

AMENDED IN ASSEMBLY JULY 16, 1997

AMENDED IN ASSEMBLY JULY 10, 1997

AMENDED IN ASSEMBLY JUNE 19, 1997

AMENDED IN SENATE APRIL 21, 1997

SENATE BILL

No. 819

**Introduced by Senator Calderon
(Coauthor: Senator Polanco)**

February 26, 1997

An act to amend ~~Section 94990~~ of Sections 94892.5 and 94990 of, and to add Section 94753.5 to, the Education Code, relating to postsecondary education, *making an appropriation therefor*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, Calderon. Postsecondary education.

~~Existing~~

(1) *Existing* law, renders the Private Postsecondary and Vocational Education Reform Act of 1989, which includes the Council for Private Postsecondary and Vocational Education, inoperative on July 18, 1997, and repeals the act on January 1, 1998.

This bill would extend the operation of the act and the council until January 1, 1998. *Thus, the bill would extend the existence of criminal penalties under the act until January 1, 1998, thereby imposing a state-mandated local program. The bill also would make an appropriation by continuing the*

operation of continuous appropriations in the act until January 1, 1998.

In addition, this bill, until January 1, 1998, would authorize the council to delegate certain matters to the director of the council. The bill also would require the director of the council to obtain approval from the chair of the council, or the undersecretary of the State and Consumer Services Agency in the chair's absence, prior to taking any enforcement actions or prior to initiating any legal actions, or both, and would authorize the chair, or the undersecretary in the chair's absence, to delegate that authority.

(2) Under the act, a private postsecondary educational institution, before enrolling a student in instruction in English as a second language (ESL), is required to document (a) the nature of the student's existing knowledge, training, or skills, and (b) that ESL instruction is necessary to enable the student to use that existing knowledge, training, or skills.

The act provides that if the results of a test indicate that the student has not attained adequate English language proficiency after the completion of ESL instruction at a private postsecondary educational institution, the institution shall make a full refund of the total charge for the ESL instruction or offer the student the choice of either enrolling without charge in additional ESL instruction until the student attains adequate English proficiency or obtaining a full refund of the total charge for the ESL instruction.

This bill, instead, under these circumstances, until January 1, 1998, would require the institution to offer the student additional instruction, without charge, for a period of up to 50% of the number of hours of instruction previously offered by the institution to the student, to enable the student to attain adequate English language proficiency.

~~The~~

@@@(3) This bill would specify that its provisions shall become operative only if Assembly Bill 71 of the 1997–98 Regular Session is enacted and enacts the Private Postsecondary and Vocational Education Reform Act of 1989.

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

Vote: ²/₃. Appropriation: ~~no~~—yes. Fiscal committee: yes. State-mandated local program: ~~no~~—yes.

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

1 SECTION 1. Section 94753.5 is added to the
2 Education Code, to read:

3 94753.5. (a) Except as provided in subdivision (b),
4 the council may delegate to the director any power, duty,
5 purpose, function, or jurisdiction that the council may
6 lawfully delegate, including the authority to enter into
7 and sign contracts on behalf of the council. The director
8 may redelegate any of those powers, duties, purposes,
9 functions, or jurisdictions to his or her designee, unless by
10 statute or regulation, the director is expressly required to
11 act personally.

12 (b) The director shall obtain approval from the chair
13 of the council, or in the chair's absence from the
14 Undersecretary of the State and Consumer Services
15 Agency, prior to taking any enforcement actions or prior
16 to initiating any legal actions, or both, and that approval
17 authority is hereby delegated to the chair, or the
18 undersecretary of the State and Consumer Services
19 Agency in the chair's absence.

20 (c) Notwithstanding the repeal of former Section
21 94753.5 by Chapter 32 of the Statutes of 1997, the
22 Legislature hereby declares that its intent in enacting this
23 section is to reenact the authority granted to the council
24 and the director by that former section. Any regulation
25 adopted by the council delegating authority to the
26 director, including Section 70030 of Title 5 of the
27 California Code of Regulations, the authority for which
28 was based on former Section 94753.5 or any other
29 provision of this chapter, are deemed to be of continuing



1 *validity and the council is not required to readopt those*
2 *regulations pursuant to Chapter 3.5 (commencing with*
3 *Section 11340) of Division 3 of Title 2 of the Government*
4 *Code.*

5 *SEC. 2. Section 94892.5 of the Education Code is*
6 *amended to read:*

7 94892.5. (a) As used in this section, “ESL instruction”
8 means any educational service involving instruction in
9 English as a second language.

