

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 893 (Becker) – As Amended June 13, 2022

SENATE VOTE: 33-0

SUBJECT: Community colleges: San Mateo County Community College District: California College Promise

SUMMARY: Authorizes San Mateo County Community College District (San Mateo CCCD) to use their unrestricted general funds to establish a tuition fee waiver and to provide financial assistance for the total cost of attendance for qualifying students, as defined. Specifically, **this bill:**

- 1) Permits San Mateo CCCD to adopt a policy to use local unrestricted general funds to provide fee waivers for students who have the greatest financial need, are living within the geographical attendance boundary for the district, and do not qualify for any other existing fee waivers provided by the California Community College (CCC) system. As part of the policy, San Mateo CCCD is required to prepare a fiscal impact statement as to how the fee waiver will impact the district over a three year period.
- 2) Permits San Mateo CCCD to use existing funds, in addition to funds received for the California College Promise (AB 19) established in Education Code Section 76396, for the purpose of assisting students with the total cost of attendance, if the student resides within the geographical attendance boundary of the district.
- 3) Requires San Mateo CCCD by March 1, 2026, to submit to the Chancellor's Office of the California Community Colleges (CCC), the Department of Finance, and the appropriate committees of the Legislature, a report of the following information:
 - a) How San Mateo CCCD determined the use of local unrestricted general funds to support the implementation of the California College Promise pursuant to Education Code Section 76396;
 - b) How San Mateo CCCD determined the use of local unrestricted general funds to assist students with the total cost of attendance;
 - c) How San Mateo CCCD determined to use the California College Promise funds to assist students with the total cost of attendance;
 - d) A copy of the policy adopted by the governing board of the district pursuant to (1) of this analysis;
 - e) A copy of the fiscal impact statement prepared pursuant to (1) of this analysis;
 - f) The number and percentage of students receiving the fee waiver established pursuant to (1) of this analysis, disaggregated by age, race and ethnicity, unit load, and income level; and,

- g) The number and percentage of students receiving other forms of institutional aid, including scholarships, and grants, disaggregated by age, race and ethnicity, unit load, and income level.
- 4) Defines total cost of attendance as a student's tuition and fees, books and supplies, living expenses, transportation expenses, and other student expenses used to calculate a student's financial need for purposes of federal Title IV student aid programs.
- 5) Establishes a sunset and repeal date for the aforementioned provisions. Sunsets the above provisions on July 1, 2028, and repeals the provisions on January 1, 2029.
- 6) States the Legislature finds and declares the above provisions require a special statute and a general statute cannot be used, as determined by Section 16 of Article IV of the California Constitution because of the unique circumstances of the district's need for greater flexibility in the use of their local unrestricted general funds in order to support students' basic needs and to remove financial barriers for students living in a high cost region of the State.

EXISTING LAW: *Federal law.*

- 1) Defines for full-time and part-time students, the cost of attendance to include tuition and fees, cost of books, supplies, transportation, and miscellaneous personal expenses and the cost of room and board (20 U.S. Code Section 1087II).

State law.

- 1) Defines "cost of attendance" as the monetary costs of attending college or university for the purpose of determining financial aid eligibility. Includes the cost of mandatory systemwide tuition and fees, books and supplies, room and board, transportation, and miscellaneous personal expenses (Education Code (EDC) Section 66028.1 (b)).
- 2) Establishes the CCC under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in this state. The CCC shall be comprised of community college districts (EDC Section 70900).
- 3) Establishes that CCC districts are under the control of a board of trustees, known as the governing board, who has the authority to establish, maintain, operate, and govern one or more community colleges, within its district as specified (EDC Section 70902).
- 4) Authorizes the governing board of each community college district to charge each student \$46 per unit per semester. Exempts the following from paying the prescribed fee:
 - a) Students enrolled in specified non-credit courses;
 - b) California State University or University of California student enrolled in remedial courses, as defined;
 - c) A student who meets a minimum academic and progress standards, as defined, and is either:

