

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
AB 2087 (Ammiano) – As Introduced: February 20, 2014

SUBJECT: Community colleges: Board of Governors of the California Community Colleges.

SUMMARY: Specifies that the California Community College (CCC) Board of Governors (BOG) may not usurp, transfer, or limit, in any way, the powers of the governing boards of community college districts (CCD).

EXISTING LAW:

- 1) Establishes the CCC BOG, appointed by the Governor, and a Chancellor, appointed by the BOG, to prescribe minimum standards for the formation and operation of CCC and to exercise general supervision over the CCC (Education Code §66700, 71000, 71090).
- 2) Requires the CCC BOG in establishing specified minimum standards for CCC operation and receipt of state funding to maintain and continue, to the degree permissible, local authority and control in the administration of the CCC (EDC §70901).
- 3) Requires each CCD to be under the control of a locally elected board of trustees (governing board), requires the governing board to operate the CCD in compliance with state law, and authorizes the governing board to delegate powers to the CCD executive officer, employee or committee (EDC §70902).
- 4) Requires the CCC BOG to establish standards for fiscal management practices of CCD governing boards and requires BOG to develop procedures and actions for districts that fail to achieve fiscal ability or to comply with BOG recommendations, including the appointment of a special trustee to manage the district. The BOG is required to report to the Legislature, the Department of Finance, and the Governor regarding any corrective actions taken by the CCD or the BOG to ensure fiscal stabilization (EDC §84040).
- 5) Pursuant to BOG regulations (5 CCR §58312), the CCC Chancellor has authority to take corrective actions to ensure fiscal stabilization if the Chancellor has determined a CCD:
 - a) Established plans for corrective action that are insufficient to solve financial problems or implement sound fiscal management;
 - b) Has failed to implement corrective plans; or,
 - c) College within the CCD is in imminent jeopardy of losing its accreditation, which would create severe fiscal problems.
- 6) Regulations (5 CCR §58312) also direct the Chancellor to first utilize measures that minimize interference with CCD operations, unless the Chancellor determines that action is necessary to prevent a worsening of fiscal conditions. The Chancellor is authorized to take the following actions:

- a) Conduct a comprehensive management review of the district and an audit of the financial condition of the district;
 - b) Direct the district to amend and readopt financial and educational plans based on the findings of the audits;
 - c) Review and monitor the implementation of the plans and direct the district to make any modifications necessary; and,
 - d) Appoint a special trustee at the district expense for the period of time necessary to achieve fiscal solvency, implement sound fiscal management, or maintain accreditation status. In appointing a special trustee:
 - i) The Chancellor is required to establish benchmarks that indicate local capacity to manage fiscal duties;
 - ii) The special trustee is required to have recognized expertise in finance and, with the approval of the Chancellor, may employ short-term staff for assistance; and,
 - iii) The Chancellor and the special trustee are required to specify in writing the special trustee's duties, which may include:
 - (1) Reviewing and monitoring plans, reports, and other financial material;
 - (2) Requiring further modifications to the fiscal and educational plans;
 - (3) Determining district spending levels and priorities to further achievement of fiscal stability; and,
 - (4) Approving or disapproving actions of the district which affect or relate to the implementation of the plans.
- 7) Regulations (5 CCR §58312) authorize, with the approval of the BOG, the Chancellor to authorize the special trustee to assume management and control of the district, including the assumption of legal rights and powers and duties of the governing board, as necessary to achieve fiscal stability, to implement sound fiscal management, or to maintain or recover accredited status:
- a) Pursuant to regulations, the Chancellor is only authorized to elevate the special trustee powers to full district management for one year, unless the BOG approves one or more one-year extensions; and,
 - b) The special trustee, when managing the district, is subject to all legal requirements applicable to the district and the governing board is prohibited from exercising any authority that has been assumed by the special trustee.
- 8) Regulations (5 CCR §58312) authorize the Chancellor to require the district to pay all costs incurred in performing the duties necessary to restore fiscal stability or accreditation status.

FISCAL EFFECT: Unknown

COMMENTS: Purpose of this bill. According to the author, this bill is necessary to "address the vague language found in the Education Code that gives the BOG, as appointed body, the authority to take away decision making power from a college's Board of Trustees, an elected body." The author argues that, "Citizens go to the ballot box to vote with the idea in mind that their voice will be represented by the individual they choose for elected office. San Francisco voters approved Proposition A in 2012, a parcel tax that would aid the recovery of San Francisco City College (SFCC). San Francisco voters also elected SFCC District Board of Trustee members with the knowledge that these elected officials could be held accountable for managing the recently passed parcel tax (Prop. A). The BOG and the Special Trustee are unelected individuals and voters cannot hold either the board of the special trustee accountable for their actions."

Background. In July of 2012, SFCC was placed on "Show Cause" status by its accrediting agency, Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges (ACCJC). The ACCJC visiting team found that the college had insufficient cash flow and reserves to maintain financial stability and no realistic plans for the future. The institution was provided one year to establish compliance with accrediting standards.

