administration of the Trustees of the California State University, and the University of California, under the administration of the Regents of the University of California, as the 3 segments of public higher education in the state. Existing law~~

exempts specified students from paying nonresident tuition at the California Community Colleges and the California State University.

This bill would additionally exempt a student who *is a United States citizen who resides in a foreign country, and who* meets all of the following requirements, from nonresident tuition at the California Community Colleges and the California State University: (A) *demonstrates financial need for the exemption;* ~~(A)~~ (B) has a parent who has been deported or was permitted to depart voluntarily; ~~(B)~~ (C) moved abroad as a result of that deportation or voluntary departure; ~~(C)~~ *is a United States citizen;* (D) lived in California immediately before moving abroad; and (E) attended ~~an elementary or a secondary school~~ in the state for 3 or more years; and (F) *is in his or her first academic year as a matriculated student in California public higher education, as defined. The bill would request the regents to enact regulations and procedures to exempt similarly situated students of the University of California from nonresident tuition. The bill would provide for equitable relief, limited as specified, if a state court finds that this exemption, or any similar provision adopted by the Regents, is unlawful.*

~~(2) Existing law requires the Trustees of the California State University and the Board of Governors of the California Community Colleges, and requests the Regents of the University of California, to establish procedures and forms that enable persons who are exempt from paying nonresident tuition pursuant to specified law to apply for, and participate in, all student aid programs administered by these segments to the full extent permitted by federal law.~~

~~This bill would additionally require or, as to the University of California, request those institutions to establish those procedures and forms for persons who are exempt from nonresident tuition pursuant to the provisions of this bill.~~

~~(3)~~

(2) Existing law makes a student who meets the requirements for exemption from nonresident tuition pursuant to specified law eligible to apply for, and participate in, any student financial aid program administered by the state, as specified.

This bill would additionally make students who meet the requirements for exemption provided by this bill eligible to apply for, and participate in, any financial aid program administered by the state, as specified.

~~(4)~~

(3) To the extent the provisions of this bill would place additional requirements on community college districts regarding the provision

of postsecondary education benefits to additional categories of students, the bill would impose a state-mandated local program.

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

This bill would provide that, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

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

3     *(a) It is estimated that over 5 million children are currently*  
4     *living in the United States with at least one undocumented*  
5     *immigrant parent. Approximately 75 percent of these children are*  
6     *United States citizens, and many of them are from California.*

7     *(b) When one or both parents are deported, these citizen*  
8     *children often have no recourse but to leave the country. At no*  
9     *fault of their own, these children lose their schools, friends, and*  
10    *the place they have come to know as “home.”*

11    *(c) As a result of moving abroad, there is a break in these*  
12    *children’s presence in California, affecting their ability in later*  
13    *years to attend a California public college or university at the*  
14    *much lower resident prices.*

15    *(d) Today, these children, who are American citizens, are*  
16    *growing up outside the United States, yet their desire to return to*  
17    *their birth home continues to live within them. These children lack*  
18    *many basic services granted to most United States citizens.*

19    *(e) The State of California has an interest in ensuring that these*  
20    *children can access and afford a high-quality education.*

21    ~~SECTION 1. Section 66021.6 of the Education Code is~~  
22    ~~amended to read:~~

23    ~~66021.6. (a) Notwithstanding any other law, and except as~~  
24    ~~provided for in subdivision (b), the Trustees of the California State~~  
25    ~~University and the Board of Governors of the California~~  
26    ~~Community Colleges shall, and the Regents of the University of~~

1 California are requested to, establish procedures and forms that  
2 enable persons who are exempt from paying nonresident tuition  
3 under Section 68130.5 or 68130.6, or who meet equivalent  
4 requirements adopted by the regents, to apply for, and participate  
5 in, all student aid programs administered by these segments to the  
6 full extent permitted by federal law. The Legislature finds and  
7 declares that this section is a state law within the meaning of  
8 Section 1621(d) of Title 8 of the United States Code.

9 (b) The number of financial aid awards received by California  
10 resident students from financial aid programs administered by the  
11 segments shall not be diminished as a result of the application of  
12 subdivision (a). The University of California is requested to comply  
13 with this subdivision.

14 (c) This section shall become operative on January 1, 2013.

15 SEC. 2. Section 68130.6 is added to the Education Code, to  
16 read:

17 68130.6. (a) Notwithstanding any other law, a student who  
18 meets all of the following requirements shall be exempt from  
19 paying nonresident tuition at the California State University and  
20 the California Community Colleges:

21 (1) Has a parent or guardian who has been deported or was  
22 permitted to depart voluntarily under the federal Immigration and  
23 Nationality Act in accordance with Section 1229e of Title 8 of the  
24 United States Code. The student shall provide documents from the  
25 United States Citizenship and Immigration Services evidencing  
26 the deportation or voluntary departure of his or her parent or  
27 guardian.

