
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair
2017 - 2018 Regular

Bill No: AB 1655 **Hearing Date:** July 5, 2017
Author: Grayson
Version: June 29, 2017
Urgency: No **Fiscal:** Yes
Consultant: Lynn Lorber

Subject: University of California: requests from the California State Auditor's office: prohibition on coordination.

NOTE: This bill has been significantly amended and this is the first time the bill is being heard in its current form.

SUMMARY

This bill prohibits campuses of the University of California (UC), when a request for information is made by the California State Auditor's Office, from coordinating responses with or seeking counsel or contact from the Office of the President. This bill also expands an existing biennial report the UC provides on the total costs of education to include information on all funds acquired and spent by the Office of the President, what programs or projects were funded from discretionary or restricted funds, and the policies used to determine which funds are discretionary or restricted.

BACKGROUND

Existing law:

State Auditor

- 1) Establishes the California State Auditor under the direction of the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy and provides that in order to be free of organizational impairments to independence, the office shall be independent of the executive branch and legislative control. (Government Code § 8543)
- 2) Requires the State Auditor to conduct audits requested by the Legislature's Joint Legislative Audit Committee relating to a state or local governmental agency or other publicly created entity. (GC § 8546.1)
- 3) Authorizes the State Auditor to issue subpoenas and the superior court has jurisdiction to compel the attendance of witnesses, the making of oral or written sworn statements, and the production of papers, books, accounts, and documents, as required by any such subpoena. (GC § 8545.5)
- 4) Requires the State Auditor during regular business hours to have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and all other records, bank accounts, and money or other property, of any agency of the state, whether created by the

California Constitution or otherwise, any local governmental entity, including any city, county, and school or special district, and any publicly created entity, for any audit or investigation. (GC § 8545.2)

- 5) Requires any officer or employee of any agency or entity having these records or property in his or her possession, under his or her control, or otherwise having access to them, to permit access to, and examination and reproduction thereof, upon the request of the California State Auditor or his or her authorized representative. (GC § 8545.2)
- 6) States that any officer or person who fails or refuses to permit access and examination and reproduction, as required, is guilty of a misdemeanor. (GC § 8545.2)

Reporting by the University of California (UC)

- 7) Requires the UC to report biennially to the Legislature and the Department of Finance, by October 1 each even-numbered year, on the total costs of education at the UC.
- 8) Requires the report to identify the costs of undergraduate education, graduate academic education, graduate professional education, and research activities. Existing law requires all four of these categories to be reported in total and disaggregated separately by specified disciplines.
- 9) Requires the costs to also be reported by fund source, including state General Fund, systemwide tuition and fees, non-resident tuition and fees, and UC General Funds.
- 10) Requires the costs to be reported on both a systemwide and campus-by-campus basis for any report submitted after January 1, 2017.
- 11) Requires a report prepared after January 1, 2017, to include information on costs, disaggregated by campus, based on the methodology developed by the National Association of College and University Business Officers in its February 2002 report, and other methodologies determined by the UC.
- 12) Sunsets the requirement to submit this report on January 1, 2021. (Education Code § 92670)

ANALYSIS

This bill prohibits campuses of the UC, when a request for information is made by the California State Auditor's Office, from coordinating responses with or seeking counsel or contact from the Office of the President. This bill also expands an existing biennial report the UC provides on the total costs of education to include information on all funds acquired and spent by the Office of the President, what programs or projects were funded from discretionary or restricted funds, and the policies used to determine which funds are discretionary or restricted. Specifically, this bill:

Requests from the Auditor

- 1) Prohibits campuses of the University of California (UC), whenever a request for information relating to the security of funds is made by the California State Auditor's Office to one or more campuses, from coordinating their response with, or seeking counsel, advice, or similar contact regarding their response from, the Office of the President before submitting the requested information to the Auditor's Office.
- 2) Provides that the purpose is to ensure that accurate and unfiltered information is provided to the Legislature for purposes of making informed funding decisions.
- 3) Requires the Auditor's Office, when requesting information pursuant to this bill, to include a statement in the request that it is requesting the information and that the request for information is not to be shared with the Office of the President.

Report on costs of education

- 4) Requires the existing biennial report the UC provides on the total costs of education to also include all of the following information:
 - a) All funds acquired by the Office of the President of the UC, from all sources, for each year of the reported period.
 - b) All funds that the Office of the President spent each year of the reporting period, including funds the Office of the President deems as discretionary funds or restricted funds.
 - c) Which funds are deemed discretionary or restricted, and the current policy used to determine which funds are deemed discretionary or restricted.
 - d) What programs or projects were funded from discretionary or restricted funds, and what amount of discretionary, restricted, or both, were used for each program or project.
- 5) Requires the costs reported to be prior year actual expenditures and the amounts included in the reports to be based on publicly available information.
- 6) Extends the sunset on the requirement to submit this report from January 1, 2021, to January 1, 2023.
- 7) States legislative intent to ensure that the Legislature has accurate information upon which to base funding decisions relating to the UC.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Despite having issued two reports to comply with the cost reporting requirement since 2014, UC does not clearly state what source of information it used as the basis for its cost estimates. In fact, the UC qualified in both reports that its data should not be reliably used as a

foundation on which the Legislature bases funding decisions. Drastic tuition increases have not been accompanied by reliable and transparent data about the cost of educating a student at University of California (UC). A State Auditor report also found in April 2017 that the University of California Office of the President (UCOP) amassed \$175 million in reserve funds and left unclear what the necessity of many spending decisions were, and their direct benefit to student instruction. The report made various suggestions for UCOP to more transparently report its funds. Finally, the transparency and reliability of UC cost reporting has been further clouded by the finding that the UCOP intentionally interfered with individual campuses' survey responses meant to gauge the usefulness of certain spending activities on university programs. In an effort to address all of the above issues with the obtainment of information from the UC, there needs to be guidelines to strengthen transparency."