The CCC Chancellor's Office (CCCCO) and the Fiscal Crisis & Management Assistance Team (FCMAT) released an audit, in September of 2012, of SFCC fiscal stability and management controls. The audit found that SFCC was near fiscal insolvency resulting from poor financial decisions and lack of accountability. In October 2012, the CCC BOG appointed Robert Agrella as special trustee under the aforementioned limited powers (See: Existing Law 6(d)) to assist SFCC in achieving sound financial management.

In July of 2013, ACCJC terminated SFCC accreditation effective July 31, 2014. The ACCJC visiting team found that of the recommendations, SFCC fully addressed only two, nearly addressed just one, and eleven were inadequately addressed. Also in July, CCCCCO and FCMAT released a second SFCC fiscal review which found overall non-implementation of 2012 recommendations due to "internal struggles and a general unwillingness to make hard decisions and see change occur." FCMAT found that "absent strong and consistent leadership, progress will be extremely difficult to achieve."

On July 9, 2013, BOG voted to authorize the special trustee for SFCC District to assume the management and control of the District (See: Existing Law 7). This decision was based on a BOG analysis that SFCC had not developed a plan to fund liabilities and obligations, had not made ongoing funding reductions necessary to maintain fiscal solvency, had employed twice as many full-time faculty and incurred expenses \$17 million higher than comparison districts, and that the magnitude of employee contract obligations made it difficult for the district to achieve fiscal health without change. The BOG analysis found that SFCC did not have an effective management plan, which is necessary to effectively use available resources and that faculty were provided an inordinate amount of expensive faculty release time. Finally, the BOG analysis identified as a major barrier to financial stability that decisions with serious fiscal implications were made without any individual having accountability for those decisions.

Currently, according to the CCCCCO, SFCC special trustee and the recently appointed chancellor, Arthur Tyler, are working to meet the ACCJC accreditation standards and achieve fiscal stability, with the goal of restoring accreditation to the college and returning management control to the local governing board.

According to estimates, without Legislative intervention, declining enrollment at SFCC could result in \$23 million in reduced funding to the college in 2014-15. SB 965 (Leno), pending in the Senate Education Committee, would provide four years of stabilization funding to SFCC to account for this declining enrollment; CCC BOG appointment of a special trustee is a condition of receipt of funding. ***The Committee may wish to consider the implications of removing state level oversight and control of the SFCC District (and any future districts that face fiscal insolvency and loss of accreditation) in the context of the pending request for state funding.***

Arguments in support. The California Federation of Teachers supports this bill, arguing that "community college governing boards are elected and come from the community. They strive to be responsive to the immediate and long-term needs of their community."

Gray Panthers of San Francisco writes, "This bill is necessary to prevent future precipitous acts like the coup d'état last year against the elected Board of Trustees of City College of San Francisco. This was based on allegations – neither proven nor unproven – that are currently being contested legally. The suspension of the college's Board is a blatant, egregious attack on the principles of democracy in education."

According to information provided by the author's office, a resolution recently approved by the San Francisco Board of Supervisors urges the CCC Chancellor to restore the voice of San Francisco voters and bring democratic decision-making, transparency, and public accountability back to City College of San Francisco by restoring the duly elected SFCC Board of Trustees.

Arguments in opposition. The CCCCCO argues "assigning a special trustee is a rare step and only done after other, less intrusive alternatives have been exhausted." CCCCCO notes that in most cases special trustees have been assigned to only provide advisory support to a struggling district. Only in two cases (SFCC and Compton Community College District) has the BOG elevated the powers of a special trustee and suspended the authority of a local governing board. The CCCCCO believes that in these situations "State oversight was necessary and prudent given impending fiscal crisis and imminent threats to accreditation."

The Community College League of California, which represents locally-elected trustees and CEOs, argues that the BOG "has an important oversight role to play in ensuring locally elected boards are adequately serving students" and that in the two cases where the BOG has intervened "state oversight was necessary and prudent".

The CCC Chief Instructional Officers (CCCCIO) oppose this bill and argues, "in some cases the local board may not have the expertise necessary to lead the college out of a crisis; in other cases, to be blunt, the local board itself may have caused some of the issues." The CCCCCIO argues that "we do not believe appointment of a special trustee should take place without much deliberation and consideration of alternatives, but we also believe removing that option from the BOG is not in the best interest of the system."

Alternative approach. In its current form, this bill would eliminate the authority of the CCC BOG to intervene in when districts face fiscal insolvency and/or loss of accreditation. A state-level intervention process is currently in place when a K-12 district is fiscally insolvent. The policy rationale for proposing to treat CCC districts and K-12 districts differently in these circumstances is unclear; both receive the majority of funding from state moneys. Rather than removing the CCC BOG authority entirely, the author may wish to consider, similar to requirements in K-12 district intervention, establishing statutory parameters associated with the use of the CCC BOG authority. For example, the author could require the CCC BOG to establish specific benchmarks for the return of local governance authority and/or clear standards that provide meaningful consultation on the part of the appointed special trustee with the college stakeholders (governing board, faculty, students, public, etc.).

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers
Gray Panthers of San Francisco
Los Angeles College Faculty Guild
Peralta Federation of Teachers
Several Individuals from San Francisco

Opposition

Board of Governors California Community College
California Community College Chief Instructional Officers
Community College League of California

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