

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1385 (Ting) – As Amended April 15, 2015

**SUBJECT:** Community colleges: accreditation

**SUMMARY:** Prohibits the accrediting agency for California Community Colleges (CCC) from imposing a special assessment on CCCs for legal fees for any lawsuit, unless there has been an affirmative vote of the majority of the chief executive officers, or their designees, of all of the CCCs. Specifically, **this bill:**

- 1) Prohibits the CCC accrediting agency from imposing a special assessment on CCCs for the accrediting agency's legal fees for any lawsuit, unless there has been an affirmative vote of the majority of the chief executive officers, or their designees, of all of the CCCs.
- 2) Provides that each CCC, as represented by its chief executive officer, or his or her designee, shall be eligible to cast a vote on the assessment.
- 3) Provides that this provision does not apply to the accrediting agency's activities that are related to private educational institutions in the state or educational institutions outside of the state.
- 4) Provides that this section does not affect the authority of the United States Department of Education regarding educational institutions.

**EXISTING LAW:**

- 1) Establishes the CCC Board of Governors (BOG) to provide general supervision over the CCC and requires the BOG to prescribe minimum standards for CCC formation and operation (Education Code Section 66700).
- 2) Requires the BOG to develop minimum standards governing academic standards, employment policies and shared governance; evaluate CCC fiscal and educational effectiveness and provide assistance when districts encounter management difficulties; administer state funding and establish minimum conditions entitling CCC districts to receive state funds; requires the CCC BOG, in determining if a CCC district satisfies the minimum conditions for receipt of apportionment funding, to review the accreditation status of the CCCs within that district review and approve educational programs (EDC Section 70901).
- 3) Requires the accrediting agency for CCCs to report to the appropriate policy and budget subcommittees of the Legislature upon the issuance of a decision that affects the accreditation status of a community college and, on a biannual basis, any accreditation policy changes that affect the accreditation process or status for a CCC; and, requires the CCC Chancellor's Office to ensure that the appropriate policy and budget subcommittees are provided the aforementioned required information (EDC Sections 72208).

- 4) BOG regulations (5 CCR Section 51016) require CCCs to be accredited by the Accrediting Commission for Community and Junior Colleges (ACCJC). However, BOG recently approved regulatory changes to remove the explicit requirement of accreditation by the ACCJC. The regulatory change would provide that accreditation shall be determined only by an accrediting agency approved recommended by the CCC Chancellor and approved by the BOG. The Board is authorized to approve only an accreditor recognized and approved by the U.S. Secretary of Education (USDE) under the Higher Education Act of 1965 acting within the agency's scope of recognition by the Secretary.

**FISCAL EFFECT:** Unknown

**COMMENTS:** *Accreditation.* Accreditation is a voluntary, non-governmental peer review process used to determine academic quality. Accrediting agencies are private organizations that establish operating standards for educational or professional institutions and programs, determine the extent to which the standards are met, and publicly announce their findings. Accrediting agency membership consists of the accredited institutions and organizational activities are funded through fees/dues required of accredited institutions. Under federal law, the USDE establishes "criteria for recognition" of an accrediting agency and publishes a list of "recognized" agencies. Institutions must be recognized in order to participate in federal financial aid programs. Under California law, institutions must be accredited in order to participate in the Cal Grant Program. Accreditation, and most commonly regional accreditation, is established by California's public and independent universities as a requirement for transfer of educational credits earned by a student at another institution.

*ACCJC.* ACCJC is the regional accrediting agency for community colleges in the western region (California, Hawaii, and U.S. territories). Commission membership consists of the institutions ACCJC has accredited. The 19 ACCJC commissioners are elected by a vote of the presidents of the member-colleges and serve up to two three-year terms. Commissioners must fall within the following categories:

- 1) One representative of the CCC Chancellor's Office;
- 2) One representative from the Hawaii community colleges system office;
- 3) At least five academic faculty;
- 4) At least three public members;
- 5) At least three community college administrators;
- 6) At least one independent institutional representative;
- 7) At least one representative of WASC Sr. accredited institutions;
- 8) At least one representative of the institutions in the American Affiliated Pacific Islands.