- i) Students enrolled in or receiving benefits from Temporary Assistance for Needy Families program (TANF), the Supplemental Security Income/State Supplementary Payment Program (SSI), or a general assistance program;
 - ii) Students who demonstrate eligibility according to income standards established by regulations of the CCC Board of Governors; or,
 - iii) Students who demonstrates financial need according to the methodology set forth in federal law or by regulations for determining the exempted family contribution of students seeking financial aid;
- d) Homeless or formerly homeless youth, as defined;
 - e) Students who were the dependent or surviving spouse of any member of the California National Guard who died or was permanently disabled while in the line of duty or while in active service of the state;
 - f) Students who were the dependent or surviving spouse of a California firefighter or law enforcement officer killed in the performance of their duties or who died as a result of performing duties related to law enforcement or fire suppression;
 - g) Students who were the dependent of a California resident who killed or who died as a result of injuries sustained in the September 11th, 2001 terrorist attacks;
 - h) Any child of any veteran of the United States military who has a service- connected disability, was killed in service, or has died of a service-connected disability; and,
 - i) The child of a recipient or the recipient of a Congressional Medal of Honor
 - j) The dependent or spouse of a person who was a nurse, physician, or first responder who died of COVID -19 during the state emergency (EDC Section 76300, 68120, 68120.3 and 66025.3).
- 5) Establishes the California College Promise (AB 19) to be administered by the Chancellor of the California Community Colleges for the purpose of authorizing community colleges to waive all or some of the tuition fees for first-time students who enroll in a 12 units or more at a community college and complete the Free Application for Federal Student Aid (FASFA) or the California Dream Act Application (CADAA). Provides an exemption to the 12 unit rule for those who have been certified as full-time by a staff person in the disabled student services program, as defined (EDC Section 76396 and 76396.3).

FISCAL EFFECT: Pursuant to Senate Rule 28.8, the Chair of the Senate Appropriations Committee determined any state costs associated with SB 893 (Becker) were not significant and ordered the measure to be directly sent to the Senate Floor for Second Reading without a hearing in Senate Appropriations.

COMMENTS: *Purpose.* As expressed by the author, “SB 893 provides flexibility for San Mateo CCCD to use unrestricted general fund dollars to support students. SB 893 will have significant impacts throughout the community and will allow the district to bridge inequities

throughout San Mateo County by making college more accessible and affordable for students, particularly those in marginalized and underrepresented communities.”

Tuition waivers at the CCC. The CCC serves over 1.8 million students, who attend 116 colleges throughout the state. As an open access institution, CCCs are often the first steps in a student’s higher education journey. Ensuring students matriculate to a timely degree and with minimal debt is part of the *Vision for Success*, as implemented by CCC Chancellor Oakley, and, therefore, offering an array of tuition fee waivers is a tool used by CCC districts to accomplish the objectives of the CCC.

In total the CCC offers ten different fee waivers to qualifying students who meet a codified requirements. For a comprehensive list of all the fee waivers, please see the aforementioned existing law section of this analysis. In the 2020-2021 academic year the CCC offered 841,488 fee waivers to students, equating to \$654,199,132 in financial aid.

The two most common fee waivers are the California College Promise (AB 19 (Santiago), Chapter 735, Statutes of 2017), and the California College Promise Grant (formerly the Board of Governors’ fee waiver). The California College Promise established in 2017, enables all students, regardless of income or financial aid status, to qualify for a fee waiver if they are 1) first-time college students, 2) enroll in at least 12 units or qualify for an exemption to the 12 unit requirement, and 3) complete either the FASFA or the CADAA. In the 2020-2021 academic year, 34,427 students qualified for a fee waiver under the California College Promise (AB 19) for a total of \$24,322,465 in financial aid.

The California College Promise Grant (CCPG) formerly the Board of Governors Fee Waiver) was established in 1984 to provide an exemption to the state-mandated enrollment fee that was implemented in the same year. The goal of the waiver was to eliminate the cost of attendance as a barrier to accessing higher education for low-income and underrepresented students. There are multiple pathways to qualifying for a CCPG including being a TANF recipient, an SSI recipient, or demonstrating financial need on either the FASFA or the CADAA. Additionally, a student must maintain a grade point average of 2.0 or higher in more than 50% of the coursework they attempt. The waiver provides a fee exemption for every unit the student takes at their chosen CCC. In the 2020-2021 academic year, 802,470 students qualified for the CCPG, which equates to \$616,910,291 in financial aid.

San Mateo CCCD. Nestled in the Bay Area of California is the San Mateo CCCD. Established in 1922, San Mateo CCCD is governed by a six member board of trustees who oversee the governing operations of three community colleges within the district’s borders. In the 2020-2021 academic year Skyline College, Cañada College, and the College of San Mateo offered courses to 39,958 students (CCC Chancellor’s Office Data Mart: student count). In 2020, San Mateo CCCD employed 1,556 employees including 45 Educational Administrators, 354 tenure or tenure track faculty, 515 temporary faculty, and 642 classified faculty (CCC Chancellor’s Office Data mart: faculty and staff demographics). As a community college in the Bay Area, San Mateo CCCD students face financial barriers unique to their geographical location. Specifically, high cost of total attendance attributed to high property values. According to College Navigator, the National Center for Education Statistics, the cost of attending any college with the San Mateo CCCD is more than \$28,000 per year.

