

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 20, 2012

To: The Commission
(Meeting of June 21, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 478 (Hill) – Public utilities: fines and penalties.**
As amended: May 30, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL

AB 478 would amend Sections 2104 and 2104.5 of the PU Code to direct the California Public Utilities Commission (CPUC) to order that all or a portion of a fine or penalty levied against a gas corporation in I.11-02-016, I.11-11-009 or I.12-01-007, be held in a separate account by the gas corporation to offset investments for pipeline replacement to be undertaken within the service territory of the corporation and that would otherwise be recovered from the corporation's ratepayers. Any moneys not used for these purposes shall be paid to the General Fund five years after the date of their deposit into the trust account.

This bill is an urgency measure, requiring 2/3 approval to take effect immediately.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

Currently, PU code Section 2104.5 requires that all gas safety penalties or fines recovered from violations be paid into the State Treasury to the credit of the General Fund. While this allocation of fines to the General Fund benefits the state through increased revenue, it reduces the CPUC's ability to direct penalty funds in a manner that provides the greatest economic and safety benefit to ratepayers.

AB 478 would require the CPUC to use the penalty monies levied in specified safety investigations to offset expenses for pipeline replacement to be undertaken within the service territory of the corporation and that would otherwise be recovered from the corporation's ratepayers. Rather than requiring the CPUC to take such action, the bill should be amended to not specifically prescribe how the CPUC should direct such funds.

SUMMARY OF SUGGESTED AMENDMENTS

Section 2104.5 (b) of the bill should be amended as follows:

(b) The commission ~~shall~~ **may** order that any fine or penalty levied against a gas corporation in Investigation 11-02-016, Investigation 11-11-009, or Investigation 12-01-007, be held in a separate account by the gas corporation to offset investments for pipeline replacement to be undertaken within the service territory of the corporation and that would otherwise be recovered from the corporation's ratepayers.

DIVISION ANALYSIS (Energy Division)

Currently all fines and penalties recovered due to safety violations from gas pipelines or transportation, are paid by the CPUC into the State Treasury to the credit of the General Fund. Under AB 478, the CPUC shall require the monies paid for fines and penalties be held in a separate account by the gas corporation to be used for offsetting expenses incurred by the gas corporation for pipeline replacement.

AB 478 should not result in a reduction of the punitive effect on a utility and its shareholders of any fine issued by the CPUC. The fine itself would still be funded by shareholders and funds would only be used to offset pipeline replacement expenses the CPUC had determined were otherwise recoverable from ratepayers.

Legislation is required, because the current regulation requiring the CPUC to pay fines and penalties into the General Fund is embedded in PU Code Section 2104.5.

PROGRAM BACKGROUND

Currently the payment of fines and penalties related to safety violations is recorded and then paid by the CPUC into the State Treasury to the credit of the General Fund. This is a fiscal transaction.

The CPUC currently is conducting several investigations to determine if Pacific Gas and Electric Company violated certain gas safety regulations and statutes. The fines ordered in such investigations may be substantial.

LEGISLATIVE HISTORY

A similar measure, SB 1350 (Leno), was held on suspense in the Senate Appropriations Committee. Senator Leno is now a principal coauthor of AB 478.

FISCAL IMPACT

The Commission would have to add a PURA V position for the work required by the bill.

The PURA V would be required to review the offending utility's accounts and safety activities to ensure that the correct amount of the fine was credited to the ratepayers' accounts for specific pipeline replacement work. This position does not currently exist because the Energy Division does not currently review accounts for pipeline replacement-related work to ensure that ratepayers are credited for utility fines related to safety violations.

STATUS

AB 478 is pending hearing in the Senate Appropriations Committee.

SUPPORT/OPPOSITION

None on file.

STAFF CONTACTS

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BILL LANGUAGE

BILL NUMBER: AB 478 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 30, 2012
AMENDED IN ASSEMBLY APRIL 7, 2011

INTRODUCED BY Assembly Member ~~Roger Hernández~~
Hill
(Principal coauthor: Senator
Leno)

FEBRUARY 15, 2011

An act to amend ~~Section 84750.5 of the Education Code,~~
~~relating to community colleges~~ Sections 2104 and
2104.5 of the Public Utilities Code, relating to gas corporations,
and declaring the urgency thereof, to take effect immediately .

