REQUESTS FOR EXEMPTION FROM THE FIFTY PERCENT LAW (REVISED)

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 Fifty Percent Law for fiscal year 2010-11. Grant full exemption to Compton CCD, and partial exemptions to Hartnell CCD, Palo Verde CCD and Redwoods CCD.

*Staff: Michael Yarber, College Finance and Facilities Planning*
ATTACHMENT A

Analysis of Compton CCD
Application for Exemption from the Fifty Percent Law
2010-11 Fiscal Year

Deficiency Calculation

1. 2010-11 Current Expense of Education (CEE) $28,383,467
2. 2010-11 Fifty Percent Expenditure Requirement $14,491,734
3. Actual Amount Expended $12,838,757
4. Total 2010-11 Deficiency $1,352,976
5. Amount of exemption application $1,352,976
6. Amount Eligible for Exemption $1,352,976
7. Amount Not Eligible for Exemption $0
8. Unrestricted General Fund Ending Balance June 30, 2011 $7,467,743

Analysis

AB 318 (Dymally) of 2006 waived the district from compliance with the requirements of the Fifty Percent Law during the period 2003-04 to 2008-09 to allow the district to help in its fiscal recovery and efforts to regain its accreditation. 2009-10 was the first year since the AB 318 waiver that the district had to comply with the Fifty Percent Law. The district was granted a partial exemption of $308,374 from a total identified deficiency of $329,639 in fiscal year 2009-10. That left an unexempted deficiency of $21,265 which was retired in 2010-11.

During 2010-11 Compton CCD spent only 45.2 percent of its current expense of education on salaries of classroom instructors, and is seeking an exemption of its deficiency of $1,352,976. The district contends that it qualifies for “serious hardship” pursuant to CCR title 5 section 59204.1, because it expended $822,258 in general fund monies to backfill categorical programs in 2010-11. Additionally, the district contends that it qualifies for a “serious hardship” exemption pursuant to CCR title 5 section 59204(c)(4) because of $530,718 in unanticipated, unbudgeted, and necessary expenditures for legal services associated with alleged illegal conduct of some instructors regarding international students.

The Chancellor’s Office determined that the district’s maximum amount of eligibility for categorical program backfill is $1,095,253; therefore, the district’s request for an exemption for $822,258 in categorical backfill expenditures is warranted.

As reported on the district’s amended 311 annual financial report, the district’s Ending Balance in its unrestricted general fund as of June 30, 2011 was $7,467,743 or 22.4%. However after subtracting out an audit adjustment of $2,340,613, and the $3,079,417 balance on the advance on the state’s
emergency apportionment, the district’s unassigned unrestricted general fund Ending Balance for 2010-11 is $3,079,417 or 9.2%. We have received a letter of support for the full exemption from the Compton Community College Federation of Employees Certificated Unit, Local 3486.

**Recommendation**

That the Board grants a one-time **full exemption of $1,352,976** to Compton CCD for Fifty Percent Law compliance in 2010-11. The district shall also submit a plan to the Chancellor’s Office by June 30, 2012 stating how it will comply with the requirements of the Fifty Percent Law in the future.
ATTACHMENT B

Analysis of Hartnell CCD
Compliance with the Fifty Percent Law
2010-11 Fiscal Year

Deficiency Calculation

1. 2010-11 Current Expense of Education (CEE) $28,254,058
2. 2010-11 Fifty Percent Expenditure Requirement $14,127,029
3. Actual Amount Expended $13,784,074
4. Total 2010-11 Deficiency $ 342,955
5. Amount of district exemption request $ 342,955
6. Amount Eligible for Exemption $ 327,554
7. Amount Not Eligible for Exemption $ 15,401
8. Unrestricted General Fund Ending Balance June 30, 2011 $ 8,246,608

Analysis

During 2010-11 Hartnell CCD spent only 48.8 percent of its current expense of education on salaries of classroom instructors, and is seeking an exemption of its deficiency of $342,955. The district contends that it qualifies for “serious hardship” pursuant to CCR title 5 section 59204.1, because it expended $342,955 in general fund monies to backfill categorical programs in 2010-11.

