SENATE JUDICIARY COMMITTEE Senator Thomas Umberg, Chair 2023-2024 Regular Session

AB 2492 (Irwin) Version: April 18, 2024 Hearing Date: June 25, 2024 Fiscal: Yes Urgency: No ME

SUBJECT

Public postsecondary education: sex discrimination complaints: advocates and coordinators

DIGEST

This bill requires each public postsecondary education institution to establish the following positions: confidential student advocate to assist students who file complaints of sex discrimination with a Title IX office or have experienced sex discrimination; a confidential staff and faculty advocate to assist staff and faculty who have filed a complaint of sex discrimination with a Title IX office or have experienced sex discrimination; and a confidential respondent services coordinator to assist students, staff, or faculty who have been accused of sex discrimination.

EXECUTIVE SUMMARY

In response to numerous reports of California public postsecondary educational institutions creating an environment that protects perpetrators of sexual harassment to the detriment of student and employee survivors, various legislators have introduced legislation to force public postsecondary educational institutions to create an environment that better protects students and employees from being victimized by sexual harassment. AB 2492 is one of the bills designed to create a safer environment in California's public colleges and universities.

The provisions in this bill arise from recommendations for legislation described in a 2024 Assembly Higher Education Committee report.¹ This bill requires a public postsecondary educational institution to establish and designate at least one person to fulfill the positions of confidential student advocate, confidential staff and faculty advocate, and confidential respondent services coordinator to assist students, faculty, or

¹ See campus recommendation 3 on pages 26 in the Assembly Higher Education Committee report entitled *A Call to Action: How Postsecondary Education Institutions Can Address Sex Discrimination and Provide Educational Justice on Campus* (2024), available at https://abed.assembly.ca.gov/system/files/2024-02/a-call-to-action-report-2024_0.pdf [as of June

https://ahed.assembly.ca.gov/system/files/2024-02/a-call-to-action-report-2024_0.pdf [as of June 9, 2024]

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staff who have filed a complaint of sex discrimination, experienced sex discrimination, or are accused of sex discrimination, as provided, on or before July 1, 2026. The bill requires the positions to be independent from the Title IX office, receive specified training, and provide information to the students, faculty, or staff regarding various issues.

The bill is supported by the California State University, Cal State Student Association, California Faculty Association, California State University Employees Union, and Lieutenant Governor Eleni Kounalakis. The bill is opposed by Stop Abuse for Everyone, an organization that opposes most of the bill package that seek to implement recommendations from the Assembly Higher Education Committee report. AB 2492 passed the Senate Education Committee with a vote of 7 to 0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- Provides that, in part, "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 or activity receiving Federal financial assistance." Enforcement of compliance is initiated upon the filing of a complaint alleging a violation of Title IX. (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act)
- 2) Requires each school district and county office of education, or a local public or private agency that receives funding from the state or federal government, to designate a person to serve as the Title IX compliance coordinator to enforce compliance at the local level, including coordinating any complaints of non-compliance. (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act)

Existing state law:

- 1) Provides that no person participating in any program or activity conducted by any postsecondary education institution, that receives state financial assistance or enrolls students who receive state financial aid, is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Government Code section 11135 or any other characteristic that is contained in the prohibition of hate crimes defined in Penal Code Section 422.6 (a), including immigration status. (Educ. Code § 66270.)
- 2) Provides that no person participating in any program or activity, that is conducted, operated, or administered by the state or state agency that is funded directly by the state or receives any financial assistance from the state, will not be subjected to

discrimination nor denied full or equal access to benefits, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, and clarifies that this section applies to the California State University (CSU). (Gov. Code § 11135.)

This bill:

- 1) Requires a public postsecondary educational institution, in order to comply with the above-described provision of the Equity in Higher Education Act, to establish and designate at least one person to fulfill the positions of confidential student advocate, confidential staff and faculty advocate, and confidential respondent services coordinator to assist students, faculty, or staff who have filed a complaint of sex discrimination, experienced sex discrimination, or are accused of sex discrimination, as provided, on or before July 1, 2026.
- 2) Requires those positions to, among other things, be independent from the Title IX office, receive specified training, and subject to permission from the student, faculty, or staff, provide, among other things, information about where the student, faculty, or staff can access campus resources, as provided.
- 3) Defines "public postsecondary educational institution" as any campus of the California Community Colleges, the California State University, or the University of California.