LEGISLATIVE COUNSEL'S DIGEST

AB 478, as amended, ~~Roger Hernández~~ Hill
. ~~Community colleges: funding.~~ Gas
Corporations: fines and penalties.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable. The act provides that any public utility that violates any provision of the California Constitution or the act, or that fails or neglects to comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, where a penalty has not otherwise been provided, is subject to a penalty of not less than \$500 and not more than \$50,000 for each offense. Existing law requires that any fine or penalty imposed by the commission and collected from a public utility be paid to the State Treasury to the credit of the General Fund. The act includes provisions that are specific to gas corporations that involve safety standards for pipeline facilities or the transportation of gas in the state.

This bill would revise the provisions that are specific to gas corporations that involve safety standards for pipeline facilities or the transportation of gas in the state, to authorize the commission to order that all or a portion of a fine or penalty levied against a gas corporation in three specified proceedings be held in a separate account by the gas corporation to offset investments for pipeline replacement to be undertaken within the service territory of the corporation that would otherwise be recovered from the corporation's

ratepayers. The bill would require that moneys ordered by the commission to be held in a separate account be used only for the purpose of offsetting investments by the gas corporation for pipeline safety replacement to be undertaken within the service territory of the corporation, and only if the expenses would otherwise be recovered in rates from the utility's ratepayers. The bill would require that any moneys not used for these purposes be paid to the General Fund 5 years after the date of their deposit into the trust account.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state.~~

~~Existing law requires the board of governors to develop criteria and standards, in accordance with specified statewide minimum requirements, for the purposes of making the annual budget request for the California Community Colleges to the Governor and the Legislature and allocating state general apportionment revenues. Those statewide minimum requirements include, among other things, a requirement that the calculations of each community college district's revenue level for each fiscal year be based on specified criteria, with revenue adjustments being made for increases or decreases in full-time equivalent students (FTES) for specified purposes. These requirements also include a requirement that the statewide requested increase in budgeted workload FTES be based on the sum of specified computations, computed on the basis of fiscal years, including the positive difference between the California unemployment rate and a rate of 5%. For purposes of this computation, existing law prohibits that positive difference from exceeding 2%.~~

~~This bill would change the basis of the computation to calendar years, and delete that prohibition.~~

Vote: ~~majority~~ 2/3 . Appropriation:
no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) On September 9, 2010, a natural gas transmission pipeline owned and operated by Pacific Gas and Electric Company exploded under the intersection of Earl Avenue and Glenview Drive in the Crestmoor neighborhood of San Bruno, killing eight people, injuring more than 50, and destroying 38 homes.

(b) The explosion was in a section of pipeline thought by Pacific Gas and Electric Company to be seamless. Inspection by the National Transportation Safety Board (NTSB) determined that the pipe in fact had a double-submerged arc weld.

(c) The revelation that the utility did not know such basic and vital information as seam type for this pipeline led the NTSB to issue an urgent recommendation that Pacific Gas and Electric Company find traceable, verifiable, and complete records for all pipe in

class 3 and 4 locations, and in class 1 and 2 high consequence areas, that had not had their maximum allowable operating pressures established through prior hydrostatic testing. The NTSB recommended that, should the utility not be able to comply with this recommendation, it establish a maximum allowable operating pressure through hydrostatic pressure testing.

(d) The Public Utilities Commission (PUC), in Decision 11-06-017, ordered all California gas corporations to develop a plan to implement these NTSB recommendations for all transmission pipelines. Pacific Gas and Electric Company's plan for Phase 1, which addressed pipelines in high-consequence areas, proposed to incur expenses of seven hundred fifty million five hundred thousand dollars (\$750,500,000) and to make capital expenditures of one million four hundred thirty-three thousand dollars (\$1,433,000) between 2011 and 2013. Pacific Gas and Electric Company officials have stated that Phase 2 could cost between six billion eight hundred million dollars (\$6,800,000,000) and nine billion dollars (\$9,000,000,000).

(e) This investment will greatly exceed the total net investment that Pacific Gas and Electric Company has placed in its pipeline system over the past several decades. The vast majority of this cost is proposed to be borne by the utility's ratepayers.

(f) Given Pacific Gas and Electric Company's current 11.35 percent authorized return on equity, each dollar of capital investment in pipeline replacement will cost ratepayers more than three dollars and fifty cents (\$3.50) in repayment of principal, debt service, return on shareholder equity, and taxes on the return on shareholder equity over the 45-year amortization of the investment.