28 (2) Moved abroad as a result of the deportation or voluntary  
29 departure specified in paragraph (1).

30 (3) Is a United States citizen.

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

34 (5) Attended an elementary or secondary school in the state for  
35 three or more years.

36 (b) A student exempt from nonresident tuition under this section  
37 may be reported by a community college district as a full-time  
38 equivalent student for apportionment purposes.

39 (c) The Board of Governors of the California Community  
40 Colleges and the Trustees of the California State University shall,

1 and the Regents of the University of California are requested to,  
2 prescribe rules and regulations for the implementation of this  
3 section.

4 ~~SEC. 3.~~ Section 68130.7 of the Education Code is amended to  
5 read:

6 ~~68130.7.~~ If a state court finds that Section 66021.6, 66021.7,  
7 68130.5, or 68130.6, or any similar provision adopted by the  
8 Regents of the University of California, is unlawful, the court may  
9 order, as equitable relief, that the administering entity that is the  
10 subject of the lawsuit terminate any waiver awarded under that  
11 statute or provision, but no money damages, tuition refund or  
12 waiver, or other retroactive relief, may be awarded. In any action  
13 in which the court finds that Section 66021.6, 66021.7, 68130.5,  
14 or 68130.6, or any similar provision adopted by the Regents of the  
15 University of California, is unlawful, the California Community  
16 Colleges, the California State University, and the University of  
17 California are immune from the imposition of any award of money  
18 damages, tuition refund or waiver, or other retroactive relief.

19 ~~SEC. 4.~~

20 ~~SEC. 2.~~ Section 69508.5 of the Education Code is amended to  
21 read:

22 69508.5. (a) Notwithstanding any other law, and except as  
23 provided for in subdivision (c), a student who meets the  
24 requirements of subdivision (a) of Section 68130.5 ~~or Section~~  
25 ~~68130.6, paragraph (4) of subdivision (a) of Section 76140, or~~  
26 ~~subdivision (c) of Section 89705,~~ or who meets equivalent  
27 requirements adopted by the Regents of the University of  
28 California, is eligible to apply for, and participate in, any student  
29 financial aid program administered by the State of California to  
30 the full extent permitted by federal law. The Legislature finds and  
31 declares that this section is a state law within the meaning of  
32 Section 1621(d) of Title 8 of the United States Code.

33 (b) Notwithstanding any other law, the Student Aid Commission  
34 shall establish procedures and forms that enable students who are  
35 exempt from paying nonresident tuition under Section 68130.5 ~~or~~  
36 ~~68130.6, paragraph (4) of subdivision (a) of Section 76140, or~~  
37 ~~subdivision (c) of Section 89705,~~ or who meet equivalent  
38 requirements adopted by the regents, to apply for, and participate  
39 in, all student financial aid programs administered by the State of  
40 California to the full extent permitted by federal law.

1 (c) A student who is exempt from paying nonresident tuition  
2 under Section 68130.5 shall not be eligible for Competitive Cal  
3 Grant A and B Awards unless funding remains available after all  
4 California students not exempt pursuant to Section 68130.5 have  
5 received Competitive Cal Grant A and B Awards for which they  
6 are eligible.

7 (d) This section shall become operative on January 1, 2013.

8 *SEC. 3. Section 76140 of the Education Code, as added by*  
9 *Section 66 of Chapter 38 of the Statutes of 2012, is amended to*  
10 *read:*

11 76140. (a) A community college district may admit, and shall  
12 charge a tuition fee to, nonresident ~~students. The students, except~~  
13 *as required by paragraph (4). A community college district may*  
14 *exempt from all or parts of the fee any person described in*  
15 *paragraph (1), (2), or ~~(3);(3), and shall exempt from all of the fee~~*  
16 *any person described in paragraph (4):*

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

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

26 (3) (A) A student who, as of August 29, 2005, was enrolled,  
27 or admitted with an intention to enroll, in the fall term of the  
28 2005–06 academic year in a regionally accredited institution of  
29 higher education in Alabama, Louisiana, or Mississippi, and who  
30 could not continue his or her attendance at that institution as a  
31 direct consequence of damage sustained by that institution as a  
32 result of Hurricane Katrina.

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

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

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

4 (A) Demonstrates a financial need for the exemption.

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

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

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

17 (E) Attended a secondary school in the state for three or more  
18 years.

19 (F) Is in his or her first academic year as a matriculated student  
20 in California public higher education, as that term is defined in  
21 subdivision (a) of Section 66010.

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

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

30 (d) The nonresident tuition fee shall be set by the governing  
31 board of each community college district not later than February  
32 1 of each year for the succeeding fiscal year. The governing board  
33 of each community college district shall provide nonresident  
34 students with notice of nonresident tuition fee changes during the  
35 spring term before the fall term in which the change will take  
36 effect. Nonresident tuition fee increases shall be gradual, moderate,  
37 and predictable. The fee may be paid in installments, as determined  
38 by the governing board of the district.