COMMENTS

1. Stated need for the bill

According to the author:

California's colleges and universities are filled with extremely bright and dedicated students who come from around the world to study, conduct research, participate in athletics, and better their lives. At times their higher education experience presents them with challenges related to sexual harassment and sex discrimination. Many students and staff are not prepared to navigate these proceedings on their own. AB 2492 would provide students, faculty, and staff involved in Title IX adjudication processes a confidential advocate or respondent coordinator. These positions provide support to those navigating a Title IX hearing on both the complainant and the respondent side. California's institutions of higher education must be equipped with resources that appropriately support their students, faculty, and staff during Title IX proceedings.

2. <u>Senate Education Committee and Assembly Higher Education Committee hosted</u> <u>fact finding briefings that resulted in a report² prepared by the Assembly Higher</u> <u>Education Committee with various legislative proposals to prevent and address</u> <u>discrimination on college and university campuses in California</u>

According to the Senate Education Committee, staff from the Assembly Higher Education Committee and their Committee hosted fact-finding briefings with representatives from the CCCs, CSUs, UCs and independent colleges and universities in California. Their goal was to understand how higher education institutions are preventing and addressing sexual discrimination on campuses. The Assembly Higher Education Committee released a report this year that highlights shortcomings with existing law and recommends proposals to prevent and address discrimination on California's higher education campuses.

The 2024 Assembly Higher Education Committee report, A Call to Action: How Postsecondary Education Institutions Can Address Sex Discrimination and Provide Educational Justice on Campus, page 2, explains:

Title IX goes beyond ensuring women have access to sports and academic majors; it requires all higher education institutions to provide educational programs free from sex discrimination. The prevention of sex discrimination is more than simply having a policy on how to address complaints. Prevention is creating a campus culture that addresses the root cause of sex discrimination before it becomes a complaint. The prevention of sex discrimination includes training where bystanders are empowered to intervene, a campus where students, faculty, and staff are encouraged to report incidents, and a culture, where those reports are met with support for all parties involved. Policies are necessary to address sex discrimination when it occurs, but those policies should be trauma-informed and focused on imposing accountability rather than retribution when conduct is found to have violated the campuses' policies or the law.

As further explained on page 2 of the report, sex discrimination "means sexual assault, sexual harassment, stalking, domestic violence, and dating violence...The prevention of sex discrimination on college and university campuses in California is outlined in three main sets of policies: Federal (Title IX), State (Sex Equity in Higher Education act and related sections of the Education Code), and the higher education institution's policies."

The Senate Education Committee analysis of SB 1491 (Eggman, 2024) explains the genesis of the report:

² A Call to Action: How Postsecondary Education Institutions Can Address Sex Discrimination and Provide Educational Justice on Campus; The California Assembly Committee on Higher Education (2024). <u>https://ahed.assembly.ca.gov/system/files/2024-02/a-call-to-action-report-2024_0.pdf</u>

Throughout 2023, staff from the Assembly Higher Education Committee and [the Senate Education Committee] hosted fact-finding briefings with representatives from the CCC, CSU, UC and various California Independent Colleges and Universities to understand how higher education institutions are preventing and addressing sexual discrimination on campuses. The Assembly Higher Education Committee released a report that provides a synopsis of the information gleaned from the briefings and a compilation of legislative proposals for how the State can partner with higher education institutions to prevent and address discrimination in all its forms on college and university campuses throughout California. [the report is available at: https://ahed.assembly.ca.gov/system/files/2024-02/a-call-to-action-report-2024_0.pdf]

The following write up on pages 15-16 of the 2024 Assembly Higher Education Committee report, *A Call to Action: How Postsecondary Education Institutions Can Address Sex Discrimination and Provide Educational Justice on Campus*, relates to this bill. As described in the report:

Confidential advocates provide a continuum of care for survivors and play an integral role in restoring educational equity after a discriminatory event. Confidential advocates are the key architect in building a blueprint for a survivor's recovery as they are responsible for connecting the survivor with onand off-campus resources to help facilitate healing after the alleged incident.

