

Introduced by Senator Evans

February 14, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1017, as introduced, Evans. Taxation: Oil Severance Tax Law.

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

This bill would establish the California Higher Education Endowment Corporation (CHEEC) in state government. The bill would establish an oversight board to govern the CHEEC and would require that board to appoint the chief executive officer of the CHEEC. The bill would require the CHEEC to annually allocate the moneys in the continuously appropriated California Higher Education Fund, which would be created by the bill, to the California Community Colleges, the California State University, and the University of California, the Department of Parks and Recreation, and to the California Health and Human Services Agency, in specified proportions and for expenditure as provided. The bill also would authorize the board to invest the moneys in the fund in accordance with prescribed procedures.

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

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

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

(3) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

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

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

(5) Funds appropriated by this bill and allocated to the California Community Colleges would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

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

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

- 1 SECTION 1. The Legislature finds and declares:
- 2 (a) California is the nation's fourth largest producer of oil, after
- 3 only North Dakota, Texas, and Alaska, and it is the only one of

1 36 oil producing states that does not have a severance tax. For
2 example, Alaska employs a minimum severance tax of 25 percent
3 that can range up to 50 percent depending on the net value of oil
4 and natural gas, while Alabama, Kansas, Texas, North Dakota,
5 Mississippi, Oregon, and Florida tax oil and gas at 8 percent, 8
6 percent, 7.5 percent, 6.5 percent, 6 percent, 6 percent, and 5
7 percent, respectively.

8 (b) California is currently tied with Mississippi for the highest
9 unemployment rate in the nation, and is ranked 47 out of 50 in
10 quality of education in the United States.

11 (c) A recent study prepared by the Public Policy Institute of
12 California found that, by the year 2025, the state will experience
13 an educated labor shortage of about one million college-educated
14 workers. This would leave firms unable to fill vacancies, which
15 would potentially raise the unemployment rate in California and
16 lead firms to look outside the state for an adequately educated
17 workforce.

18 (d) A study conducted in April 2012 by the Institute for the
19 Study of Societal Issues at the University of California, Berkeley,
20 sponsored by the California Chamber of Commerce, the California
21 Civil Rights Coalition, and the Campaign for College Opportunity,
22 found that for every dollar the state invests in higher education,
23 the state receives a \$4.50 return on its investment. Moreover, a
24 person with a bachelor's degree will earn, on average, \$1.34 million
25 more in his or her lifetime than one without a college education.

26 (e) Since the budget cuts enacted in 2010, over 32,000 teachers
27 and faculty have been laid off. This has resulted in cuts in classes
28 being offered, an increase in the ratio of students to teachers, and
29 a reduced quality of education in the state. Moreover, University
30 of California student fees have almost doubled in the last five years
31 alone, while California State University student tuition fees have
32 risen 80 percent, and California Community College student tuition
33 fees have risen 130 percent. As a result, over 750,000 students are
34 no longer seeking to attain an advanced degree in California.

35 (f) This proposed severance tax is intended to provide at least
36 \$1 billion of annual revenue that will, among other things, promote
37 economic stimulus through the education of our citizens so that
38 they can excel, innovate, and become eligible for high-paying
39 professional careers.

SEC. 2. Chapter 8 (commencing with Section 99500) is added to Part 65 of Division 14 of Title 3 of the Education Code, to read:

CHAPTER 8. THE CALIFORNIA HIGHER EDUCATION
ENDOWMENT CORPORATION

Article 1. General Provisions

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

(a) “Board” means the oversight board described in subdivision (a) of Section 99505.

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

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

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

99502. The California Higher Education Endowment Corporation is hereby established in state government for purposes of implementing this chapter.

Article 2. Oversight Board

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

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

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

(C) Two members appointed by the Chancellor of the California Community Colleges.

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

(E) Two members appointed by the Speaker of the Assembly.

(F) One member appointed by the Treasurer.

(G) One member appointed by the Superintendent of Public Instruction.

1 (H) (i) One member who is a student enrolled in the California
2 Community Colleges at the time of the appointment. The member
3 appointed pursuant to this subparagraph shall be enrolled in the
4 California Community Colleges for the duration of his or her term.

5 (ii) The Board of Governors of the California Community
6 Colleges shall appoint the student member from a list of three
7 eligible persons furnished by the Student Senate.

8 (I) (i) One member who is a student enrolled in the California
9 State University at the time of the appointment. The member
10 appointed pursuant to this subparagraph shall be enrolled in the
11 California State University for the duration of his or her term.

12 (ii) The Trustees of the California State University shall appoint
13 the student member from a list of three eligible persons furnished
14 by the California State Student Association.