39 (e) (1) The fee established by the governing board pursuant to  
40 subdivision (d) shall represent for nonresident students enrolled

1 in 30 semester units or 45 quarter units of credit per fiscal year  
2 one or more of the following:

3 (A) The amount that was expended by the district for the  
4 expense of education as defined by the California Community  
5 College Budget and Accounting Manual in the preceding fiscal  
6 year increased by the projected percent increase in the United  
7 States Consumer Price Index as determined by the Department of  
8 Finance for the current fiscal year and succeeding fiscal year and  
9 divided by the FTES (including nonresident students) attending  
10 in the district in the preceding fiscal year. However, if for the  
11 district's preceding fiscal year FTES of all students attending in  
12 the district in noncredit courses is equal to, or greater than, 10  
13 percent of the district's total FTES attending in the district, the  
14 district may substitute the data for expense of education in grades  
15 13 and 14 and FTES in grades 13 and 14 attending in the district.

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

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

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

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

37 (2) The additional revenue generated by the increased  
38 nonresident tuition permitted under the amendments made to this  
39 subdivision during the 2009–10 Regular Session shall be used to  
40 expand and enhance services to resident students. In no event shall

1 the admission of nonresident students come at the expense of  
2 resident enrollment.

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

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

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

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

26 (j) The attendance of nonresident students who are exempted  
27 pursuant to subdivision (h) or (i), or pursuant to paragraph (3) *or*  
28 (4) of subdivision (a), from the mandatory fee requirement  
29 described in subdivision (a) for nonresident students may be  
30 reported as resident FTES for state apportionment purposes. Any  
31 nonresident student reported as resident FTES for state  
32 apportionment purposes pursuant to subdivision (h) or (i) shall  
33 pay a per unit fee that is three times the amount of the fee  
34 established for residents pursuant to Section 76300. That fee is to  
35 be included in the FTES adjustments described in Section 76330  
36 for purposes of computing apportionments.

37 (k) This section shall become operative on July 1, 2013.

38 *SEC. 4. Section 89705 of the Education Code is amended to*  
39 *read:*

1 89705. (a) Except *as provided in subdivision (c), and as*  
2 *otherwise specially provided*, an admission fee and rate of tuition  
3 *fixed by the trustees shall be required of each nonresident student.*  
4 *The rate of tuition to be paid by each nonresident student, as*  
5 *defined in Section 68018, shall not be less than three hundred sixty*  
6 *dollars (\$360) per year. The rate of tuition paid by each nonresident*  
7 *student who is a citizen and resident of a foreign country and not*  
8 *a citizen of the United States, except as otherwise specifically*  
9 *provided, shall be fixed by the trustees and shall not be less than*  
10 *three hundred sixty dollars (\$360) per year.*

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

25 (c) *The trustees shall waive entirely the admission fee and rate*  
26 *of tuition fixed under this section for a nonresident student who is*  
27 *a United States citizen who resides in a foreign country, if that*  
28 *nonresident meets all of the following requirements:*

29 (1) *Demonstrates a financial need for the exemption.*

30 (2) *Has a parent or guardian who has been deported or was*  
31 *permitted to depart voluntarily under the federal Immigration and*  
32 *Nationality Act in accordance with Section 1229c of Title 8 of the*  
33 *United States Code. The student shall provide documents from the*  
34 *United States Citizenship and Immigration Services evidencing*  
35 *the deportation or voluntary departure of his or her parent or*  
36 *guardian.*

37 (3) *Moved abroad as a result of the deportation or voluntary*  
38 *departure specified in paragraph (2).*

1 (4) *Lived in California immediately before moving abroad. The*  
2 *student shall provide information and evidence that demonstrates*  
3 *the student previously lived in California.*

4 (5) *Attended a secondary school in the state for three or more*  
5 *years.*

6 (6) *Is in his or her first academic year as a matriculated student*  
7 *in California public higher education, as that term is defined in*  
8 *subdivision (a) of Section 66010.*

9 *SEC. 5. The Legislature requests the Regents of the University*  
10 *of California to enact regulations and procedures that exempt*  
11 *from nonresident tuition students of that university who meet the*  
12 *requirements applicable to students of the California Community*  
13 *Colleges and the California State University, respectively, in*  
14 *paragraph (4) of subdivision (a) of Section 76140, and subdivision*  
15 *(c) of Section 89705, of the Education Code.*

16 ~~SEC. 5.~~

17 *SEC. 6. If the Commission on State Mandates determines that*  
18 *this act contains costs mandated by the state, reimbursement to*  
19 *local agencies and school districts for those costs shall be made*  
20 *pursuant to Part 7 (commencing with Section 17500) of Division*  
21 *4 of Title 2 of the Government Code.*