(g) Pacific Gas and Electric Company is currently under investigation in three PUC penalty proceedings related to the pipeline accident: Investigation 11-02-016, Investigation 11-11-009, and Investigation 12-01-007. The utility projects that fines in these penalty proceedings will likely exceed two hundred million dollars (\$200,000,000).

(h) Currently, all fines in PUC penalty proceedings are required by statute to be deposited into the state's General Fund.

(i) Prior to the current investigations involving the San Bruno pipeline explosion, the largest safety-related fine the PUC had levied was a thirty-eight-million-dollar (\$38,000,000) fine for a fatal natural gas distribution pipeline explosion on Christmas Eve of 2008 in Rancho Cordova.

(j) Given the unprecedented amount of pipeline investment that Pacific Gas and Electric Company is proposing to make in the aftermath of the San Bruno explosion and the unprecedented size of the likely fine that the utility faces as a result of the explosion, any fines assessed to the utility as a result of the explosion should go toward offsetting the costs that the utility's ratepayers would otherwise bear for safety upgrades to the utility's pipeline system.

SEC. 2. Section 2104 of the Public Utilities Code, as amended by Section 7 of Chapter 552 of the Statutes of 2008, is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, and in addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this part may be brought in the name of the people of the State of California, in the superior court in and for the county, or city and

county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided.

~~All~~ Except as provided in Section 2104.5, all

fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 3. Section 2104 of the Public Utilities Code, as added by Section 8 of Chapter 552 of the Statutes of 2008, is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided.

~~All~~ Except as provided in Section 2104.5, all

fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall become operative on January 1, 2014.

SEC. 4. Section 2104.5 of the Public Utilities Code is amended to read:

2104.5. (a) Any penalty for violation of any provision of this act, or of any rule, regulation, general order, or order of the commission, involving safety standards for pipeline facilities or the transportation of gas in the State of California may be compromised by the commission. In determining the amount of ~~such~~ the penalty, or the amount agreed upon in compromise, the appropriateness of ~~such~~ the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of any ~~such~~ penalty, when finally determined, or the amount agreed upon in compromise, may be recovered in a civil action in the name of the ~~People~~ people of the State of California in the superior court in and for the county, or city and county in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business or the person complained of resides. In any such action, all penalties incurred, or amounts agreed upon in compromise for violations committed up to the time of commencing the action may be sued for and recovered. In all ~~such~~ those actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any ~~such~~ action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund , except upon order of the commission pursuant to subdivision (b) .

(b) *The commission shall order that any fine or penalty levied against a gas corporation in Investigation 11-02-016, Investigation 11-11-009, or Investigation 12-01-007, be held in a separate account by the gas corporation to offset investments for pipeline replacement to be undertaken within the service territory of the corporation and that would otherwise be recovered from the corporation's ratepayers.*

(c) *The commission shall set a rate of interest for an account established pursuant to subdivision (b).*

(d) (1) *Any moneys ordered by the commission to be held in a separate account pursuant to subdivision (b) shall be used, consistent with the intent of the Legislature as stated in paragraph (2), only for the purpose of offsetting investments by the gas corporation for pipeline replacement to be undertaken within the service territory of the corporation, and only if the investments would otherwise be recovered in rates from the utility's ratepayers. Any moneys not used for these purposes shall, five years after the date of their deposit into the trust account, be paid to the General Fund.*

(2) *It is the intent of the Legislature that moneys ordered by the commission to be held in a separate account pursuant to subdivision (b) be used to offset investments that are to be made by a gas corporation during the first phase of the utility's implementation plan filed in response to Decision 11-06-017, Decision Determining Maximum Allowable Operating Pressure Methodology and Requiring Filing of Natural Gas Transmission Pipeline Replacement or Testing Implementation Plans (filed June 9, 2011), if the commission determines that the investments would otherwise be recovered in rates from the utility's ratepayers.*

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address and resolve significant financial issues presented by ongoing proceedings before the Public Utilities Commission, it is necessary for this act to take effect immediately.