15 (J) (i) One member who is a student enrolled in the University
16 of California at the time of the appointment. The member appointed
17 pursuant to this subparagraph shall be enrolled in the University
18 of California for the duration of his or her term.

19 (ii) The Regents of the University of California shall appoint
20 the student member from a list of three eligible persons furnished
21 by the University of California Student Association.

22 (2) (A) At least one member appointed pursuant to paragraph
23 (1) shall be a nonmanagement employee of the California State
24 University.

25 (B) At least one member appointed pursuant to paragraph (1)
26 shall be a nonmanagement employee of the University of
27 California.

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

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

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

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

33 (c) The Legislature requests that the Regents of the University
34 of California and the President of the University of California
35 comply with the membership requirements in subparagraph (B)
36 of paragraph (1) of subdivision (a) and paragraph (2) of subdivision
37 (b).

38 (d) Except as specified in subparagraphs (H), (I), and (J) of
39 paragraph (1) of subdivision (a), each of the members identified

1 in subdivisions (a) and (b) shall be appointed to serve a term of
2 four years.

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

5 99506. (a) The board shall appoint a director, who shall be
6 the chief executive officer of the corporation. This position is
7 designated as a confidential position and is exempt from civil
8 service under subdivision (e) of Section 4 of Article VII of the
9 California Constitution.

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

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

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

17 99508. (a) The board shall select an auditing firm to conduct
18 periodic audits as provided in subdivision (b) to determine if the
19 funding allocated pursuant to Section 99510 is being appropriately
20 used to fund direct classroom instruction in compliance with this
21 chapter. The auditing firm shall submit a report of the results of
22 the audit to the board.

23 (b) The three segments of public postsecondary education
24 receiving funding from the California Higher Education Fund, the
25 University of California, the California State University, and the
26 California Community Colleges, shall be audited at least once
27 every six years, with the audits occurring alternately between the
28 three public postsecondary education segments every two years.
29 An audit of a public postsecondary education segment may occur
30 independently of the six-year cycle if the board determines that a
31 more immediate audit is necessary.

32 (c) The independent audits shall be funded with investment
33 returns from the fund.

34 (d) The board shall select a different auditing firm to perform
35 the audits at least every six years to ensure the audits are conducted
36 in a fair and equitable manner.

37 (e) If the board determines through the audits performed
38 pursuant to this section that any campus or related administrative
39 office of any segment that receives funding from this chapter is
40 found to have improperly used or otherwise improperly

administered moneys allocated under this chapter, the board shall take the following disciplinary actions:

(1) Upon a first finding, the board shall place the recipient campus or related administrative office on probation status and require the recipient campus or related administrative office to submit a remediation plan as a condition of receiving funding under this chapter.

(2) Upon finding that a recipient campus or related administrative office has subsequently mishandled funds allocated under this chapter within five years of a finding pursuant to paragraph (1), the board shall bar the recipient campus or related administrative office from receiving funds made available under this chapter during the following fiscal year.

(3) Upon finding that a recipient campus or related administrative office has subsequently mishandled funds allocated under this chapter within five years of a finding pursuant to paragraph (2), the board shall bar the recipient campus or related administrative office from receiving funding under this chapter.

(f) The board may allow a campus or related administrative office that has been barred from receiving funding pursuant to paragraph (3) of subdivision (e) to apply for funding under this chapter after five years have passed since the campus or related administrative office was barred from receiving funding pursuant to paragraph (3) of subdivision (e).

99509. The board may adopt regulations necessary or appropriate to implement its powers and duties under this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

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

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

99512. (a) The corporation shall annually allocate the moneys in the California Higher Education Fund, for immediate expenditure as follows:

(1) Fifty percent of the moneys in the fund, in equal shares, to the Regents of the University of California, the Trustees of the

1 California State University, and the Board of Governors of the
2 California Community Colleges. The moneys shall only be used
3 for the following purposes and in the following order of priority:

4 (A) First, to reduce mandatory systemwide tuition and fees.

5 (B) Second, to hire faculty and reduce class sizes.

6 (C) Third, for instructional materials.

7 (D) Fourth, for English as a second language (ESL) programs.

8 (E) Fifth, for deferred maintenance.

9 (2) Twenty-five percent of the moneys in the fund to the
10 Department of Parks and Recreation for the maintenance and
11 improvement of state parks.

12 (3) Twenty-five percent of the moneys in the fund to the
13 California Health and Human Services Agency to fund health and
14 human services programs.

15 (b) The funding established pursuant to this chapter shall be
16 used to supplement, not supplant, existing levels of state funding
17 for the California State University, the University of California,
18 and the California Community Colleges.