10 (b) No institution shall offer ESL instruction without
11 the prior approval of the council.

12 (c) The council shall not approve an institution’s
13 offering of ESL instruction unless that institution
14 complies with the minimum standards established in
15 Section 94781.

16 (d) An institution that offers ESL instruction to a
17 student shall not enroll the student in any educational
18 service presented in the English language unless the
19 student passes a test indicating that he or she has attained
20 adequate proficiency in oral and written English to
21 comprehend instruction in English.

22 (e) A student who has completed ESL instruction at
23 an institution shall not be enrolled in any course of
24 instruction presented in the English language at that
25 institution unless the student passes a test indicating that
26 he or she has attained adequate proficiency in oral and
27 written English to be successfully trained by English
28 language instruction to perform tasks associated with the
29 occupations or job titles to which the educational
30 program is represented to lead.

31 (f) If an institution offers ESL instruction to a student
32 to enable the student to use already existing knowledge,
33 training, or skills in the pursuit of an occupation, the
34 institution shall test the student after the student
35 completes the ESL instruction to determine that the
36 student has attained adequate proficiency in oral and
37 written English to use his or her existing knowledge,
38 training, or skills. Before enrolling the student in ESL
39 instruction, the institution shall document the nature of
40 the student’s existing knowledge, training, or skills and



1 that the ESL instruction is necessary to enable the
2 student to use that existing knowledge, training, or skills.

3 (g) If an institution offers ESL instruction to a student
4 in connection with a course of instruction leading to
5 employment in any occupation requiring licensure
6 awarded after the passage of an examination offered in
7 English, the institution shall test the student after the
8 student completes the ESL instruction to determine that
9 the student has attained a level of proficiency in English
10 reasonably equivalent to the level of English in which the
11 licensure examination is offered.

12 (h) If the results of a test administered pursuant to
13 subdivision (d), (e), (f), or (g) indicate that the student
14 has not attained adequate English language proficiency
15 after the completion of ESL instruction, the institution
16 shall ~~(1) make a full refund of the total charge for the ESL~~
17 ~~instruction, or (2) offer the student the choice of either~~
18 ~~enrolling additional instruction without charge—in~~
19 ~~additional ESL instruction until the student attains~~
20 ~~adequate English language proficiency or obtaining a full~~
21 ~~refund of the total charge for the ESL instruction. The~~
22 ~~institution shall pay refunds within 30 days and shall~~
23 ~~comply with subdivisions (e) and (d) of Section 94895, for~~
24 ~~a period of up to 50 percent of the number of hours of~~
25 ~~instruction previously offered by the institution to the~~
26 ~~student, to enable the student to attain adequate English~~
27 ~~language proficiency.~~

28 (i) This section does not apply to grantees funded
29 under Section 1672 of Title 29 of the United States Code.

30 (j) The institution shall, for five years, retain an
31 exemplar of each language proficiency test administered
32 pursuant to this section, an exemplar of the answer sheet
33 for each test, a record of the score for each test, the
34 answer sheets or other responses submitted by each
35 person who took each test, and the documentation
36 required by subdivision (f).

37 (k) (1) In addition to any applicable provisions of this
38 chapter, this article, except for Sections 94866 to 94873,
39 inclusive, subparagraph (B) of paragraph (2) of



1 subdivision (a) of Section 94884, and Section 94898,
2 applies to institutions offering ESL instruction.

3 (2) For the purpose of determining compliance with
4 this article, ESL instruction shall be deemed a course and
5 a charge shall be deemed to be made for ESL instruction
6 if a student is obligated to make any payment in
7 connection with any educational service, including, but
8 not limited to, the ESL instruction that is offered by the
9 institution.

