Date of Hearing: March 27, 2012

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Marty Block, Chair
AB 1561 (Hernandez) – As Amended: March 20, 2012

SUBJECT: California State University and University of California: compensation.

SUMMARY: Prohibits the California State University (CSU) Board of Trustees from increasing executive compensation in years of either decreased General Fund support or student tuition/fee increases; prohibits an administrator, as defined, from receiving more than 10% above the total compensation, as defined, received by the predecessor in that position; and prohibits administrators from participating in activities, as specified, by an auxiliary organization if that auxiliary provides compensation to that administrator. Specifically, this bill:

1) Prohibits the CSU Trustees from entering into or renewing a contract that provides for a compensation increase for any administrator, as defined, using moneys from the state, tuition or fees in any fiscal year in which the amount of General Fund monies appropriated to that segment is less than the amount appropriated in the immediately preceding fiscal year or in a year when tuition or fees are increased in the same fiscal year.

2) Prohibits the CSU Trustees from entering into or renewing a contract for compensation for a campus president that exceeds 10% of the compensation relative to the immediately preceding compensation for that position, which may subsequently be adjusted on January 1 of each year per inflation as determined by the California Consumer Price Index (CCPI).

3) Defines "administrator" as including, but not limited to the CSU Chancellor, a vice chancellor or an executive vice chancellor, the general counsel, the Trustees' secretary, or the president of an individual campus.

4) Prohibits an administrator from participating in the following activities of an auxiliary organization if that auxiliary provides compensation to that administrator:

   a) The procurement of donations by an auxiliary organization if those donations are used to provide a compensation increase to that administrator, or,

   b) The bidding or negotiations for services or contracts with an entity that provided funding to an auxiliary organization if that funding is used to provide a compensation increase to that administrator.

5) Requests the University of California (UC) Board of Regents refrain from entering into or renewing a contract that provides for a compensation increase for any administrator, as defined, using moneys from the state, tuition or fees in any fiscal year in which the amount of General Fund monies appropriated to that segment is less than the amount appropriated in the immediately preceding fiscal year or in a year when tuition or fees are increased in the same fiscal year.

6) Requests the UC Regents refrain from entering into or renewing a contract for compensation for an administrator that exceeds 10% of the compensation relative to the immediately

preceding compensation for that position, which may subsequently be adjusted on January 1 of each year per inflation as determined by the California Consumer Price Index (CCPI).

7) Requests an administrator refrain from participating in the following activities of an auxiliary organization if that auxiliary provides compensation to that administrator:

   a) The procurement of donations by an auxiliary organization if those donations are used to provide a compensation increase to that administrator, or,

   b) The bidding or negotiations for services or contracts with an entity that provided funding to an auxiliary organization of that funding is used to provide a compensation increase to that administrator.

8) Defines "administrator" as including, but not limited to the UC President; any UC vice president; the general counsel; the Regents' secretary; the chancellor of an individual campus; all assistant, associate and vice chancellors; and all provosts and vice provosts, and the chief counsel of each UC campus.

9) Defines "compensation" at UC and CSU as including salary, benefits, perquisites, severance payments, retirement benefits, or any other form of compensation.

EXISTING LAW:

1) Establishes the CSU Trustees, requires that they administer CSU, and outlines the authorities, responsibilities, and requirements of the Trustees relative to personnel matters. (Education Code § 66600, 89500 et. seq.)

2) Requires the proposals for the compensation packages of specified executive officers, including the Chancellor, president of an individual campus, vice chancellor, treasurer, general counsel and the Trustee's secretary, occur in open sessions of a committee of the Trustees and the full Board of Trustees, as specified. (EC § 66002.7)

3) Requires meetings of state bodies, including UC and CSU, to be open and public, requires state bodies to publish a specific agenda and notice of each meeting at least 10 days in advance of the meeting, and requires executive compensation, as defined, to be publicly disclosed. (Government Code § 11120-11132)

4) Requires records maintained by an auxiliary organization of CSU, the California Community Colleges (CCC), and CCC districts and a UC campus foundation be available to the public consistent with the California Public Records Act, excepting specified donor information. (EC § 72690, 89913, 92950)

FISCAL EFFECT: Unknown

COMMENTS: Need for the bill. According to the author, "At a time in which both the CSU and UC systems are simultaneously experiencing budget cuts and student fee increases, it does not make fiscal sense to have high-level executives be paid exorbitant compensation increases at the expense of students. The State must remain vigilant and guarantee that the limited public resources with which it has provided to the CSUs and UCs are being used appropriately to enhance and expand actual student services, and to ensure and maintain a quality education."