Addressing Gender-Based Violence on Campuses: Guide to a Comprehensive Model, establishes confidential advocates as the first line of action when it comes to helping survivors determine the next steps. In addition to connecting survivors to comprehensive care services, confidential advocates assist survivors in navigating the difficult choices of reporting in a manner that leaves the survivor empowered to choose what is best to meet their individual needs (Campus Technical Assistance and Resource Project). Confidential advocates provide trauma-informed, inclusive, emotional support by helping survivors connect with services such as access to health care and counseling.

Not Alone, the first report by the White House Task Force to Protect Students from Sexual Assault, determined a key best practice in responding effectively when a student is sexually assaulted, is for every campus to have a confidential victim advocate who can provide emergency and ongoing support to the survivor (The White House, 2014). The state of Texas goes a step further by not only requiring higher education institutions to have confidential advocates, but Texas also requires higher education institutions to employ students as confidential advocates to encourage reporting (Texas Higher Education Coordinating Board, 2023). A task force created by the Massachusetts Board of Higher Education published a report with best practices for campus safety and violence prevention, which included a recommendation to provide support services to both survivors of sexual violence and those who are accused (Massachusetts Commissioner of Higher Education, 2016). Both parties will need help through the grievance process, and both may need access to support services such as counseling and academic support. The report also suggests the institutions examine the impact of the sex discrimination incident and offer confidential advocates to those impacted by the discriminatory incident; such as roommates, teammates, classmates, fraternity brothers or sorority sisters, friends, professors, coaches, and others who may have been impacted by having witnessed or learned of the incident (Massachusetts Commissioner of Higher Education, 2016).

The report highlights the importance of confidential advocates for survivors of sexual violence and those who are accused of sexual violence ³ The report concluded with various recommendations for legislation. AB 2492 is modeled after campus recommendation 3. Recommendation 3 suggests requiring "each campus of the CCC, CSU, and UC to hire at least one confidential advocate and one confidential respondent coordinator. The advocates and respondents shall be housed in an independent office and shall be confidential by every standard under the law. Campuses are encouraged to hire students, in addition to the required advocates as listed above, who shall be confidential advocates for their peer students and shall be trained and certified as confidential advocates to provide the campus community with peer-confidential resources."

The bill requires California's public postsecondary educational institutions to have a confidential student advocate, confidential staff and faculty advocate, and a confidential respondent services coordinator to assist parties through Title IX investigation and adjudication processes. The confidential student advocate will receive training to provide services including: confidential emotional support, campus-specific misconduct policies, how to file complaints, informing the student of various reporting options and anti-retaliation policies, assisting the Title IX coordinator in supporting the student, and providing information on the medical and mental health resources available on campus. The confidential faculty and staff advocate will operate similarly, with the added provision that the advocate will be trained on campus collective bargaining agreements. The confidential respondent services coordinator will receive similar training on campus nondiscrimination policies, as well as training on conduct standards, and the rights afforded to the respondent under the campus nondiscrimination policy. AB 2492 allows for the confidential student advocate to be the same person as the confidential staff and faculty advocate. It also permits a sexual assault and domestic violence counselor to serve as the confidential advocate for either student or staff. These

³ 2024 Assembly Higher Education Committee report, A Call to Action: How Postsecondary Education Institutions Can Address Sex Discrimination and Provide Educational Justice on Campus, p. 15-16.

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positions will not be classified as mandatory reporters, to ensure students and faculty feel free to access these services.

3. Support

The California State University writes the following in support of the bill:

This bill would require California's public universities to provide confidential advocates and respondent advocates to assist students, faculty, and staff members who are navigating incidents of sex discrimination.

These positions are vital to ensuring that members of the campus community are aware of systemwide policies as well as state and federal laws that may impact their case. Confidential advocates assist survivors by providing emotional support, informing them of their rights and options, and helping them to file a report with the campus Title IX office as well as law enforcement if they so choose. This position supports the student, faculty, or staff member in navigating the Title IX process and helping them access the resources they need at a difficult time. Respondent advocates assist the student, faculty, or staff member involved in the case by informing them of their rights and relevant policies, as well as resources they can access including mental health services. Both of these positions are separate from the university's Title IX office and are entirely focused on supporting the individual.

