

Date of Hearing: August 21, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 493 (Jackson) – As Amended August 12, 2019

Policy Committee:	Higher Education	Vote:	9 - 3
	Judiciary		9 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill requires, by January 1, 2021, a postsecondary institution that receives state funds to comply with various requirements pertaining to student sexual harassment protections and to provide students with procedural protections relating claims of sexual harassment. Specifically, this bill requires the governing board or body of each of these institutions to:

- 1) Disseminate a notice of nondiscrimination to each employee, volunteer and individual or entity contracted with the institution.
- 2) Designate at least one employee of the institution to coordinate its efforts to comply with this bill's requirements.
- 3) Adopt rules and procedures for the prevention of sexual harassment.
- 4) Create procedures for the investigation of sexual harassment policy violations.
- 5) Adopt and publish on its website grievance procedures related to the prompt and equitable resolution of sexual harassment complaints.
- 6) Publish on its website the name, title and contact information for the employee designated to coordinate the institution's efforts to comply with this bill's requirements and individuals with the authority to investigate complaints or to institute corrective measure.
- 7) Provide training for each employee engaged in the grievance procedure.
- 8) Provide training for residential life student and nonstudent staff on trauma-informed handling of reports regarding incidents of sexual harassment at an institution with on-campus housing.
- 9) Notify employees of the obligation to report sexual harassment to appropriate school officials.
- 10) Provide training to all employees on the identification of sexual harassment.

In addition, this bill authorizes the Attorney General and any student or former student who alleges to have suffered injury caused by a violation of these provisions to bring an action in a court to enjoin, or recover specified damages for, a violation of its provisions. The bill also authorizes a court to assess a civil penalty not to exceed \$2,500 per day of violation and \$50,000

total per violation, against a postsecondary institution found to have violated this act in an action brought by the Attorney General.

FISCAL EFFECT:

- 1) Ongoing Proposition 98 General Fund cost pressures to CCCs in the tens of millions of dollars annually for increased litigation, increased number of hearing and for training employees. This estimate assumes each of the CCC's 72 districts receives a total of 288 lawsuits (four per campus) a year resulting in annual total costs between \$29 million and \$58 million, depending on several variables, including how many lawsuits go to trial. (The CCC serves about two million students annually.) The estimate also assumes 100 hearings systemwide a year, resulting in annual total costs of \$1 million to \$2 million. The estimate also assumes at least three people at each CCC campus, plus 10 individuals at the 12 campuses with housing, receiving training, resulting in annual total costs of between \$1 and \$2 million.

The state would need to reimburse these costs to CCC, if the Commission on State Mandates determines the bill's requirements to be a reimbursable state mandate.

- 2) Ongoing General Fund cost pressures to CSUs of about \$10 million annually for increased litigation, increased number of hearings and for training for employees. This estimate assumes the CSU's 23 campuses receives a total of 17 lawsuits a year, with costs between \$3 million and \$6 million, depending on several variables, including how many lawsuits go to trial. (The CSU serves about 480,000 students annually.) The estimate also assumes 100 hearings systemwide a year, with annual costs of \$1 million to \$2 million. Training would have costs, but they likely would not be significant, as CSUs already provide extensive training on sexual harassment.
- 3) Ongoing General Fund cost pressures to UCs of about \$2 million to \$5 million annually for increased litigation, increased number of hearing and for training employees. This estimate assumes the UCs nine campuses receive a total of seven lawsuits a year, with costs between \$1 and \$3 million, depending on several variables, including how many lawsuits go to trial. (The UC serves about 225,000 students annually.) The estimate also assumes 100 hearings system wide a year, with annual costs of \$1 to \$2 million. Training would have costs, but they likely would not be significant, as UCs already provides extensive training on sexual harassment.
- 4) Ongoing General Fund costs to the Department of Justice of about \$3 million to hire 16 employees, with lower costs in the 2020-21 fiscal year of about \$2 million as the department ramps up staff.

COMMENTS:

- 1) **Purpose.** According to the author:

SB 493 addresses the gap in California law as it concerns institutions of higher education by putting in place required processes for schools to response to alleged sexual harassment and assault, including notice and posting requirements to ensure students are aware of such processes and their rights, as well as transparent

procedures for investigating complaints to ensure a fair and equitable process for both parties.

- 1) **Background.** Federal law (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act) states that, "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program of activity receiving Federal financial assistance." Sexual harassment on college campuses may be considered a violation of Title IX because it impedes a student's right to receive an education free of sex-based discrimination. Federal law requires institutions of higher education to designate an individual on each campus to serve as a Title IX coordinator.

State law currently requires schools to post information on their websites related to the designated Title IX coordinator, rights of students and responsibilities of schools with regard to Title IX, and a description of how to file a complaint. In addition, state law requires each educational institution in California to have a written policy on sexual harassment. The policy is to be displayed on campus, be provided during orientations for new students and staff and appear in certain school publications.

This bill expands upon and further standardizes the responsibilities of institutions with regard to sexual harassment. Mostly notably, the bill authorizes enforcement of its provisions by the Attorney General and it provides for a private right of action, (meaning that an individual who has had their rights under the bill violated could file suit in court seeking redress against the higher education institution involved). Higher education institutions subject to this bill have voiced concerns about the anticipated costs of this portion of the bill.

Institutions subject to the provisions of this bill are all UC campuses, all CSU campuses, all CCC campuses and various private institutions that receive state funding. The most common state aid received by private institutions, including institutions such as Stanford, St Mary's College and the University of Southern California, is through the state's Cal Grant student aid program.

California universities indicate some of their Title IX procedures have changed since the California Court of Appeals' January 4, 2019, Doe vs. Allee decision found deficiencies in Title IX review processes at the University of Southern California, and indicate costs to comply with certain portions of this bill are lower as a result.

- 2) **Related Legislation.** SB 169 (Jackson), of the 2017-18 Legislative Session, was similar to this bill. The bill was vetoed by the Governor, who instead convened a workgroup to make recommendations related to the issues of this bill. The workgroup's recommendations largely are addressed the current iteration of this bill.

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