

Date of Hearing: April 17, 2007

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Anthony Portantino, Chair
AB 591 (Dymally) – As Amended: March 26, 2007

SUBJECT: Community colleges: Non-tenure-track temporary faculty employees

SUMMARY: Makes several statutory changes related to parity in salaries and benefits for part-time and temporary faculty in the California Community Colleges (CCC). Specifically, this bill:

- 1) Changes the definition of a temporary employee from one who teaches for not more than 60% of the hours per week considered to be a regular full-time faculty assignment to one who teaches less than 100% of the hours per week that constitutes a regular full-time faculty assignment.
- 2) Renames a "temporary employee" in Education Code Section 87482.5 (a) (1) to be a "non-tenure track temporary faculty employee."
- 3) Provides definitions to be used in this section, including:
 - a) "Non-tenure track" means a faculty member who teaches a number of hours per week equal to or less than a full-time faculty member but is not on a tenure track;
 - b) "Parity basis" means equal pay for equal work; and,
 - c) "Temporary" means a faculty member whose position is for a limited term and does not qualify him or her for evaluation for the possible conferral of tenure.
- 4) Requires that a non-tenure track temporary faculty employee shall receive pay and benefits equal to the pay and benefits received by tenured and tenure-track faculty with comparable qualifications doing comparable work on a parity basis.
- 5) Stipulates that a non-tenure track temporary faculty employee who teaches at least 40% of a full load shall receive the same health care benefits that are received by tenured and tenure-track faculty in the same CCC district.
- 6) Requires a CCC district to reduce the gap in salaries and benefits between non-tenure track temporary faculty employees and tenured and tenure-track faculty by 50% each year until salaries and benefits are on a parity basis.
- 7) Requires a CCC district to hire at least 50% of its full-time tenure-track faculty from the pool of its qualified non-tenure track temporary faculty employees.
- 8) Recognizes that all benefits, load calculations, and hiring may be subject to collective bargaining that includes representatives of non-tenure track temporary faculty employees and requires the CCC Chancellor's Office (CCCCO) to enter into and conclude negotiations with a CCC district on behalf of employees not represented by a bargaining unit.

EXISTING LAW defines a person who teaches not more than 60% of the hours per week considered a full-time assignment for a regular employee having comparable duties as a temporary employee.

A complete summary of existing law regarding the employment of community college faculty is beyond the scope of this analysis, however it is important to note there are extensive, complex statutes, many of which apply to full-time, part-time, temporary, contract and other academic employees, in a wide array of situations related to multiple aspects of district employment.

FISCAL EFFECT: Unknown. According to the author, the cost is estimated to be \$100 million.

COMMENTS: What is the purpose of this bill? According to the author, existing law creates a class of employees, now called "part-time faculty," who are allowed to teach no more than 60% of full-time teaching load. The author states, "The continuing exploitation of part-time faculty in the community college system is the result of enforcing obsolete legislation that was designed to protect the community college system from externally funded temporary and contract instructors qualifying for tenure-track positions once those funding sources were exhausted." He notes part-time faculty are routinely excluded from basic benefits, do not have paid office hours or office space and receive significantly less pay than similarly qualified full-time faculty. Citing previous legislation and regulations, he says, "The net result of this two-tiered instructional system prevents all faculty from providing the best educational opportunities for all community college students."

The author also points out that this system has led many faculty members to teach in multiple districts at the same time (so called "freeway flyers") and that the State should not rely so heavily on such exploitation to keep the colleges functioning.

Community college faculty teaching loads and salaries: According to the CCCCCO in its "Report on Staffing for Fall 2006:"

- There are 59,821 faculty in the system. On a headcount basis, 18,196 are tenured or tenure-track faculty (30%) and 41,625 are academic temporaries (70%). When calculated on a full-time equivalent (FTE) basis, there are 36,025 FTE faculty, 57% that are tenured or tenure-track, and 43% that are temporary.
- The average salary for a tenured or tenure-track faculty member is \$78,498, ranging from a high of \$106,958 at Mira Costa to a low of \$57,233 at Southwestern. Salaries for temporaries are not provided in the same format. The average hourly rate for an academic temporary in credit instruction is \$62.86; in non-credit instruction the hourly average is \$47.46.
- Of the 41,625 academic temporaries, 3,393 work at multiple districts.

Scope: This bill applies to both credit and non-credit faculty.

The report of the California State Auditor: A June 2000 report by the Bureau of State Audits (BSA), "Part-time Faculty Are Compensated Less Than Full-time Faculty for Teaching Activities," found significantly lower wages and benefits provided to part-time faculty. The report states, "Depending on one's policy perspective, the unequal compensation of part-time faculty either creates problems that should be addressed or reflects an appropriate balance of

market conditions at the local level that should not be tampered with." In noting that the existing pay disparity creates an incentive for college districts to utilize part-time faculty, BSA points out such an incentive is not in keeping with standards that stress the importance of maintaining a balance, but on the other hand mandating equal pay for equal work could interfere with the collective bargaining process and limit local flexibility. Districts interviewed for this report cited their dependence on the State for financial resources and indicated funds are not sufficient to meet all of their needs. The BSA estimated the cost for eliminating all existing pay differences to be about \$144 million annually. At the time of the report, the headcount ratio of full-time to part-time faculty was 33% to 67%.