- 2) **Recent state audit.** The Bureau of State Audits released a report on April 25, 2017, titled "The University of California Office of the President: It Failed to Disclose Tens of Millions in Surplus Funds, and Its Budget Practices Are Misleading." This audit found, among other things:
 - a) The Office of the President accumulated more than \$175 million in undisclosed restricted and discretionary reserves; as of the fiscal year 2015–16, it had \$83 million in its restricted reserve and \$92 million in its discretionary reserve.
 - b) More than one-third of its discretionary reserve, or \$32 million, came from unspent funds from the campus assessment, an annual charge that the Office of the President levies on campuses to fund the majority of its discretionary operations.
 - c) The Office of the President did not disclose the reserves it had accumulated, nor did it inform the Regents of the annual undisclosed budget that it created to spend some of those funds. The undisclosed budget ranged from \$77 million to \$114 million during the four years we reviewed.
 - d) The State Auditor's Office found it particularly troublesome that the Office of the President intentionally interfered in the Auditor's efforts to assess the types and quality of services it provides to campuses. Correspondence between the Office of the President and the campuses shows that the Office of the President inappropriately reviewed campuses' survey responses, which resulted in campuses making changes to those responses prior to submitting them to the Auditor's Office, campus statements that were critical of the Office of the President had been removed or substantially revised, and negative ratings had been changed to be more positive. <http://www.bsa.ca.gov/pdfs/reports/2016-130.pdf>
- 3) **Action as result of the audit.** The UC has agreed to accept all of the recommendations contained in the State Auditor's February 2017 report. The UC has formed a task force to implement the recommendations and has adopted

an implementation plan. <http://www.ucop.edu/ucop-audit-implementation/index.html>

In addition, AB 97 (Ting, Chapter 14, 2017), the Budget Act of 2017, provides that it is the expectation of the Legislature that University of California (UC) “take the actions of the Regents of the UC and the UC Office of the President that are directed by the California State Auditor in its audit report “Report 2016-130,” dated April 25, 2017, regarding the University of California Office of the President, by April 1, 2018.

- 4) ***Communication during a State Audit.*** The February 2017 State Audit found that “the Office of the President intentionally interfered in the Auditor’s efforts to assess the types and quality of services it provides to campuses. Correspondence between the Office of the President and the campuses shows that the Office of the President inappropriately reviewed campuses’ survey responses, which resulted in campuses making changes to those responses prior to submitting them to the Auditor’s Office, campus statements that were critical of the Office of the President had been removed or substantially revised, and negative ratings had been changed to be more positive.”

On May 16, 2017, the UC issued Guidelines for Internal Communication during State Audits. These guidelines provide that all UC employees should follow the following protocols for communication during fieldwork for an audit conducted by the California State Auditor:

- a) The primary contact for any inquiries relating to a State audit during audit fieldwork is a member of the State Auditor’s audit team.
- b) The campus Internal Audit Director or designated external audit coordinator will serve as the internal point of contact for inquiries relating to a State audit and can serve to facilitate communication with the State Auditor’s office as necessary unless otherwise directed by the State Auditor’s Office.
- c) If there is a need for a campus to contact the Office of the President for guidance during audit fieldwork, this communication should be handled exclusively between the campus Internal Audit Director/designated external audit coordinator and the Chief Compliance and Audit Officer or Systemwide Deputy Audit Officer.
- d) If there is uncertainty at a campus about whether the Office of the President should be contacted regarding a State audit matter, the campus Internal Audit Director/designated external audit coordinator should contact the State Auditor’s Office for guidance.
<http://www.ucop.edu/ethics-compliance-audit-services/files/audit/state-audit-guidelines.pdf>

This bill prohibits campuses of the UC, when a request for information is made by the California State Auditor’s Office, from coordinating responses with or seeking counsel or contact from the Office of the President. This bill essentially codifies

existing standard audit practices.

- 5) ***Funds acquired and spent by the Office of the President.*** This bill expands an existing biennial report the University of California (UC) provides on the total costs of education to include information on all funds acquired and spent by the Office of the President, what programs or projects were funded from discretionary or restricted funds, and the policies used to determine which funds are discretionary or restricted. AB 97 (Ting, Chapter 14, 2017), the Budget Act of 2017, provides that it is the expectation of the Legislature that UC “disclose all revenues and expenditures, including carryover funds, and provide a full description of systemwide and presidential initiatives, including their sources of revenue and a justification of how they further the mission of the university, to the Senate Education Committee, the Assembly Higher Education Committee, the Senate Budget Subcommittee Number 1 on Education, and the Assembly Budget Subcommittee Number 2 on Education Finance, beginning with the 2018–19 fiscal year.”

While the Budget Bill Language (BBL) is not identical to the contents of this bill, the BBL is the result of negotiations and agreement between the Legislature and the Governor. Therefore, the provisions of this bill related to funds of the Office of the President are unnecessary and duplicative. **Staff recommends an amendment** to remove those provisions from this bill (strike Education Code § 92670).

- 6) ***Fiscal impact.*** The Assembly Appropriations Committee analysis is based on a prior version of this bill and is not relevant to the current version of this bill.
- 7) ***Related legislation.*** AB 562 (Muratsuchi) provides that any person who, with intent to deceive or defraud, interferes, obstructs or impedes the California State Auditor in the performance of his or her official duties relating to an audit required by statute or requested by the Joint Legislative Audit Committee is guilty of a misdemeanor. AB 562 is pending before the Senate Public Safety Committee.

SUPPORT

None received

OPPOSITION

None received

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