While the CSU currently has a confidential advocate at each of our twenty-three universities and respondent advocates at the majority of our universities, the CSU is currently working to ensure all universities have a respondent advocate. This bill aligns with our belief that members of all campus communities should have access to both of these resources.

The California Faculty Association writes the following in support of AB 2492:

AB 2492 mandates that by July 1, 2026, each campus of the CCC, CSU, and UC will designate a confidential student advocate, a confidential staff and faculty advocate, and a confidential respondent services coordinator. These roles are critical to providing the necessary support to survivors of sexual harassment and sex discrimination, as well as to those accused, ensuring they receive fair and compassionate treatment.

Key provisions of AB 2492 include:

1. **Confidential Student Advocate**: This advocate will receive training on campus nondiscrimination policies and student misconduct procedures. They will provide confidential emotional support, inform students of their rights and options, and assist with the reporting process, all with the student's permission.

- 2. **Confidential Staff and Faculty Advocate**: This advocate will support staff and faculty members who have experienced sexual harassment or sex discrimination, providing similar services as the student advocate but tailored to the needs of employees.
- 3. **Confidential Respondent Services Coordinator**: This coordinator will provide emotional support and assistance to students, staff, and faculty who have been accused of sex discrimination. They will ensure that respondents understand their rights and the investigatory process, maintaining confidentiality and independence from the Title IX office.

The roles established by AB 2492 are exempt from the requirements of a responsible employee, ensuring that individuals can seek support without fear of mandatory reporting. This bill also permits campuses to have the same person fulfill multiple advocate roles and allows sexual assault and domestic violence counselors to serve as confidential advocates.

The need for these positions is evident. Currently, the CCC lacks a systemwide policy on confidential advocates, leaving many districts without this critical support. While most CSU and UC campuses have some form of confidential advocacy, the level of support and consistency varies. AB 2492 addresses these gaps by standardizing the availability of confidential support across all public postsecondary institutions in California.

AB 2492 will significantly enhance the support system for survivors of sexual harassment and sex discrimination, as well as ensure fair treatment for respondents. By establishing these roles, California's public postsecondary institutions will be better equipped to handle these sensitive issues, providing a safer and more supportive environment for all students, faculty, and staff.

The Cal State Student Association writes the following in support of AB 2492:

This bill aims to ensure that students have the option of having a confidential advocate or a confidential respondent services coordinator to accompany them during Title IX investigation and adjudication processes.

We commend the diligent work undertaken by the committee as evidenced in the Call to Action Report. The report highlights significant deficiencies in addressing discrimination and inequitable treatment within the CSU system, issues that deeply trouble us. It is clear that substantial action is necessary to address these shortcomings. AB 2492, aligning with the third campus recommendation from the Call to Action Report, represents a crucial step forward in this regard. At present, public colleges and universities lack a systemwide policy to support students and staff during sexual harassment or sex discrimination hearings. AB 2492 seeks to remedy this by establishing a mechanism for individuals filing complaints to access trained, confidential advocates who can provide support, inform them of their rights, and explain reporting options. Similarly, individuals responding to complaints will have the option to engage with a confidential respondent services coordinator. Given the stressful and complex nature of Title IX hearings, AB 2492 ensures that students, staff, and faculty receive the necessary guidance and support.

SUPPORT

Cal State Student Association California Faculty Association California State University California State University Employees Union Lieutenant Governor Eleni Kounalakis

OPPOSITION

Stop Abuse for Everyone

RELATED LEGISLATION

Pending Legislation:

SB 1166 (Dodd, 2024) expands the scope of a currently-required CSU report containing a summation of the activities undertaken by each campus and by the systemwide Title IX office to also include outcomes of appeals, a list of personnel who are exempt from being a "responsible employee," and a yet-to-be-developed annual report that compiles campus-based evaluations of how sex discrimination is addressed on campuses. Requests the UC and requires each community college district to also submit this report. SB 1166 is pending in the Assembly Appropriations Committee.

