

Date of Hearing: March 28, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 21 (Kalra) – As Amended March 15, 2017

**[Note: This bill is doubled referred to the Assembly Judiciary Committee and will be heard as it relates to issues under its jurisdiction.]**

**SUBJECT:** Public postsecondary education: Access to Higher Education for Every Student.

**SUMMARY:** Requires the California State University (CSU) Trustees, the governing boards of California Community Colleges (CCC) districts, and each independent institution of higher education that are qualifying institutions for purposes of the Cal Grant Program, and requests the University of California (UC) Regents, to the fullest extent consistent with federal law, to: refrain from releasing certain information regarding the immigration status of students, faculty, and staff of, or other members of the communities served by these campuses; requires all faculty and staff to immediately notify the campus chancellor or president if they suspect or become aware that specified federal authorities may enter, or have entered, the campus; immediately notify any and all students who may or could be subject to an immigration enforcement order or inquiry in a discrete and confidential manner, as specified; and, requires all faculty and staff responding to or having contact with a representative of federal immigration authorities, or any other public or law enforcement entity working in coordination with these federal authorities, to verify the legality of any warrant or subpoena prior to complying or cooperating with any enforcement of an immigration order or inquiry. Specifically, **this bill:**

1) Finds and declares all of the following:

- a) California's colleges and universities have traditionally been beacons of free thought that challenge students in a peaceful, safe environment. Its institutions of higher education have always been of great pride to the State of California;
- b) With great risks presented by changes to immigration policies and enforcement at the federal level, it is more important than ever to work to protect the students, faculty, staff, and the public, and ensure that, regardless of their immigration status, they can continue to take advantage of the education to which they are entitled, and are free from intimidation or loss of access to resources and programs that other students enjoy;
- c) It is imperative that California put necessary protections in place, and show it will take the necessary steps to ensure that the state's students, faculty, staff, and the public have every opportunity to continue their education without fear or undue risk;
- d) In doing so, California reaffirms the principles that the attainment of education for the betterment of the individual and the community is paramount, regardless of one's immigration status. It is in the country's best interests, as a nation of immigrants, which has benefited greatly from immigrants of all walks and backgrounds, to ensure that those who pursue educational and academic growth may further contribute to the productivity of this great state and nation;

- e) The Legislature intends to enact legislation to create policies, as specified, and ensure that public institutions of higher education are safe spaces free of immigration enforcement activities with access to services and supports for all students, faculty, and staff regardless of their immigration status; and,
  - f) That the provisions of this measure shall be funded, commencing with the 2017–18 fiscal year, through appropriations for these purposes in the annual Budget Act.
- 2) Requires the CSU Trustees, the governing boards of all CCC districts, and each eligible independent institution of higher education, and requests the UC Regents to do all of the following to the fullest extent consistent with federal law:
- a) Refrain from releasing information regarding the immigration status of students, faculty, and staff of, or other members of the communities served by, their respective campuses and programs;
  - b) Require each member of the faculty and staff to immediately notify the campus chancellor or president if he or she suspects, or becomes aware that, federal Immigration and Customs Enforcement (ICE), or other public or law enforcement entities working in coordination with federal ICE, are expected to enter, will enter, or have entered, the campus;
  - c) Immediately notify any and all students, who may or could be subject to an immigration enforcement order or inquiry, in a discrete and confidential manner that federal ICE is suspected to have entered, may enter, or has entered the campus;
  - d) Require all faculty and staff responding to or having contact with a representative of federal ICE, or any other public or law enforcement entity working in coordination with federal ICE, to verify the legality of any warrant or subpoena prior to complying or cooperating with any enforcement of an immigration order or inquiry;
  - e) Assign a staff person, or multiple staff persons as necessary, to serve as a point of contact for any student, faculty, or staff person who may or could be subject to an immigration order or inquiry on campus. Staff shall be prohibited from discussing the immigration status of any student, faculty, or staff with anyone, or revealing that immigration status to anyone, except the student, faculty, or staff in question;
  - f) Solicit and maintain a contact list of known attorneys or legal services providers who provide pro bono legal immigration representation, and provide it free of charge to any and all students who request it. The list shall include, but not necessarily be limited to, the attorney's name, photograph if available, telephone and cellular telephone numbers, email address, and office address; and,
  - g) In the event that the federal Deferred Action for Childhood Arrivals (DACA) policy is amended in any way from how it existed on January 19, 2017, or is reversed, ensure that both of the following occur:
    - i) That students to whom the DACA policy was applicable may continue to receive financial aid, fellowship stipends, exemption from nonresident tuition fees, funding

for research or other educational projects, or other benefits they have been awarded or received, and,

- ii) That staff is available to assist, on a strictly confidential basis, former DACA students, other students, faculty, and staff who may be subject to a federal immigration order or inquiry, or who may face similar issues, and whose education or employment is at risk because of federal ICE actions.