Background. In July 2011, the CSU Trustees approved an annual salary for the incoming president of San Diego State University that was $100,000 greater than his predecessor's salary. Prior to this action, the Governor submitted a letter to the Trustees expressing concern about CSU's compensation approach and asking the Trustees to rethink their criteria for setting administrator salaries, as well questioning whether CSU could select future presidents from within the CSU system instead of recruiting and paying higher compensation for candidates from other states. The Trustees appointed a special committee to review its executive compensation policy.

New CSU executive compensation policy. Based upon the special committee's recommendations, in January the CSU Trustees adopted an executive compensation policy that includes the following:

1) A "cap" of no more than 10% above the predecessor's salary from state funds for incoming presidents.

2) A new set of comparison institutions, divided into tiers to recognize the differences in the 23 campuses' sizes and missions, that includes only public universities with comparable enrollment, operating budgets, funded research, graduation rates and Pell Grant eligible students.

3) Increased opportunities for CSU campus and system leaders to develop the experience and skills necessary to be a successful president.

At its recent March meeting, the Trustees approved the compensation for the incoming presidents at its East Bay, Fullerton, and Northridge campuses, all of which included a 10% increase from that of their immediate predecessors, consistent with the new CSU policy. CSU is currently conducting presidential searches at its Monterey Bay, San Bernardino, San Francisco, and Maritime Academy campuses.

CSU's compensation policy vs. this bill.

1) CSU's policy applies regardless of General Fund or tuition/fee status. Under this bill, administrator compensation could only be increased (per the conditions below) in years when CSU's state funds increase and tuition/fees do not increase.

2) CSU's policy includes a 10% cap above the immediate predecessor's salary from state funds. This bill would apply the cap to total compensation, including auxiliary funding or other forms of compensation.

3) CSU's policy applies only to campus presidents. This bill would apply to campus presidents, the Chancellor, vice chancellors or executive chancellors, general counsel, and trustee's secretary.

UC executive compensation policy. UC policies govern accountability and disclosure of executive compensation but does not cap or limit salaries of its senior managers. However, the agenda for the September 2011 UC Regents meeting included a discussion item, which notes that, pursuant to a request by the Chair and Vice Chair of the Regents' Committee on Compensation, the UC Office of the President intends to undertake a comprehensive review of the compensation paid to chancellors at other universities. Once the study and analysis are finalized, the details will be presented in open session at a meeting of the Board of Regents in 2012. UC is conducting chancellor searches for its San Diego and Berkeley campuses.

National comparison of UC and CSU executive salaries. The CSU Trustees and UC Regents determine the compensation levels for executive personnel. Compensation typically reflects compensation levels paid at comparable institutions nationwide. Using the comparison institutions included its new compensation policy (described previously), CSU estimates an 18% base salary lag in administrative salaries. A UC study found that cash compensation for senior managers, on average, was 22% lower than their counterparts. Total compensation for top administrators, including university chancellors, was 14% below their counterparts at comparable institutions.

Issues to consider. This bill would remove the Trustees' and Regents' authority for determining executive compensation by placing these compensation parameters in statute rather than leaving these decisions to the discretion of the boards, which have fiduciary responsibility for the institutions and whose members are chosen by the Governor and confirmed by the Senate.

1) How will this affect California's ability to attract or retain the professionals necessary to fill these positions? Does it put California's public institutions at a competitive disadvantage for recruiting leaders and risk undermining their quality?

2) Tuition/fee levels are historically tied to funding provided in the annual budget act. Should the institutions' authority to compensate leaders be tied to decisions that are outside the institutions' control? How does state support and tuition/fees connect to the management needs of these institutions?