Despite having a large student population and a high cost of attendance, only 8,578 students who attended a college within San Mateo CCCD qualified for the CCPG and there was no data

provided indicating any students qualified for the California College Promise (AB 19) (CCC Chancellor's Office Data Mart: financial aid). The low CCPG participation is attributed to a larger population of students who do not qualify for CCPG, Pell Grants, or any other form of financial aid based on need. In fall 2021, San Mateo CCCD identified 9,945 students who are classified as not low income and do not qualify for financial aid despite having a financial need when one factors in the total cost of attendance. Furthermore, the lack of California College Promise (AB 19) participation could be attributed to students not qualifying for the program.

As previously mentioned, to qualify for the California College Promise (AB 19) a student must have a course load of at least 12 units. The majority of students attending San Mateo CCCD in the fall and spring of 2020, took between 3 and 5.9 units per academic term (CCC Chancellor's Office Data Mart: part/full time unit load). Therefore, the majority of the student population attending San Mateo CCCD do not currently qualify for an existing tuition fee waiver and, therefore, an exemption is warranted for the district.

"Base Aid" districts. While the high cost of attendance due to property values bodes ill for students attending San Mateo CCCD, the high property values equates to additional property tax revenues for the district. San Mateo CCCD is one of eight base aid districts with the CCC system.

The total funding a CCC district receives from the State is the total calculation of both 1) apportionment funds as determined by the Student Centered Funding Formula and 2) categorical programs such as the Student Equity and Achievement Program or the California College Promise (AB 19). Categorical programs are entirely funded by the State General Fund (Proposition 98) and often include codified requirements for how the funds are to be used by the district. Apportionment funds are compiled from three sources: local property taxes, student enrollment fees, and the State General Fund. Once it is determined how much the State owes a college in apportionment, based on the Student Centered Funding Formula, a mixture of the three sources is paid to the college.

As defined by the fiscal team at the CCC Chancellor's Office, a district is considered basic aid if the district's property tax and enrollment fee revenues cover the entirety of their general apportionment allocation as computed by the Student Centered Funding Formula. Base aid districts also receive \$100 per full-time enrolled students of Proposition 30 Education Protection Account funds, and Full Time Faculty Hiring 2015-2015 funds. As a base aid district, San Mateo CCCD is locally funded and therefore has local authority over their apportionment funds as all of their apportionment funds are considered unrestricted or not controlled by the State.

Need for the measure? If San Mateo CCCD is a base aid district and has complete autonomy over their local unrestricted funds, why is SB 893 (Becker) necessary? Technically, San Mateo CCCD has the authority to establish its own tuition fee waiver or financial assistance for the total cost of attendance if they used foundational or philanthropy dollars. If San Mateo CCCD were to use their apportionment funds for a tuition fee waiver or to assist in covering the total cost of attendance, two legal questions would arise as to whether the tuition waiver and financial assistance would constitute a gift of public funds and whether there is legal precedence for the establishment of a district – specific tuition fee waiver.

Confined within the California Constitution, specifically Article 16, Section 6, is the prohibition regarding the use of public funds for a gift. While the section does not specifically identify fee waivers or financial assistance towards the total cost of attendance, Section 6 does prohibit the

use of public funds by a county, city, or community college for the purposes of a gift. In a presentation in 2018, the Fiscal Crisis and Management Assistance Team (FCMAT) provided context of the constitutional prohibition on gifts for K-12 districts. FCMAT noted if the K-12 district had a board policy that determined the expenditure serviced a public purpose, then perhaps the expenditure could be permissible. The public purpose must be authorized by statute; therefore, in order to comply with the California Constitution, San Mateo CCCD would need authorization in Education Code to provide a tuition fee waiver or financial assistance for their students.

On March 11, 2011, the CCC Chancellor's Office issued a legal opinion which clearly stated a community college could not decide to use apportionment funds to provide a cohort of students with a fee waiver; however the legal team did determine if the community college district received a grant or a gift from an outside source it could be used to pay for the fee waiver or financial assistance program. Specifically the legal counsel of the CCC Chancellor's Office found that if a district were to simply provide the fee waiver, the district would be in violation of Education Code Section 76300. In order to meet the legal standard established by the CCC Chancellor's Office, San Mateo CCCD would need permission in Education Code to provide the tuition fee waiver to student, despite being a base aid district.