ACCJC bylaws govern, among other areas, commission meetings, responsibilities of commissioners, and the appeal process for institutions appealing a denial or termination of accreditation. ACCJC bylaws may be amended by a majority vote of the Commissioners. Under ACCJC bylaws, the President (Chief Executive Officer) is appointed, and may be removed, by the Commissioners. The President is responsible for general supervision, direction, and control of ACCJC operations.

*ACCJC budget and special assessments.* ACCJC's primary sources of revenues for operating expenses are derived from dues assessed to each member institution. ACCJC's budget committee recommends dues to the Commission as a whole, and Commissioners vote on the amount of dues each January. The ACCJC budget is approved first by the Committee, and then sent to the Commission for approval. The member institutions are notified, usually in March or April each year, regarding budget. Dues are set 18 months in advance; the dues for the 2015-16 fiscal year were set in January 2014. Due amounts range from about \$6,000 to \$35,000, depending on the number of full-time equivalent students enrolled at an institution. Special assessments are issued in order to cover extraordinary expenses that were not anticipated and could not be planned for, and that may exceed fiscal reserves. ACCJC indicates that it has issued special assessments in approximately three cases. Special assessments are set at a percentage (depending on budgeting needs) of an institution's dues. As a condition of accreditation, all member institutions are required to pay special assessments and dues.

*ACCJC controversy.* Between 2003 and 2008, ACCJC had placed 37% of CCCs on "sanction" (at risk of losing accreditation). A study of other regional accreditors showed that during this same time, the percentage of community colleges being sanctioned ranged from 0 to 6%. The large number of penalties for community colleges under ACCJC's jurisdiction led community college leaders, faculty, and staff to, through the CCC Chancellor's Office (CCCCO) Consultation Council, review and make recommendations regarding ACCJC's actions. Under the leadership of then-Chancellor Jack Scott, the group made a series of recommendations largely designed to focus ACCJC on institutional improvement rather than compliance. In a written response to Chancellor Scott's recommendations, ACCJC defended current standards and practices and made suggestions of how the CCCCCO could assist colleges in meeting ACCJC's requirements.

*Background on City College of San Francisco (CCSF).* In July of 2012, CCSF was placed on "Show Cause" status by ACCJC. The ACCJC visiting team found, among other deficiencies, that the college had insufficient cash flow and reserves to maintain financial stability and no realistic plans to meet financial emergencies and unforeseen circumstances. The institution was provided one year to establish compliance with accrediting standards. In September of 2012, the CCC Chancellor's Office and the Fiscal Crisis & Management Assistance Team (FCMAT) released an audit of fiscal stability and management controls. The audit found that CCSF was near fiscal insolvency resulting from poor financial decisions and lack of accountability. In October 2012, CCC Board of Governors (BOG) appointed Robert Agrella as special trustee under limited powers to assist CCSF in achieving sound financial management.

In July of 2013, ACCJC voted to terminate accreditation effective July 31, 2014, subject to review and appeal. ACCJC found that of the 2012 recommendations, CCSF fully addressed only two, nearly addressed one, and eleven were inadequately addressed. Also in July, FCMAT released a second review which found that the 2012 recommendations had not been fully implemented. Following the ACCJC decision to revoke accreditation, on July 9, 2013, BOG voted to authorize a Special Trustee to assume full management and control of the district. In November 2013, Arthur Tyler was named Chancellor of CCSF. To date, the CCSF governing board does not have management authority over the district.

In June 2014, despite significant concerns raised by the public, CCC leaders, the CCC Chancellor, and Legislators over the serious impact to students and the San Francisco community, the ACCJC appeal panel upheld the decision to terminate accreditation. In July, ACCJC informed CCSF of their option to apply for "restoration status" – a status created by the Commission for the purposes of allowing CCSF to continue to be accredited while it works to achieve accreditation standard compliance; and in January 2015, CCSF was granted "restoration status" by ACCJC. Under restoration status, CCSF will remain accredited and have two years to come into full compliance with all ACCJC eligibility requirements, standards and policies. CCSF is scheduled to be reviewed by ACCJC in January 2017. ACCJC notes that during this time, CCSF will have access to ACCJC technical assistance and training processes.