~~SECTION 1. Section 84750.5 of the Education Code is amended to read:~~

~~84750.5. (a) The board of governors, in accordance with the statewide requirements contained in paragraphs (1) to (11), inclusive, of subdivision (d), and in consultation with institutional representatives of the California Community Colleges and statewide faculty and staff organizations, so as to ensure their participation in the development and review of policy proposals, shall develop criteria and standards for the purposes of making the annual budget request for the California Community Colleges to the Governor and the Legislature, and for the purpose of allocating the state general apportionment revenues.~~

~~(b) In developing the criteria and standards, the board of governors shall utilize and strongly consider the recommendations and work product of the "System Office Recommendations Based on the Report of the Work Group on Community College Finance" that was adopted by the board at its meeting of March 7, 2005. The board shall complete the development of these criteria and standards, accompanied by the necessary procedures, processes, and formulas for utilizing its criteria and standards, by March 1, 2007, and shall submit on or before that date a report on these items to the Legislature and the Governor.~~

~~(c) (1) It is the intent of the Legislature in enacting this section to improve the equity and predictability of general apportionment and growth funding for community college districts in order that the districts may more readily plan and implement instruction and related programs, more readily serve students according to the policies of the state's master plan for higher education, and enhance the quality of instruction and related services for students.~~

~~(2) It is the intent of the Legislature to determine the amounts to be appropriated for the purposes of this section through the annual Budget Act. Nothing in this section shall be construed as limiting the authority either of the Governor to propose, or the Legislature to approve, appropriations for California Community Colleges programs or purposes.~~

~~(d) The board of governors shall develop the criteria and standards within the following statewide minimum requirements:~~

~~(1) The calculations of each community college district's revenue level for each fiscal year shall be based on the level of general apportionment revenues (state and local) the district received for the prior year plus any amount attributed to a deficit from the adopted standards to be developed pursuant to this section, with revenue adjustments being made for increases or decreases in full time equivalent students (FTES), for equalization of funding per credit FTES, for necessary alignment of funding per FTES between credit and noncredit programs, for inflation, and for other purposes authorized by law.~~

~~—(2) The funding mechanism developed pursuant to this section shall recognize the need for community college districts to receive an annual allocation based on the number of colleges and comprehensive centers in the district. In addition to this basic allocation, the marginal amount of credit revenue allocated per FTES shall be funded at a rate not less than four thousand three hundred sixty seven dollars (\$4,367), as adjusted for the change in the cost of living in subsequent annual budget acts.~~

~~—(A) To the extent that the Budget Act of 2006 contains an appropriation of one hundred fifty nine million four hundred thirty eight thousand dollars (\$159,438,000) for community college equalization, the Legislature finds and declares that community college equalization for credit FTES has been effectively accomplished as of March 31, 2007.~~

~~—(B) The chancellor shall develop criteria for the allocation of one time grants for those districts that would have qualified for more equalization under prior law than pursuant to this section and the Budget Act of 2006, and for those districts that would have qualified for more funding under a proposed rural college access grant than pursuant to this section and the Budget Act of 2006, as determined by the chancellor. Appropriations for the one time grants shall be provided pursuant to paragraph (24) of subdivision (a) of Section 43 of Chapter 79 of the Statutes of 2006.~~

~~—(3) Noncredit instruction shall be funded at a uniform rate of two thousand six hundred twenty six dollars (\$2,626) per FTES, as adjusted for the change in the cost of living provided in subsequent annual budget acts.~~

~~—(4) Funding for instruction in career development and college preparation, as authorized pursuant to Section 84760.5, shall be provided as follows:~~

~~—(A) Career development and college preparation FTES may be funded at a rate of three thousand ninety two dollars (\$3,092) per FTES for courses in programs that conform to the requirements of Section 84760.5. This rate shall be adjusted for the change in the cost of living or as otherwise provided in subsequent annual budget acts.~~

~~—(B) Changes in career development and college preparation FTES shall result in adjustments to revenues as follows:~~

~~—(i) Increases in career development and college preparation FTES shall result in an increase in revenues in the year of the increase and at the average rate per career development and college preparation FTES, including any cost of living adjustment authorized by statute or by the annual Budget Act.~~

~~—(ii) Decreases in career development and college preparation FTES shall result in a revenue reduction in the year following the decrease and at the average rate per career development and college preparation FTES.~~

~~—(5) Except as otherwise provided by statute, current categorical programs providing direct services to students, including extended opportunity programs and services, and disabled students programs and services, shall continue to be funded separately through the annual Budget Act, and shall not be assumed under the budget formula otherwise specified by this section.~~

