REQUESTS FOR EXEMPTION FROM THE FIFTY PERCENT LAW

March 5-6, 2012

ACTION

Presentation:  Dan Troy, Vice Chancellor for Fiscal Policy

Item 3.4

Issue

This item presents requests from four community college districts for an exemption from the Fifty Percent Law pursuant to Education Code section 84362 and California Code of Regulations (CCR) title 5, sections 59200-10.

Background

Four community college districts did not meet the basic requirements of the Fifty Percent Law for fiscal year 2010-11. The districts are Compton CCD, Hartnell CCD, Palo Verde CCD and Redwoods CCD. All four districts applied for an exemption per CCR title 5, section 59206.

Education Code section 84362, commonly known as the Fifty Percent Law, requires each community college district to spend at least half of its Current Expense of Education each fiscal year for salaries and benefits of classroom instructors.

Current Expense of Education generally includes the unrestricted general fund expenditures of a community college district. Excluded from the Current Expense of Education are expenditures for student transportation, food services, community services, lease agreements for plant and equipment, and other costs specified in law and regulations. Amounts expended from State Lottery proceeds are excluded, except for expenditures for instructional salaries.

Salaries of Classroom Instructors are described in the California Community Colleges Budget and Accounting Manual as “Expenditures for the full or prorated portions of salaries of all employees in contract or regular faculty positions.” This includes the following expenditures:

- Prorated salaries of contract or regular instructors working a reduced load or whose assignment includes both instructional and noninstructional duties.
- Prorated salaries of administrators having a teaching assignment as part of their regular work assignment.
- Salaries of instructors on sabbatical leave.
• Extra duty days or assignments paid as part of an instructor’s regular salary.

• Salaries of instructors with a dual-employment relationship, under instructional service agreements.

• Instructional aides employed to assist instructors in classroom instruction tasks during any portion of their duties.

• Applicable staff benefits.

Administering the Law

The responsibility for administering the Fifty Percent Law resides with the Chancellor and the Board of Governors. Every year, exemption application forms and applicable due dates are distributed to all districts, and the annual financial and budget reports of all districts are monitored for compliance with Education Code section 84362 and California Code of Regulations (CCR) title 5, sections 59200-10. Upon receipt of an application for exemption, Chancellor’s Office staff determines whether applicable procedures have been followed, analyze supporting documentation and data, and make recommendations to the Chancellor for presentation to the Board. An independent assessment of each district’s computation of compliance is also a requirement of the annual audits conducted by contracted independent audit firms pursuant to Education Code section 84040.

Districts not achieving the required 50 percent and failing to apply for an exemption, or failing to complete the application process, are still subject to the terms and conditions of the compliance requirements in the regulations. However, these districts are not eligible for consideration of an exemption and also must retire any deficiency within the same timeframe (CCR title 5, section 59208(c)) as districts with a partial approval or denial of an exemption application.

Basis for Exemption

A district may request exemption from the Fifty Percent Law if Salaries of Classroom Instructors are higher than comparable districts and/or if compliance would have resulted in serious hardship. The district declares on the exemption application the basis for its exemption request. Districts may choose any one or all of the categories for exemption.

CCR title 5, section 59211 specifies that the Board of Governors has the responsibility to deny, grant or grant in part a district’s application after review of all the supporting documentation including the Chancellor’s Office recommendation. The bases for exemption are:

**COMPARABLE SALARIES**: Salaries higher than the average of comparable districts are eligible for an exemption under CCR title 5, sections 59204(e) and (f).

**SERIOUS HARDSHIP**: Includes five criteria as defined in CCR title 5, sections 59204(c)-(f) and 59204.1, and as summarized below:
1. **Unable to Discharge Fiscal Liabilities.** Conformance with the Fifty Percent Law would have resulted in the district’s inability to discharge financial liabilities.