3) Is it appropriate to restrict how private foundations and auxiliaries use their funds relative to executive salaries?

Existing restrictions on state employees' executive compensation. The Department of Personnel Administration sets and adjusts salaries for each classification in state service. There are currently no restrictions on executive compensation for state employees; however, recent legislation to freeze state salaries over $150,000, including those at UC and CSU (AB 53 and AB 224, Portantino of 2011] was not approved by the Legislature.

General Fund fluxuations. Factors other than programmatic cuts or increases affect General Fund appropriations, including:

1) Debt Service: General Fund appropriations include the amounts needed to pay for existing debt service obligations. Bonds for such projects may be sold at different times and for different rates. A bond sold at a much better rate may result in significantly lower debt service payments resulting in a lower General Fund appropriation.

2) Deferral: The state often defers millions of dollars of General Fund monies from one year to the next as a budget-balancing mechanism. How should such deferrals be accounted for in determining if a General Fund appropriation differs from one year to the next?

Auxiliaries provisions. CSU and CCC auxiliary organizations and UC campus foundations are formed to further the educational missions of their institutions. Examples include alumni groups, student associations, faculty organizations, and groups that bear the name of the particular college or university or campus. The campus presidents or chancellors usually serve the campus auxiliary/foundation board. These groups operate as nonprofit public benefit corporations chartered under the California Nonprofit Public Benefit Corporation Law and must meet certain standards of operation such as: (1) auditing and financial reporting procedures with oversight by a certified public accountant; (2) expenditures that are in accordance with policies delineated by the governing body; (3) meetings of boards and committees that are open to the public; and (4) conformity of operational procedures with regulations established by the governing body. Existing law also restricts board members from participating in any contract in which they have a personal financial interest except as specified.

Arguments in support. The University of California Student Association argues that this bill will restore the public's trust in the CSU and UC by limiting executive compensation increases when students and families must face mandatory systemwide fee hikes and reduced course offerings and student services. According to the American Federation of State, County, and Municipal Employees, Local 3299, "Increasing executive salaries while simultaneously increasing tuition costs for students who are already struggling with fewer available classes, larger classroom sizes and higher fees is unconscionable and should not be tolerated."

Arguments in opposition. UC and CSU argue that this bill will: 1) jeopardize their ability to attract and retain outstanding administrators during times of major budget reductions, restructuring, and realignment that require the skills of highly qualified personnel in order to maintain excellence and ensure success; and 2) restrict their ability to raise private dollars to support their institutions, noting that current law already prevents individuals from raising donations for their own self-interest. CSU also argues that this bill fails to recognize its board's actions on executive compensation, which respond to concerns about executive salaries and balances the need for good leaders and fiscal restraint.

Clarifying amendment. This bill restricts executive compensation awards in a year when tuition or fees increase. Staff recommends the language be clarified to refer to *systemwide resident tuition and fees* to avoid capturing increases in nonresident, graduate and professional school tuition/fees or student-approved campus based fees.

Related legislation. Several bills have been introduced on this subject, including the following:

1) AB 1684 (Eng), pending in this Committee, would limit the pay of California Community College Chancellors to no more than twice the highest faculty member salary.

2) SB 952 (Alquist), pending in the Senate Appropriations Committee, would limit administrator salary increases using state fund to 10% above the predecessor's salary.

3) SB 967 (Yee), which failed passage in the Senate Education Committee on March 21, 2012, was substantially similar to this bill, capping compensation at 5% instead of 10% of the predecessor's total compensation.

4) SB 1368 (Anderson), pending in the Senate, would limit the annual rate of salary of a state officer or employee to the annual salary authorized to be received by the Governor.

5) ABx1 39 (Hernández, 2011), which was not heard by the Legislature, was substantially similar to this bill.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, Local 3299
California Faculty Association
University Professional and Technical Employees, CWA Local 9199
University of California Student Association

Opposition

California State University
University of California

Analysis Prepared by: Sandra Fried / HIGHER ED. / (916) 319-3960