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

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

39 (c) Any investment transaction decisions made during a closed
40 session pursuant to paragraph (16) of subdivision (c) of Section

1 11126 of the Government Code shall be by rollcall vote entered
2 into the minutes of that meeting. The board, within 12 months of
3 the close of an investment transaction or the transfer of system
4 assets for an investment transaction, whichever occurs first, shall
5 disclose and report the investment transaction at a public meeting.

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

10 SEC. 3. Part 21 (commencing with Section 42001) is added to
11 Division 2 of the Revenue and Taxation Code, to read:

12
13 PART 21. OIL SEVERANCE TAX LAW
14

15 42001. This part shall be known and may be cited as the Oil
16 Severance Tax Law.

17 42002. For purposes of this part, the following definitions shall
18 apply:

19 (a) "Barrel of oil" means 42 United States gallons of 231 cubic
20 inches per gallon computed at a temperature of 60 degrees
21 Fahrenheit.

22 (b) "California Higher Education Fund" or "CHEF" means the
23 fund that is created by Section 42147.

24 (c) "Gas" means all natural gas, including casing head gas, and
25 all other hydrocarbons not defined as oil in subdivision (f).

26 (d) "Division" means the Division of Oil, Gas, and Geothermal
27 Resources in the Department of Conservation.

28 (e) "In this state" means within the exterior limits of the State
29 of California and includes all territory within these limits owned
30 by or ceded to the United States of America. "In this state" includes
31 the mean high tide line to three nautical miles offshore.

32 (f) "Oil" means petroleum, or other crude oil, condensate, casing
33 head gasoline, or other mineral oil that is mined, produced, or
34 withdrawn from below the surface of the soil or water.

35 (g) "Operator" means a person that, by virtue of ownership, or
36 under the authority of a lease or any other agreement, has the right
37 to drill, operate, maintain, or control an oil or gas well in the earth
38 or water in this state, including any person that takes oil or gas
39 from the earth or water in this state in any manner, any person that
40 owns, controls, manages, or leases any oil or gas well in the earth

1 or water of this state, and any person that produces or extracts in
2 any manner any oil or gas by taking it from the earth or water in
3 this state; and includes the first person that acquires either the legal
4 title or beneficial title to oil or gas taken from the earth or water
5 in this state by the federal government or a federal instrumentality.

6 (h) “Political subdivision of the state” includes any local public
7 entity, as defined in Section 900.4 of the Government Code.

8 (i) “Severed” or “severing” means the extraction or withdrawing
9 from below the surface of the earth or water of any oil or gas,
10 regardless of whether the extraction or withdrawal shall be by
11 natural flow, mechanical flow, forced flow, pumping, or any other
12 means employed to get the oil or gas from below the surface of
13 the earth or water, and shall include the extraction or withdrawal
14 by any means whatsoever of oil or gas upon which the tax has not
15 been paid, from any surface reservoir, natural or artificial, or from
16 a water surface.

17 (j) “Stripper well” means a well that has been certified by the
18 division as an oil well incapable of producing an average of more
19 than 10 barrels of oil per day during the entire calendar month or
20 a gas well that is incapable of producing more than an average of
21 60,000 cubic feet of gas per day during the entire calendar month.
22 Once a well has been certified as a stripper well, that stripper well
23 shall remain certified as a stripper well until the well produces an
24 average of more than 10 barrels of oil per day during an entire
25 calendar month or produces more than an average of 60,000 cubic
26 feet of gas per day during an entire calendar month.

27 (k) “Unit of gas” means 1,000 cubic feet (mcf) measured at a
28 base pressure of 15.025 pounds per square inch absolute and at a
29 temperature base of 60 degrees Fahrenheit.

30 42010. (a) (1) An oil and gas severance tax is hereby imposed
31 upon any operator for the privilege of severing oil or gas from the
32 earth or water in this state at the rate of 9.5 percent of the average
33 price per barrel of California oil or 3.5 percent of the average price
34 per unit of gas, as calculated pursuant to this section.

35 (2) (A) On or before December 1, 2014, and June 1, 2015, and
36 on or before those dates of each year thereafter, the division shall
37 determine the average price per barrel of California oil for the
38 six-month period ending on the preceding October 31 and April
39 30, respectively. The price of California oil shall be based on the
40 first purchase price for California Midway-Sunset crude oil as

1 determined by the United States Energy Information
2 Administration's (EIA) First Purchase Report. In the event the
3 EIA First Purchase Report is delayed or discontinued, the division
4 may base its determination on other sources of first purchase prices
5 of California oil.

6 (B) On or before December 1, 2014, and June 1, 2015, and on
7 or before those dates of each year thereafter, the division shall
8 determine the average price per unit of gas for the six-month period
9 ending on the preceding October 31 and April 30, respectively.
10 The price of gas shall be based on California's price for gas as
11 determined by the United States Energy Information
12 Administration's (EIA) Report. In the event the EIA Report is
13 delayed or discontinued, the division may base its determination
14 on other sources of city gate prices of California gas.