2. **Infusion of New Moneys.** The first year of infusion of new moneys would have resulted in the district’s inability to comply with the requirements of the Fifty Percent Law. The percentage is recalculated without including these new moneys in order to determine if the district would have been in compliance. However, CCR title 5 section 59204(c)(4) specifies these new moneys must be from program-based funding, described in Education Code section 84755. This source of funding has been supplanted by SB 361, Scott (Chapter 631, statutes 2006). This CCR title 5 section has not been amended to conform to the new funding laws.

3. **Unanticipated Expenditures.** Unanticipated, unbudgeted, and necessary expenditures would result in the district’s inability to comply with the Fifty Percent Law. Litigation, arbitration, costs of energy, insurance and security are among some of the items to be considered.

4. **Unexempted Deficiency.** Districts with an unexempted deficiency from a prior cycle may expend funds for other than Salaries of Classroom Instructors but count the expenditures as instructional after reaching an agreement with faculty representatives that these expenditures, as itemized in CCR title 5, section 59213(f), are necessary.

5. **Categorical Program Backfill.** This Supplemental Exemption for “Serious Hardship” is provided for each year during the periods 2009-10 through 2012-13 as follows:

   - Conformance with the Fifty Percent Law requirement during the year of deficiency would have likely resulted in a substantial reduction of funding for categorical programs as compared to the level of funding for categorical programs in 2008-09. Such a reduction would have had a detrimental impact on those programs and a detrimental impact on student success.

   - It is NOT the intent of this regulation to provide an exemption for a district that would have expended less than 50 percent of its Current Expense of Education for the Salaries of Classroom Instructors absent the reduction of categorical funding.

The Chancellor’s Office analysis also considers any written statements of opposition received from faculty by December 29 per CCR title 5, section 59209. If so requested, the Chancellor’s Office provides for an exchange of written statements and a hearing in order to allow both parties to present facts about the exemption application. College of the Redwoods Faculty Organization (CFRO) submitted opposition statements for 2010-11 and requested a hearing.
Compliance

Under the regulations, compliance takes up to three years after the deficiency is first identified.

1. **Fiscal Year 1**—(2010-11): The year in which the deficiency occurred.

2. **Fiscal Year 2**—(2011-12): The year during which the Chancellor’s Office staff evaluates applications for exemption and the district is to begin to resolve the deficiency from 2010-11. The Board of Governors makes its decision on an exemption request at the March meeting. The Chancellor requires any district not granted a full exemption to prepare a plan for spending the unexempted deficiency on salaries of classroom instructors during the next fiscal year (2011-12). The district must submit the plan by June 30, 2012. During the time between the Board of Governors’ decision to not grant a full exemption and June 30, 2012, the Chancellor will direct the district’s county office of education to withhold funds from the district the amount of any unexempted deficiency. Upon receipt of the June 30 plan, these funds will be released to the district. If the district expends salaries of classroom instructors above 50 percent during 2011-12, the amount will reduce the unexempted deficiency.

3. **Fiscal Year 3**—(2012-13): The year in which the district recovers, by June 30, 2013, any remaining unexempted deficiency from 2010-11. This recovery includes any amount expended for salaries of classroom instructors above 50 percent of current expense of education during fiscal years 2011-12.

4. **Fiscal Year 4**—(2013-14): Districts not reporting expenditures above 50 percent sufficient to cover an unexempted deficiency will have apportionment reduced in an amount equal to the remaining unexempted deficiency from 2010-11. Any amount withheld is redistributed through the apportionment process by the Chancellor’s Office to all districts statewide.

**Analysis of Districts and Chancellor’s Recommendations**

Four community college districts did not meet the requirements of the Fifty Percent Law for fiscal year 2010-11 based on the annual financial and budget report (CCFS 311). All of these districts, Compton CCD, Hartnell CCD, Palo Verde CCD and Redwoods CCD applied for exemption and completed the required procedure.

**Recommended Action**

The Board of Governors accepts the recommendations of the Chancellor with regard to districts that did not meet the 50 Percent Law for fiscal year 2010-11. Grant full exemption to Hartnell CCD and Redwoods CCD, and partial exemptions to Compton CCD and Palo Verde CCD.

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