Arguments in support. As described by San Mateo CCCD "At the San Mateo CCCD, the flexibility to use unrestricted general fund dollars to support students will have significant impact throughout our community and will allow our district to bridge inequities throughout our county by making college more accessible and affordable for students, particularly those in marginalized and underrepresented communities. Though San Mateo County is economically prosperous in comparison to other areas of the state, there are significant opportunity, economic and educational gaps within our community. The flexibility to use local funds to support these communities will have life-changing impacts on students. For example, the San Mateo CCCD's enhanced version of the California College Promise program – San Mateo CCCD Promise Scholars program – receives some state funding through AB 19 (Santiago) and is able to use some non-general fund dollars to supplement the program locally, but our demand outpaces our allowable funding. In fact, with current received and allowable resources, the San Mateo CCCD is able to serve 2,000 students through our Promise Scholars program, though we have a need to serve between 4,000 to 6,000 students. With SB 893, the San Mateo CCCD would be permitted to waive (or charge less) fees and use its local funds to provide for total cost of attendance matters including books and supplies and for basic needs such as food, transportation and housing. This permissibility would also reconcile any issues relating to any potential gift of public funds concerns."

Arguments in opposition. As reported by the American Federation of Teachers Local 1493, "Our district sadly has a history of committing insufficient funding to instruction, and SB 893 stands to intensify this tendency. For example, the San Mateo CCCD has been out of compliance with the 50% Law since 2015-2016. Initially, it was a small dip below 50%, but instead of reversing this trend, the District has strayed further away from the requirement that at least half of its Current Expense of Education (CEE) be spent on the benefits and salaries of classroom instructors. In 2020-2021, the District spent \$14.1 million less than mandated on compensation and benefits of teaching faculty; instead of spending at least 50% of its CEE on classroom instructors, the District spends less than 42%. Cumulatively, in the years that our District has been out of compliance with the 50% law, the District has diverted \$54.2 million for purposes other than those required in the law."

Additionally, “opening up general fund revenue for costs of attendance, which amount to approximately \$15,000 per student, without addressing the other equity needs on our campuses is the wrong way to approach the many barriers our students face. As educators, we are passionate in our dedication to making community college free, especially for students from low-income and historically marginalized backgrounds. However, SB 893 is not the way to accomplish this goal.”

Fifty Percent Law. The Fifty Percent Law or Education Code Section 84362, requires all community college districts, regardless of their base aid status, to spend at least half of their “current expense of education” budgetary dollars on “salaries for classroom instructions”. As defined in the Education Code, faculty salaries, classified staff salaries, employee benefits, books, supplies, and equipment replacement account for “current expense of education” and fifty percent of this amount is to be spent on the salaries for classroom instructors or faculty. According to the CCC Chancellor’s Office Budget and Accounting Manual the intent of the Fifty Percent Law was to limit classroom size and contain the growth of administrative and non-instructional costs. Furthermore, the CCC Chancellor’s Office Budget and Accounting Manual provides a list of expenditures not included in the current expense of education including student transportation, food services, community services, lease agreements for plant and equipment and other costs not specified in law or regulations as part of the “current expense of education.

If a district is found to have not met the fifty percent threshold, the Education Code provides an avenue by which a district can remain in compliance without providing additional funds for salaries for classroom instructors. The district must apply for an exemption by September 15th of the fiscal year following the year of the lack of funds. The CCC Board of Governors will determine if the district has met the requirements for an exemption. The two authorized requirements for providing an exemption, as delineated in Education Code, are either “that the district will in fact suffer serious [financial] hardship or will have to pay salaries of classroom instructors in excess of those paid by other districts of comparable type and functioning under comparable conditions unless the district is granted an exemption”

If a district does not apply or receive an exemption, the district is in violation of the Fifty Percent Law and the CCC Board of Governors will withhold the difference between the fifty percent of the “current expense of education” and the amount the district is currently paying for salaries for instructors from the following fiscal year apportionment.

In other words, either a district seeks a waiver or their apportionments will be reduced until they comply. However, the compliance mechanism only applies to those districts who receive State General Funds as part of their apportionment. A base aid district has no manner of recourse if they do not meet the requirements of the Fifty Percent Law as the Chancellor’s Office and the CCC Board of Governors have no tools to employ to hold the district accountable.

San Mateo CCCD has not complied with the Fifty Percent Law since the 2015-2016. For six fiscal years, San Mateo CCCD has not paid half of its “current expense of education” on “instructional salaries” nor has it sought a waiver from the CCC Board of Governors. As highlighted in the Board of Governors Meeting Agenda from March 21, 2022, San Mateo CCCD deficiency for the Fifty Percent Law in the current year is \$14.1 million and has a cumulative deficiency of \$54.2 million.