15 (C) The division shall notify the board of its determinations
16 pursuant to subparagraphs (A) and (B), on or before December 1,
17 2014, and June 1, 2015, and on or before those dates on each year
18 thereafter.

19 (b) Any person that owns an interest, including a royalty interest,
20 in oil or its value, is liable for the tax until it has been paid to the
21 board.

22 42012. The tax imposed by this part shall be in addition to any
23 other taxes imposed by law, including, without limitation, any ad
24 valorem taxes imposed by the state, or any political subdivision
25 of the state, or any local business license taxes that may be incurred
26 for the privilege of severing oil or gas from the earth or water or
27 doing business in that locality. There shall be no exemption from
28 the payment of an ad valorem tax related to equipment, material,
29 or other property by reason of the payment of the severance tax
30 pursuant to this part.

31 42014. Two or more operators that are owned or controlled
32 directly or indirectly, as defined in Section 25105, by the same
33 interests shall be considered as a single operator for purposes of
34 application of the tax prescribed in this part.

35 42015. (a) There shall be exempted from the imposition of
36 the oil and gas severance tax imposed pursuant to this part, the
37 severance of oil or gas produced by a stripper well, unless the well
38 produces more than five barrels per month.

39 (b) The division shall notify the board of all wells that have
40 been certified as stripper wells.

1 42016. There shall be exempted from the imposition of the tax
2 imposed pursuant to this part all oil, gas, or both oil and gas owned
3 or produced by the state or any political subdivision of the state,
4 including such public entity's proprietary share of oil or gas
5 produced under any unit, cooperative, or other pooling agreement.

6 42019. Each operator shall prepare and file with the board a
7 return in the form prescribed by the board containing information
8 as the board deems necessary or appropriate for the proper
9 administration of this part. The return shall be filed on or before
10 the last day of the calendar month following the calendar quarter
11 to which it relates, together with a remittance payable to the board
12 for the amount of tax due for that period.

13 42145. (a) The board shall administer and collect the tax
14 imposed by this part pursuant to the Fee Collection Procedures
15 Law (Part 30 (commencing with Section 55001)). For purposes
16 of this part, the references in the Fee Collection Procedures Law
17 to "fee" shall include the tax imposed by this part and references
18 to "feepayer" shall include any person liable for the payment of
19 the tax imposed by this part.

20 (b) The board may prescribe, adopt, and enforce regulations
21 relating to the administration and enforcement of this part,
22 including, but not limited to, provisions governing collections,
23 reporting, refunds, and appeals.

24 (c) The board may prescribe, adopt, and enforce emergency
25 regulations relating to the administration and enforcement of this
26 part. Any emergency regulations prescribed, adopted, or enforced
27 pursuant to this section shall be adopted in accordance with Chapter
28 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
29 Title 2 of the Government Code, and, for purposes of that chapter,
30 including Section 11349.6 of the Government Code, the adoption
31 of these regulation is an emergency and shall be considered by the
32 Office of Administrative Law as necessary for the immediate
33 preservation of the public peace, health and safety, and general
34 welfare.

35 42147. (a) All taxes, interest, penalties, and other amounts
36 collected pursuant to this part, less refunds and costs of
37 administration, shall be deposited first into the General Fund and
38 then into the California Higher Education Fund, which is hereby
39 created in the State Treasury. Notwithstanding Section 13340 of
40 the Government Code, moneys in the fund are continuously

1 appropriated, without regard to fiscal year, to the California Higher
2 Education Endowment Corporation established by Section 99502
3 of the Education Code.

4 (b) (1) Revenues, less refunds, derived pursuant to Section
5 42013 for deposit in the California Higher Education Fund pursuant
6 to this section shall be deemed “General Fund revenues” and
7 “General Fund proceeds of taxes” for purposes of Section 8 of
8 Article XVI.

9 (2) Moneys allocated to the Board of Governors of the California
10 Community Colleges pursuant to Section 99512 of the Education
11 Code shall be deemed “moneys to be applied by the state for the
12 support of school districts and community college districts” for
13 purposes of Section 8 of Article XVI.

14 (c) Any local property tax reductions that may result from the
15 imposition of the tax by this part shall be reimbursed from the
16 revenues received from the imposition of the tax.

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

26 SEC. 5. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety within
28 the meaning of Article IV of the Constitution and shall go into
29 immediate effect. The facts constituting the necessity are:

30 In order to reduce mandatory systemwide tuition and fees as
31 quickly as possible, it is necessary that this act take effect
32 immediately.