The Chancellor’s Office determined that the district’s maximum amount of eligibility for categorical program backfill is $327,554, which leaves an unexempted deficiency for the district for 2010-11 of $15,401.

As reported on the district’s 311 annual report, the district’s Ending Balance in its unrestricted general fund as of June 30, 2011 was $8,246,608 or 25.65%. However after subtracting out $4,558,576 in the following assigned expenditures and reserves, the unassigned unrestricted general fund Ending Balance for 2010-11 is $3,688,032 or 11.5%:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Balance 2011-12 Budget</td>
<td>$374,241</td>
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<tr>
<td>Meet the 5% Reserve as required by ACCJC</td>
<td>$1,769,075</td>
</tr>
<tr>
<td>Economic Uncertainty (2 weeks)</td>
<td>$1,415,260</td>
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<tr>
<td>Nursing – possible future loss of grant</td>
<td>$400,000</td>
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<tr>
<td>Staffing shift from Restricted to Unrestricted</td>
<td>$200,000</td>
</tr>
<tr>
<td>Possible one-time compensation</td>
<td>$400,000</td>
</tr>
<tr>
<td><strong>TOTAL ASSIGNED EXPENDITURES</strong></td>
<td>$4,558,576</td>
</tr>
</tbody>
</table>

The Hartnell College Faculty Association opposed the application for exemption at the district’s Public hearing. Hartnell College Academic Senate expressed concern that the issue not happen in the future. The district has shared with us this is a one-time occurrence and will not happen again.
Recommendation

That the Board grants a one-time partial exemption of $327,554 to Hartnell CCD, thereby leaving an unexempted deficiency of $15,401. The district shall also submit a plan to the Chancellor’s Office by June 30, 2012 stating how it will retire its unexempted deficiency, and comply with the requirements of the Fifty Percent Law in the future.
Analysis of Palo Verde CCD
Compliance with the Fifty Percent Law
2010-11 Fiscal Year

Deficiency Calculation

1. 2010-11 Current Expense of Education (CEE) $11,833,403
2. 2010-11 Fifty Percent Expenditure Requirement $ 5,916,702
3. Actual Amount Expended $ 5,121,961
4. Total 2010-11 Deficiency $ 794,741
5. Amount of district exemption request $ 794,741
6. Amount Eligible for Exemption $ 771,565
7. Amount Not Eligible for Exemption $ 23,176
8. Unrestricted General Fund Ending Balance June 30, 2011 $ 342,283

Analysis

During 2010-11 Palo Verde CCD spent only 43.3 percent of its current expense of education on salaries of classroom instructors, and is seeking an exemption of its deficiency of $794,741. The district contends that it qualifies for “serious hardship” pursuant to CCR title 5 section 59204.1, because it expended $394,903 in general fund monies to backfill categorical programs in 2010-11.

Additionally, the district contends that it qualifies for a further exemption pursuant to CCR title 5 section 59204(c) because of $399,838 in unanticipated, unbudgeted and necessary expenditures that occurred in 2010-11 as indicated below, which would result in “serious hardship” to the district:

1. Supplemental Retirement Plan costs for 4 faculty and 4 classified staff $120,101
2. Unanticipated transformer connection for PAC $ 99,641
3. Unseasonably High Electricity charges for campus $ 66,123
4. Personnel and Construction lawsuits $ 51,635
5. Unexpected health Insurance increase $ 43,956
6. Additional, temporary security for PAC $ 13,131
7. Extraordinary Property Insurance for PAC $ 5,251
TOTAL $ 399,838

The Chancellor’s Office determined that the district’s maximum amount of eligibility for categorical program backfill is $384,858, which leaves an unexempted deficiency for the district for categorical backfill in 2010-11 of $10,045. Also, we determined that the $13,131 in requested security
expenses were not eligible for exemption. Combined that leaves a total unexempted deficiency for the district for 2010-11 of $23,176.