*Bureau of State Audits (BSA) review of ACCJC.* In June of 2014, the BSA released an audit of ACCJC's application of the accreditation process. The audit was conducted at the request of the Joint Legislative Audit Committee (JLAC) following concerns among several legislators over the ACCJC decision to terminate accreditation for City College of San Francisco (CCSF). The BSA audit includes a series of recommendations to improve CCC accreditation; among the recommendations supported by CCCCCO, BSA recommended the CCCCCO facilitate improved communication between CCCs and ACCJC. BSA also recommended allowing CCCs flexibility to choose an accrediting agency; the CCCCCO responded that this recommendation should not be pursued as it could lead to reduced transparency, reduced employee mobility within CCCs, and added challenges in overseeing colleges effectively.

*ACCJC lawsuit.* In August 2013, San Francisco City Attorney Dennis Herrera filed two legal actions regarding the ACCJC decision to revoke CCSF accreditation. The first sought to enjoin ACCJC from effectively closing CCSF, the second sought to require the CCC BOG to evaluate college standards and eligibility, rather than relying on accreditation. In regards to the second action, largely based on prior statutory language requiring the CCC BOG to establish minimum standards, the Legislature acted in 2014 to amend statute to require CCC BOG to review the accreditation status of an institution.

In the case against ACCJC, *People ex. rel. Herrera v. ACCJC, Case No CGC-13-533693*, Superior Court Judge Curtis E.A. Karnow issued a preliminary injunction in January 2014 blocking ACCJC from implementing the termination of CCSF accreditation. Full arguments in this case were presented in the fall of 2014; during arguments all parties generally agreed that at the time of accreditation revocation CCSF faced serious financial and other problems and was not in full compliance with accreditation standards. The central legal issues surrounded whether the state's unfair competition law (UCL) applied and was violated when ACCJC took action to terminate accreditation. ACCJC presented a series of defenses claiming that the suit was altogether barred. The judge generally rejected those defenses and, in a final Statement of Decision issued February 17, 2015, found that CCSF was warranted some relief. Specifically, the judge ordered ACCJC to allow CCSF to respond to the 2013 basis for termination, then requiring ACCJ to take action, consistent with law, to rescind or reaffirm the 2013 termination. According to Judge Karnow, "under federal law it is ACCJC, and not this court, which exercises its discretion with respect to accreditation decisions."

*CCC CEO Request.* According to information provided by the author, Committee staff understands that on April 25, 2014, the President of the CEOs of the CCCs wrote to ACCJC

requesting the Commission to use its power to provide SFCC a "good cause" extension in order to allow the college to come into compliance with accreditation standards. The letter also appears to raise concern regarding the special assessment to fund ACCJC legal fees, noting "as the funders of ACCJC's legal defense bills, we believe it is critical to exhaust every non-courtroom remedy to minimize our financial exposure as well as any negative impact on students throughout the state."

*CCSF and SB 860.* In the 2014-15 Budget Act education trailer bill, SB 860 (Committee on Budget and Fiscal Review), Chapter 34, Statutes of 2014, the Legislature provided SFCC with additional funding, for three fiscal years, as the college works to restore student enrollment and maintain accreditation. For 2014-15, the district received funding equal to the amount it received in the 2013-14 fiscal year, in 2015-16 and 2016-17 funding is to be reduced by five, and 10% respectively. SB 860 requires the CCSF Chancellor to provide ongoing reporting and, in order to receive the third year of funding CCSF is required to meet benchmarks related to fiscal management and controls. In 2014-15, CCSF received an approximately \$38.5 million in apportionment stability funding, as provided under the formula established in SB 860.

*CCSF current status.* On April 15, 2015, CCSF Chancellor Tyler submitted the first report as required pursuant to SB 860. According to the report, the Chancellor and the Special Trustee has instituted administrative reorganizations, has focused on restoring declines in student enrollment, and has established a long-term fiscal stability plan. The Chancellor and Special Trustee agree that CCSF has demonstrated an ability to meet all accreditation standards and eligibility requirements within the two year restoration timeline established by ACCJC.

*Purpose of this bill.* According to the author, CCCs are being "forced to pay hundreds of thousands of dollars to fund the ACCJC's legal bills" following its decision to terminate the accreditation of CCSF. The author notes that CCCs were assessed a 5% special assessment for 2014-15; ACCJC is expected to issue a similar assessment in 2015-16 for CCSF-associated legal fees. The author also argues, Judge Karnow "ultimately ruled that the ACCJC had violated the due process rights of CCSF when they departed from the ACCJC's evaluation team findings and identified 10 additional deficiencies without providing details to the college or affording them to opportunity to respond before the ACCJC made the decision to revoke their accreditation." The author notes that, even though ACCJC was found to have violated the law, CCCs, and ultimately the state, are forced to fund the legal defense or face the threat of loss of accreditation. The author believes that if ACCJC continues to take such actions, the state will be forced to continue to fund ACCJC legal defenses. This bill is designed to ensure CCCs, and ultimately California taxpayers, are not forced to fund ACCJC legal costs without the approval of the majority of CCC chief executive officers.