10 (l) The tests used by an institution pursuant to this
11 section shall be tests that are approved by the United
12 States Department of Education or tests such as the Test
13 of English as a Foreign Language and the Comprehensive
14 Adult Student Assessment System that are generally
15 recognized by public and private institutions of higher
16 learning in this state for the evaluation of English
17 language proficiency. An institution shall demonstrate to
18 the council that the tests and passing scores that it uses
19 establish that students have acquired the degree of
20 proficiency in oral and written English required by
21 subdivision (d), (e), (f), or (g), whichever is applicable.
22 The required level of proficiency in oral and written
23 English shall not be lower than the sixth grade level.

24 (m) All tests shall be independently administered,
25 without charge to the student and in accordance with the
26 procedures specified by the test publisher. The tests shall
27 not be administered by a previous or current owner,
28 director, consultant, or representative of the institution
29 or by any person who previously had, or currently has, a
30 direct or indirect financial interest in the institution other
31 than the arrangement to administer the test. The council
32 shall adopt regulations that contain criteria to ensure
33 independent test administration including the criteria
34 established by the United States Department of
35 Education and set forth on pages 52160 and 52161 of
36 Volume 55 of the Federal Register, dated December 19,
37 1990.

38 (n) *The council shall adopt regulations concerning the*
39 *manner of documenting the nature of a student's existing*
40 *knowledge, training, and skill and that ESL instruction*



1 offered by the institution is necessary to enable the
2 student to use that existing knowledge, training, and skill,
3 as prescribed in subdivision (f). The regulations shall
4 specify all of the following:

5 (1) Reliable sources of information, independent of
6 the student and the institution, from which
7 documentation of a student's existing knowledge,
8 training, and skill shall be obtained.

9 (2) Circumstances that must be documented by the
10 institution to establish that information from a designated
11 reliable source of information cannot reasonably be
12 obtained.

13 (3) Alternate acceptable sources of information if
14 designated reliable sources are not available.

15 (4) The nature of all required types of documentation.

16 (o) The council shall develop and distribute
17 instructions, informational materials, or forms to assist
18 institutions in developing the documentation described
19 in this section. These instructions, materials, and forms
20 shall not be subject to review or approval by the Office of
21 Administrative Law pursuant to any provision of the
22 Government Code.

23 SEC. 3. Section 94990 of the Education Code, as
24 amended by Chapter 32 of the Statutes of 1997, is
25 amended to read:

26 94990. This chapter shall remain in effect until
27 January 1, 1998, and as of that date is repealed, unless a
28 later enacted statute, which becomes effective on or
29 before January 1, 1998, deletes or extends that date.

30 ~~SEC. 2.—~~

31 SEC. 4. This act shall become operative only if
32 Assembly Bill No. 71 of the 1997–98 Regular Session is
33 enacted and enacts the Private Postsecondary and
34 Vocational Education Reform Act of 1989.

35 SEC. 5. No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the only costs that may be incurred
38 by a local agency or school district will be incurred
39 because this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty



1 *for a crime or infraction, within the meaning of Section*
2 *17556 of the Government Code, or changes the definition*
3 *of a crime within the meaning of Section 6 of Article*
4 *XIII B of the California Constitution.*

5 *Notwithstanding Section 17580 of the Government*
6 *Code, unless otherwise specified, the provisions of this act*
7 *shall become operative on the same date that the act*
8 *takes effect pursuant to the California Constitution.*

9 *SEC. 6. The provisions of this act as they relate to the*
10 *application of the urgency clause are severable. If the*
11 *urgency clause is deemed invalid as it relates to the*
12 *extension of the operation of the Council for Private*
13 *Postsecondary and Vocational Education as provided in*
14 *Section 3 of this act, that invalidity shall not affect other*
15 *provisions or applications of the act that can be given*
16 *effect without the invalid provision or application.*

17 *SEC. 7. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or*
19 *safety within the meaning of Article IV of the*
20 *Constitution and shall go into immediate effect. The facts*
21 *constituting the necessity are:*

22 *In order to extend the operation of the Private*
23 *Postsecondary and Vocational Education Reform Act of*
24 *1989 and to remedy existing problems with English as a*
25 *second language programs and to eliminate*
26 *inconsistencies regarding the refund policies of the state*
27 *and federal governments for these programs as soon as*
28 *possible, it is necessary that this act take effect*
29 *immediately.*