## **EXISTING LAW:**

### *Federal law.*

On June 15, 2012, the Secretary of Homeland Security, under the direction of President Obama, announced the DACA policy, authorizing certain people who came to the United States as children and meet several guidelines to request consideration of deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status.

Individuals may request consideration of DACA if they meet all of the following requirements:

- Were under the age of 31 as of June 15, 2012;
  - Came to the United States before their 16th birthday;
  - Have continuously resided in the United States since June 15, 2007, up to the present time;
  - Were physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action;
  - Had no lawful status on June 15, 2012, meaning never had a lawful immigration status on or before June 15, 2012, or any lawful immigration status or parole obtained prior to June 15, 2012, that had expired as of June 15, 2012;
  - Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and,
  - Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.
- 1) Provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible (8 Code of Federal Regulations (CFR) Section 287.7(a)).

- 2) States that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the DHS (8 CFR Section 287.7(d)).
- 3) Authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements between ICE and the local police are documented in memorandum of agreements (8 United States Code (U.S.C.) Section 1357(g)).
- 4) States that notwithstanding any other provision of Federal, State or local law, a Federal, State or local government entity or official may not prohibit, or in any way restrict any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service (INS) information regarding the citizenship or immigration status, lawful or unlawful of any individual (8 U.S.C. Section 1373(a)).
- 5) States that notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the INS information regarding the immigration status, lawful or unlawful, of an alien in the United States (8 U.S.C. Section 1644).
- 6) Provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S.C. 14th Amendment).

*State law.*

- 1) Establishes the Donahoe Higher Education Act, setting forth the mission of the UC, CSU, and CCC; and, defines "independent institutions of higher education" as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in California and are accredited by an agency recognized by the United States Department of Education (Education Code (EC) Section 66010, et seq.).
- 2) Requires the CCC Board of Governors (BOG) to provide leadership and direction in the continuing development of the CCC as an integral and effective element in the structure of public higher education in the state; and, requires that the work of the BOG shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the CCCs (EC Section 70901).
- 3) Grants CSU Trustees regulatory authority over the CSU (EC Section 89030, et seq.).
- 4) Grants the UC Regents regulatory authority over the UC (EC Section 92440, et seq.).
- 5) Defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual" (Government Code (GOV) Section 7282 (c)).

- 6) Provides that a law enforcement official has the discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy and only under specified circumstances (GOV Section 7282.5).
- 7) Provides that, before any interview between ICE and an individual in local law enforcement custody regarding civil violations, law enforcement must provide the individual with specified information, and requires specified notification to the individual if law enforcement intends to comply with an ICE hold or notify ICE that the individual is being released (GOV Section 7283.1).

**FISCAL EFFECT:** Unknown

**COMMENTS:** *Urgency clause.* This measure has an urgency clause.

*Background.* During his campaign for President, and ahead of his inauguration, Donald Trump promised to deport millions of immigrants. The 45<sup>th</sup> President of the United States issued an Executive Order on January 25, 2017, that aims to greatly increase the number of immigration officials and expand the population of Californians that could be subject to deportation.

*Need for the measure.* According to the author, "With great risks of changes to immigration policies and enforcement at the federal level, it is more important than ever for us to work to protect our students and ensure that, regardless of their immigration status, they may continue to take advantage of the education to which they are entitled, free from intimidation or risk of a loss of access to resources and programs that other students enjoy."

This measure is an attempt to ensure that potentially affected college and university students are made to feel safe and protected to the fullest extent via the campuses they attend.

The author argues that, "At a time when all that California has worked for could be cast aside by the new federal administration, we must take all necessary steps to protect our most vulnerable populations. This includes children and students who are undocumented and under threat of harassment and unjust prosecution and deportation."