~~—(6) For credit and noncredit instruction, changes in FTES shall result in adjustments in district revenues as follows:~~

~~—(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the amount per FTES provided for in~~

~~paragraph (2) or (3), as appropriate, including any cost of living adjustment authorized by statute or by the annual Budget Act.~~

~~—(B) Decreases in FTES shall result in revenue reductions beginning in the year following the initial year of decrease in FTES, and at the district's marginal funding per FTES.~~

~~—(C) Districts shall be entitled to the restoration of any reductions in apportionment revenue due to decreases in FTES during the three years following the initial year of decrease in FTES if there is a subsequent increase in FTES.~~

~~—(7) Revenue adjustments shall be made to reflect cost changes, using the same inflation adjustment as required for school districts pursuant to subdivision (b) of Section 42238.1. These revenue adjustments shall be made to the college and center basic allocations, credit and noncredit FTES funding rates, and career development and college preparation FTES funding rates.~~

~~—(8) The statewide requested increase in budgeted workload FTES shall be based, at a minimum, on the sum of the following computations:~~

~~—(A) Determination of an equally weighted average of the rate of change in the California population of persons between the ages of 19 and 24 and the rate of change in the California population of persons between the ages of 25 and 65, both as determined by the Department of Finance's Demographic Research Unit as determined for the preceding fiscal year.~~

~~—(B) To the extent the California unemployment rate exceeds 5 percent for the most recently completed calendar year, that positive difference shall be added in an amount determined by the Chancellor of the California Community Colleges to the Department of Finance, to the rate computed in subparagraph (A). The amount determined by the Chancellor shall be accompanied by a rationale for that determination and be submitted to the Department of Finance.~~

~~—(C) The chancellor may also add to the amounts calculated pursuant to subparagraphs (A) and (B) the number of FTES in the areas of transfer, vocational education, and basic skills that were unfunded in the current fiscal year. For this purpose, the following computation shall be determined for each district, and a statewide total shall be calculated:~~

~~—(i) Establish the base level of FTES earned in the prior fiscal year for transfer courses consisting of courses meeting the California State University breadth or Intersegmental General Education Transfer Curriculum requirements or major course prerequisites accepted by the University of California or the California State University.~~

~~—(ii) Establish the base level of FTES earned in the prior fiscal year for vocational education courses consisting of courses defined by the chancellor's office Student Accountability Model codes A and B that are consistent with the courses used for measuring success in this program area under the accountability system established pursuant to Section 84754.5.~~

~~—(iii) Establish the base level of FTES in the prior fiscal year for basic skills courses, both credit and noncredit.~~

~~—(iv) Add the sum of FTES for clauses (i) to (iii), inclusive.~~

~~—(v) Multiply the result of the calculation made under clause (iv) by one plus the district's funded growth rate in the current fiscal year. This figure shall represent the maintenance of effort level for the budget year.~~

~~—(vi) FTES in transfer, vocational education, and basic skills that~~

~~are in excess of the total calculated pursuant to clause (v), shall be considered in excess of the maintenance of effort level, and shall be eligible for overcap growth funding if the district exceeds its overall funded FTES.~~

~~— (vii) In no event shall the amount calculated pursuant to clause (vi) exceed the total unfunded FTES for that fiscal year. To the extent the computation specified in subdivision (c) requires the reporting of additional data by community college districts, that reporting shall be a condition of the receipt of apportionment for growth pursuant to this section and those funds shall be available to offset any and all costs of providing the data.~~

~~— (9) Except as provided in subparagraph (B) of paragraph (6), for the 2006-07 fiscal year or for the first fiscal year for which this section is implemented by the board of governors, whichever is later, all districts shall receive at least the amount of revenue received for the prior fiscal year, adjusted for the cost of living adjustment specified in subdivision (b) of Section 42238.1 and adjusted for the actual increase in FTES not to exceed the district's funded growth cap. Thereafter, allocations shall be made pursuant to this section, as implemented by the board of governors pursuant to the annual Budget Act.~~

~~— (10) Except as specifically provided in statute, regulations of the board of governors for determining and allocating the state general apportionment to the community college districts shall not require district governing boards to expend the allocated revenues in specified categories of operation or according to the workload measures developed by the board of governors.~~