While San Mateo CCCD has not applied for a waiver in six years and despite not complying with the fifty percent threshold for instructional salaries, San Mateo CCCD has consistently ranked in the top 20 of funding allocated to faculty salaries among all 73 community college districts and has ranked within the top five of community college districts within the Bay Area.

San Mateo CCCD Educational Expenses and salaries for Faculty from 2015 to 2021			
Year	Current Expense of Education	Instructor's salaries	Percentage/State Ranking/Regional ranking
2015-2016	\$122,234,998	\$59,133,545	48.38% / 19 / 5
2016-2017	\$134,541,331	\$61,397,825	45.63% / 19 / 5
2017-2018	\$141,321,321	\$62,807,382	44.44% / 20 / 4
2018-2019	\$156,613,664	\$66,148,910	42.24% / 18 / 4
2019-2020	\$161,933,798	\$68,756,215	42.68% / 19 / 4
2020-2021	\$167,564,649	\$69,682,558	41.58% / 18 / 4

In four of the six years listed above even if the district were to meet the fifty percent law, the district regional rankings in terms of faculty salaries would not have changed. As stated in the Board of Governors Meeting Agenda on March 21, 2022, the district maintains it provides higher salaries than other colleges in the region and continues to provide uncommon benefits to the faculty including staff housing and tuition reimbursement.

In March 25, 2022, as part of a three year contract agreement, from July 2019 till June 2022, San Mateo CCCD and the Local AFT established an agreement which included retroactive raises for faculty for the academic years 2019 to 2020, medical reimbursement stipends for part-time faculty, a part-time faculty parity goal of 85%, and a 4% raise for adjunct instructors over and above salary increases for faculty.

When examining the average salaries of tenure/tenure track faculty at San Mateo CCCD between 2015- 2020, the district was in fact among the highest paid average salaries of all the community college districts.

Average Salary of a Tenured/Tenure Track Faculty at San Mateo CCCD between 2015-2020	
Year - Average Salary	Ranking out of 72/73 community college districts (CalBright began reporting in 2020)
2015 - \$97,401	15 out of 72
2016 - \$97,375	20 out of 72

2017 - \$103,047	16 out of 72
2018 - \$107,087	15 out of 72
2019 - \$107,797	18 out of 72
2020 - \$108,807	22 out of 73
2021 - \$118,010	10 out of 73

While San Mateo CCCD has in theory met the requirements as stipulated in the Education Code for an exemption to the Fifty Percent Law, San Mateo CCCD should still apply for a waiver each year in order to be in full compliance with the law. Although, the Chancellor's Office and the Board of Governors may not have a mechanism to currently hold San Mateo CCCD accountable, a day may come when these districts require State General Fund dollars to meet their apportionments and then the Chancellor's Office would be able to hold them accountable either for the current year or potentially retroactively for the total cumulative funds.

In order to avoid any future penalties due to continual violation of the Fifty Percent Law, the Committee urges San Mateo CCCD to, at a minimum, seek an exemption in the next fiscal year they do not meet the fifty percent threshold for instructional salaries.

Furthermore, the issue of the loophole within the Fifty Percent Law for holding basic aid districts accountable is beyond the scope of this SB 893; but is an interesting policy consideration for a future Legislative Session. The current Fifty Percent Law contains a loophole by which a base aid district can continue to be in violation of the law without any recourse.

Future Legislatures may wish to examine the Fifty Percent Law to ensure the CCC Chancellor's Office and the Board of Governors are equipped to hold every district, including base aid districts, accountable to the law.

Committee amendments. To address the concerns of the opposition regarding the possibility San Mateo CCCD may reroute funds away from existing services or programs, to the tuition fee waiver and fiscal assistance for total cost of attendance, the Committee has suggested, and the Author has accepted, the following amendments to add an additional reporting requirement to the sunset report:

Adds to Subdivision (d), Subparagraph (9) which reads:

(9) Services and programs that were limited or eliminated due to the implementation of this section.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
 City of Redwood City
 City of South San Francisco

San Mateo Area Chamber of Commerce
San Mateo County Board of Supervisors
San Mateo County Chamber of Commerce
San Mateo County Community College District
San Mateo County Economic Development Association
Student Senate for California Community Colleges

Oppose

California Federation of Teachers AFL-CIO
San Mateo Community College Federation of Teachers, AFT 1493

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