As reported on the district’s 311 annual report, the district’s Ending Balance in its unrestricted general fund as of June 30, 2011 was $342,283 or 2.6%.

The Palo Verde College Faculty Association has written a letter that they are opposed to the district’s request for exemption, because the district could have made cuts in other areas outside of the categorical backfill that would not have impacted students and also contend the unanticipated, unbudgeted and necessary expenditures were known well in advance of budget planning for the 2010-11 fiscal year.

**Recommendation**

That the Board grants a one-time partial exemption of $771,565 to Palo Verde CCD from the total identified deficiency of $794,741, thereby leaving an unexempted deficiency of $23,176. The district shall also submit a plan to the Chancellor’s Office by June 30, 2012 stating how it will retire its unexempted deficiency, and comply with the requirements of the Fifty Percent Law in the future.
Analysis of Redwoods CCD
Compliance with the Fifty Percent Law
2010-11 Fiscal Year

Deficiency Calculation

1. 2010-11 Current Expense of Education (CEE) $28,462,727
2. 2010-11 Fifty Percent Expenditure Requirement $14,231,364
3. Actual Amount Expended $14,002,193
4. Total 2010-11 Deficiency $ 229,171
5. Amount of district exemption request $ 229,171
6. Amount Eligible for Exemption $ 186,231
7. Amount Not Eligible for Exemption $ 42,940
8. Unrestricted General Fund Ending Balance June 30, 2011 $ 2,545,360

Analysis

During 2010-11 the Redwoods CCD expended only 49.2 percent of its current expense of education on salaries of classroom instructors, and is seeking an exemption of its deficiency of $229,171. The district contends that it qualifies for “serious hardship” pursuant to CCR title 5 section 59204.1, because it expended $229,171 in general fund monies to backfill categorical programs in 2010-11.

The Chancellor’s Office determined that the district’s maximum amount of eligibility for categorical program backfill is $186,321; which leaves an unexempted deficiency for the district in 2010-11 of $42,940.

As reported on the district’s 311 annual report, the district’s Ending Balance in its unrestricted general fund as of June 30, 2011 was $2,545,360 or 8.4%.

In a letter dated December 20, 2011, the College of the Redwoods Faculty Organization (CFRO) issued a written statement opposing the district’s application for an exemption from the Fifty Percent Law. On Thursday, February 2, 2012, a hearing was held with the CFRO representative pursuant title 5, section 59209 presenting the CFRO concerns regarding the district’s application for exemption.

Both the written statement and oral testimony provided during the February 2, 2012 hearing by the CFRO representative describe two major grounds for denying the district’s application for “serious hardship” exemption from the Fifty Percent Law. CFRO contended the district is not eligible for this exemption because it provided less unrestricted general fund support for categoricals in 2010-11 than it did for 2008-09. It is the opinion of the Chancellor’s Office that the language used in section 59204.1 does not support this conclusion, because it only requires that in determining “serious hardship” relative to categorical funding backfill, the Board of Governors shall consider and compare both the levels of categorical funding and the levels of unrestricted general fund support for categorical programs. It does not set a minimum funding level.
CRFO also pointed out a logic error on our form for districts to report their eligibility for general fund categorical backfill. We appreciate that insight, and will ensure that error will be corrected in subsequent years reporting. Due to this error it appeared to the CFRO that Redwoods CCD was not eligible for the backfill exemption. However we determined that the district is eligible for the backfill exemption as requested.

**Recommendation**

That the Board grants a one-time **partial exemption of $186,231** to Redwoods CCD, which leaves an unexempted deficiency of **$42,940**. The district shall also submit a plan to the Chancellor’s Office by June 30, 2012 stating how it will retire its unexempted deficiency, and comply with the requirements of the Fifty Percent Law in the future.