*Federal criteria for recognition.* As previously outlined, the USDE provides recognition of accrediting agencies. In order for an institution to participate in federal financial aid programs an institution must be accredited by a recognized accrediting agency. Accrediting agencies are required pursuant to federal regulations to meet several outlined criteria for recognition, including requiring the accrediting agency to be separate and independent, meaning, among other requirements, that the agency develops and determines its own budget with no review or consultation with any other entity or organization (34 CFR §602.14(b)(5)). An alternative

approval by the USDE Secretary is available, but that alternative also requires the agency to have budgetary and administrative autonomy (34 CFR §602.14(d)(3)).

*Committee staff, in consulting with the USDE, understands that the requirements of this bill may be in conflict with USDE criteria for recognition. An accrediting agency deemed noncompliant with criteria for recognition could be order to correct deficiencies or have their recognition discontinued by the USDE. If ACCJC were to have its recognition withdrawn by USDE, the accreditation status – and the ability of students to receive federal and state financial aid, and to transfer educational credits to four-year universities – of all CCCs would be threatened.*

*Alternative approaches.* Should the Committee desire to move forward with legislation addressing this matter, the members may wish to consider the following alternative approaches that address issues surrounding compliance with federal criteria of recognition:

- 1) This bill could be amended to encourage the accrediting agency to conduct a binding vote of all member-college CEOs prior to implementing a special assessment to fund legal fees.
- 2) This bill could be amended to require the accrediting agency to conduct a vote of all member-college CEOs prior to implementing a special assessment to fund legal fees, to release publically the outcome of that vote, and to request the outcome of that vote to be considered before implementing the special assessment.
- 3) This bill could be amended to specify that the provisions of this bill are not binding if it is determined by the CCC Chancellor that federal criteria for recognition prohibit a recognized accrediting agency from complying with this requirement.
- 4) This bill could be amended to require the CCC Chancellor to conduct a vote of all CCC CEOs upon notice that the ACCJC intends to implement a special assessment to fund legal fees, and to require the CCCCO to release the results of that vote to the accrediting agency and to the public.

*Related legislation.*

AB 404 (Chiu) was approved by this committee on April 7, 2015, and requires the CCC BOG to conduct a survey of the CCC, including faculty and classified personnel, to develop a report to be transmitted to the USDE that reflects a systemwide evaluation of the agency based on criteria used to determine an accreditor's status.

AB 1397 (Ting) is pending in the Assembly Higher Education Committee. This bill would require the accrediting agency for CCC to provide an opportunity for public comment prior to taking action related to the accreditation status of a community college.

*Prior legislation.*

AB 1942 (Bonta), Chapter 382, Statutes of 2014, required the CCC BOG, in determining if a CCC district satisfies the minimum conditions for receipt of apportionment funding, to review the accreditation status of the CCCs within that district; required the accrediting agency for

CCCs to report to the appropriate policy and budget subcommittees of the Legislature upon the issuance of a decision that affects the accreditation status of a CCC and, on a biannual basis, any accreditation policy changes that affect the accreditation process or status for a CCC; and, required the CCCCCO to ensure that the appropriate policy and budget subcommittees are provided the aforementioned required information.

AB 2247 (Williams), Chapter 388, Statutes of 2014, required all campuses serving California students of public and private postsecondary educational institutions that receive state or federal financial aid funding to post institutional accreditation documents on the institution's website.

SB 1068 (Beall) of 2014, which was held in the Senate Appropriations Committee, would have required CCC BOG, by January 1, 2016, to report on the feasibility of creating an independent accrediting agency to accredit the CCCs and other 2-year private postsecondary educational institutions, and to make recommendations relative to CCC accreditation.

**REGISTERED SUPPORT / OPPOSITION:****Support**

California Labor Federation  
Faculty Association of California Community Colleges

**Opposition**

Accrediting Commission for Community and Junior Colleges  
Community College League of California

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