SB 1491 (Eggman, 2024) requires the CSU Trustees and the governing board of each community college district, and requests the UC Regents, to designate an employee at each of their respective campuses as a point of contact for the needs of lesbian, gay, bisexual, asexual, pansexual, transgender, gender-nonconforming, intersex and two-spirit faculty, staff, and students at the respective campus. The bill requires the point of contact to be a confidential employee, as specified; requires the CSU Trustees and the governing board of each community college district to adopt and publish policies on harassment, intimidation, and bullying and include these policies within the rules and regulations governing student behavior; and, requires California Student Aid Commission, beginning with the 2026-27 school year, to provide written notice to students who receive state financial aid whether their college or university has a

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religious school exemption from Title IX. SB 1491 is pending in the Assembly Judiciary Committee.

AB 810 (Friedman, 2024) requires CCCs and CSU, and requests UC and private postsecondary education institutions, to implement a policy of requiring potential employees for academic, athletic, and administrative positions to disclose whether they have been the subject of a finding of sexual harassment and to permit the institution to contact past employers to inquire whether the applicant had any substantiated allegations of misconduct. AB 810 is in the Senate Appropriations Committee.

AB 1790 (Connelly, 2024) requires the CSU to take specified actions to implement the recommendations provided by the State Auditor's report from 2022 titled "California State University: It Did Not Adequately or Consistently Address Some Allegations of Sexual Harassment." AB 1790 is pending in the Senate Appropriations Committee.

AB 1905 (Addis, 2024) prohibits an employee of a public postsecondary educational institution from being eligible for retreat rights and from receiving a letter of recommendation if the employee is the respondent in a sexual harassment complaint where a final determination has been made or the employee resigned. AB 1905 is pending in the Senate Appropriations Committee.

AB 2047 (Mike Fong, 2024) requires the CCC, CSU, and UC to establish a systemwide Office of Civil Rights and establish the position of systemwide Title IX coordinator. AB 2047 is pending referral in the Senate Judiciary Committee.

AB 2048 (Mike Fong, 2024) requires each campus of the CSU and UC, and each community college district, to establish, on or before July 1, 2026, a Title IX office in a private space for students and employees to disclose complaints of sex discrimination, including, but not limited to, sexual harassment; and, provides that the Title IX office is to be under the administration of a Title IX coordinator who is to be responsible for coordinating the campus' implementation and compliance with the systemwide nondiscrimination policies. AB 2048 is pending in the Senate Judiciary Committee.

AB 2326 (Alvarez, 2024) establishes which entities who are responsible for ensuring campus programs are free from discrimination and who has the authority to oversee and monitor compliance with state and federal laws; requires the chair of the CCC Board of Governors, the President of UC, and the Chancellor of CSU to present to the Legislature annually on the state of the system in preventing discrimination on campus; and, requires the systemwide governing boards to review the system's nondiscrimination policies and to update them if necessary. AB 2326 is in the Senate Appropriations Committee.

AB 2407 (Hart, 2024) requires the State Auditor to conduct an audit every three years of the CCC, CSU, and UC regarding their respective handling and investigation of sexual

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harassment complaints. AB 2407 is in the Senate Appropriations Committee.

AB 2608 (Gabriel, 2024) expands currently required training for students on sexual violence and sexual harassment to include information regarding drug-facilitated sexual assault and information related to confidential support and care resources. AB 2608 is pending in the Senate Appropriations Committee.

AB 2987 (Ortega, 2024) requires each campus of the CSU and CCCs, and requests each campus of the UC, to provide status updates on the outcomes of complaints of sex discrimination to complainants and respondents, to the extent permissible under state and federal law; and, requires/requests that notice of a disciplinary action to the respondent be provided to the respondent within three schooldays of a decision. AB 2987 is in the Senate Appropriations Committee.

Prior Legislation:

SB 808 (Dodd, Ch. 417, Stats. 2023) required the CSU to annually submit a report to the Legislature related to sexual harassment reports, complaints, investigations, hearings, and appeals.