*Current practices by postsecondary education segments.* 1) UC welcomes and supports students without regard to their immigration status. The UC recently issued its statement of principles reaffirming its commitment to vigorously protect the privacy and civil rights of all UC undocumented students and all members of their community.

Many UC campuses are working to empower faculty and staff with the knowledge and skills required to create safe spaces for undocumented students. For instance, the systemwide UndocuAlly program trains faculty and staff to understand the history, legislation, and current and future realities of undocumented students. Every UC campus has at least one person on staff who can answer the questions of its undocumented students and provide guidance. Additionally, the UC continues to remind their students that their privacy is protected by law and that regardless of who they approach on campus, their immigration status will remain confidential.

2) The CSU recently issued systemwide guidance and principles in order to address its relationship and/or involvement with ICE. The guidance and principles, among others, specifically state that each campus shall clearly articulate in its policies that individuals will not be contacted, detained, questioned, or arrested solely on the basis of being suspected of being an undocumented immigrant; and, CSU Police Departments will not honor ICE immigration hold requests, unless it is consistent with California Government Code Section 7282.5.

Additionally, CSU believes it is vital for their students to have access to legal advice and guidance from qualified professionals. Committee staff understands that CSU has initiated conversations with California Department of Social Services (CDSS) about ensuring their students have access to legal services that have already been vetted and funded with existing contractual agreements with state agencies.

3) The CCC Office of the Chancellor recently issued guidance and principles to its system of 113 colleges in order to address uncertainty over possible immigration policy changes. The guidance and principles, among others, specify that community college district police departments should not detain, question or arrest any individual solely on the basis of suspected undocumented immigration status; and, no confidential student records should be released without a judicial warrant, subpoena or court order, unless authorized by the student or required by law.

Additionally, Committee staff understands that based on a fall 2016 survey, of the 72 community college districts, 10 districts have already established Dream Centers and 30 districts have targeted strategies in place to eventually lead to the creation of a Dream Center.

4) Many of California's Independent Colleges and Universities' Presidents have issued statements in support of DACA and their undocumented immigrant students. Presidents of these institutions have committed to upholding free inquiry and education in their colleges and universities, and to providing the opportunity for all students to pursue their learning and life goals in a safe environment.

Additionally, the Association of Independent California Colleges and Universities conducted two immigration symposiums for the leadership of the various independent colleges and universities. The symposiums, conducted in March of this year, were successful in building and fostering support networks around immigrant communities.

*Committee comments.* This measure specifies that all applicable postsecondary education entities, as specified, shall comply with the requirements set forth, to the fullest extent consistent with federal law. However, Committee staff understands that some concerns exist as to exactly what will be permissible under state authority and that of federal authority, should this measure become law.

*Moving forward,* the author should continue to work with representatives from the postsecondary education entities in order to ensure they have clarity as to what is legally permissible and required of them to implement per requirements established under this measure.

*Related legislation.* Several legislative measures are moving through the process with varying ways of addressing on-going immigration and DACA concerns:

1) AB 291 (Chiu, et al.), which is pending a hearing in the Assembly Judiciary Committee, in part, prohibits a lessor from threatening to disclose information regarding or relating to the

perceived immigration or citizenship status of a tenant, occupant, or other person associated with a tenant or occupant for the purpose of influencing a tenant to vacate a dwelling; and, prohibit a lessor, or an agent of a lessor, from disclosing to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property.

- 2) SB 6 (Hueso), which is pending on the Senate Floor, in part, appropriates \$12 million to the CDSS to establish the Due Process for All Act to provide legal services to individuals facing deportation; and, would authorize CDSS to contract with qualified nonprofit legal services organizations and nonprofit agencies to implement the act.
- 3) SB 31 (Lara), which is pending on the Senate Floor, in part, directs California state and local governments to refrain from initiating, participating in, or assisting with any program to create a religious list, registry, or database, or using information about individuals' national origin or ethnicity to achieve the same basic purpose.
- 4) SB 54 (De León), which is pending on the Senate Floor, in part, places certain restrictions on state and local government entities in their interactions with federal immigration authorities.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Alliance for Boys and Men of Color  
California Faculty Association (sponsor)  
California Federation of Teachers  
Community Clinic Association of Los Angeles County  
Southeast Asia Resource Action Center

##### **Opposition**

None on file.

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