SB 791 (McGuire, Ch. 415, Stats. 2023) required the governing board of a community college district and the Trustees of the CSU, and requested the UC Regents, to require an application for appointment to an academic or administrative position to disclose any final administrative or judicial decision issued within the last seven years determining that the applicant committed sexual harassment.

AB 1844 (Medina, 2022) would have required disclosure of records of sexual assault and harassment allegations against employees by public postsecondary educational institutions when those employees seek future employment. AB 1844 died in the Assembly Appropriations Committee.

AB 2683 (Gabriel, Ch. 798, Stats. 2022) required the CCCs, CSU, and any independent institution of higher education or private postsecondary education institutions that receives state financial assistance to provide annual sexual harassment and sexual violence prevention training to students, as specified. Requested the UC to provide the same aforementioned annual training to students.

SB 493 (Jackson, Ch. 303, Stats. 2020) required postsecondary educational institutions to, among other things, adopt rules and procedures for the prevention of sexual harassment, and adopt and post on their Web sites the grievance procedures to resolve complaints of sexual harassment.

SB 1375 (Jackson, Ch. 655, Stats. 2016) required all schools receiving federal funding post the following information on their website: the name and contact information of their Title IX Coordinator; the rights of a pupil and the public, and the responsibilities

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of the school under Title IX; a description of how to file a complaint under Title IX. SB 1375 also required the State Superintendent of Public Instruction to electronically send an annual letter to all schools notifying them of this responsibility. SB 1435 (Jackson, Ch. 633, Stats. 2016) requested that the "Health Framework for California Public Schools" include comprehensive information on the development of healthy relationships and be age and developmentally appropriate.

AB 2654 (Bonilla, Ch. 107, Stats. 2016) required postsecondary educational institutions to post their written policy on sexual harassment on their websites. AB 2654 also required the policy to include information on the complaint process and the timeline for the complaint process. The policy must include information on where to obtain the specific rules and procedures for pursuing available remedies and resources, both on and off campus.

SB 186 (Jackson, Ch. 232, Stats. 2015) enabled the governing board of a CCC district to exercise jurisdiction over student conduct that occurs off district property in cases of sexual assault and sexual exploitation, regardless of the victim's affiliation with the college.

SB 665 (Block, 2015) would have required the Attorney General to establish a statewide Title IX Oversight Office, required postsecondary educational institutions to report specific data to this office and required each student to complete training on rape and sexual assault awareness and prevention annually. SB 665 was held in the Senate Appropriations Committee.

SB 695 (DeLeón, Ch. 424, Stats. 2015) required K-12 school districts that require completion of a course in health education as a condition of high school graduation to include instruction in sexual assault and violence.

SB 967 (DeLeón, Ch. 748, Stats. 2014) required the governing boards of CCC districts, the CSU Trustees, and the UC Regents, as well as the governing boards of independent postsecondary institutions in California to adopt victim-centered sexual assault, domestic violence, dating violence, and stalking policies as a condition of receiving state funds for student financial assistance.

AB 1433 (Gatto, Ch. 798, Stats. 2014) required the governing board of each public, private and independent postsecondary educational institution, which receives public funds for student financial assistance, to adopt and implement written policies and procedures governing the reporting of specified crimes to law enforcement agencies.

SB 777 (Kuehl, Ch. 559, Stats. 2007) revised the list of prohibited bases of discrimination and the kinds of prohibited instruction, activities, and instructional materials in the Education Code, and instead referred to the protected characteristics contained in the definition of hate crimes in the Penal Code. Defined disability, gender, nationality, race or ethnicity, religion, and sexual orientation for this purpose. Changed the current AB 2492 (Irwin) Page 13 of 13

references of "handicapped" individuals in the Education Code to, instead, refer to individuals with physical disabilities.

AB 3133 (Roos, Ch. 1117, Stats. 1982) enacted the Sex Equity in Education Act, which, similar to its federal Title IX counterpart, prohibits discrimination in California schools on the basis of sex.

PRIOR VOTES:

Senate Education Committee (Ayes 7, Noes 0) Assembly Floor (Ayes 72, Noes 0) Assembly Appropriations Committee (Ayes 15, Noes 0) Assembly Higher Education Committee (Ayes 11, Noes 0)