The report of the California Postsecondary Education Commission (CPEC): Pursuant to AB 420 (Wildman), Chapter 738, Statutes of 1999, CPEC produced a report on CCC part-time faculty salaries. This report echoed the findings of the BSA, noting that on an average (after converting hourly wages to an adjusted annual comparison) part-time faculty earned 50-60% of a comparable full-time faculty salary. CPEC also noted wide variation by district, geography and academic discipline, and also indicated that 41% of part-time faculty reported they received no benefits.

Tenure-track status for less than full-time faculty: In a few instances, districts employ tenured or tenure-track faculty on a less-than-full-time basis. Existing law permits academic employees to request a reduction to part-time status. This bill would apparently require a district to classify a person who teaches less than 100% load as non-tenured. Is this desirable?

Requirement for achieving parity: This bill requires a district to reduce the salary and benefit gap by 50% each year until parity is achieved. Taken to its extreme, the gap could be reduced to a miniscule amount but could never be eliminated by being cut in half each year. When or if the author considers amendments for this bill, this technical error should be corrected, perhaps by requiring "at least 50% each academic year." This is not recommended as a current committee amendment, however, because it is still unclear how a district might reduce a gap in benefits by precisely 50%.

Ambiguity regarding improved benefits: This bill is somewhat ambiguous regarding its intent for improved benefits for a non-tenure track temporary faculty employee. In one instance this bill requires "equal" benefits for all such employees, in another it requires "same" benefits for those who teach at least 40% of the full-time load, and in another it requires districts to close the gap by 50% per year. These provisions are conflicting and should be clarified.

What is a "pool" of "qualified" employees? This bill requires a district to hire at least 50% of its full-time tenure-track faculty from a "pool" that is not defined and limits the pool to "qualified" employees, which is also not defined. These provisions should be clarified.

Collective bargaining responsibilities at the CCCCCO: Is it appropriate to place collective bargaining responsibilities at the Chancellor's Office? Employees are normally represented in collective bargaining by a union that they, or at least some of them, have selected as their representative and to which they pay dues and in which they have some ability to influence the positions it takes. The CCCCCO would have no such relationship with the employees, and this bill is silent on what would happen if there were different ideas about how to handle the negotiations. Under current law an employee can go to the Public Employee Relations Board and file an unfair practice claim against his or her union if the employee feels he or she is not

being properly represented. Would they be able to do this to the CCCCCO? If so, it would create an awkward situation with little precedent to guide the outcome.

There are governance issues as well. The CCCCCO has relationships with the districts on various levels. For example, it is a CCCCCO responsibility to ensure that districts comply with the full-time/part-time ratio regulations as well as to ensure that districts do full and open recruitment for all faculty positions. If, in addition to these oversight responsibilities, the CCCCCO had to negotiate with the districts on behalf of some portion of employees on the same matters, conflict-of-interest situations could arise.

If this is an appropriate function for the CCCCCO, what resources would be necessary for the agency to meet these obligations? No resources are provided in this bill. And finally, in order to prevent conflict with existing statute, this bill would need to amend to the Educational Employment Relations Act in the Government Code that governs collective bargaining in the CCC.

Note: In a late amendment, the author has removed this provision.

Should these goals be achieved by collective bargaining? This bill mandates salary and benefit issues within individual CCC districts. Such items are within the purview of collective bargaining and could be achieved through those means.

Faculty representation in the CCC: Faculty in the CCC are represented by unions with collective bargaining and lobbying duties, by associations with lobbying duties, and by the Academic Senate for the CCC, which provides leadership in matters of educational policy. Faculty unions include the California Teachers Association, the California Federation of Teachers (CFT) and the Community College Independents and the Communication Workers of America. Associations include the Faculty Association of the California Community Colleges and the sponsor of this bill, the California Part-Time Faculty Association, among others. Among the 72 districts there is a wide variety of representation, including some in which all faculty (full-time and part-time) are represented by a single union and some by multiple unions. There is also a wide variety of unit designations, some with units divided at 50% teaching load, some divided at 60% teaching load or not at all. Within this mixture there is also overlapping membership in various associations.

Arguments in opposition: In its letter of opposition, the CFT notes this bill reduces faculty ability to gain tenure, increases the number of contingent and non-tenure track faculty, amends statutory definitions related to faculty that have been well worked out through the collective bargaining process, appears to eliminate tenure for some faculty who have earned it, and requires salary parity without defining what that is. CFT also notes that colleges do not currently track part-time employees in a manner that creates a pool for future employment and that this bill is silent on the consequences of non-compliance and thus it opposes the mandate that colleges hire at least 50% of probationary and regular faculty from this pool. Finally the CFT expresses opposition to a collective bargaining role for the Chancellor. The Community College League, in its letter of opposition, also notes that it believe local district diversity goals would be thwarted by requiring 50% of full-time faculty to be hired from the pool of temporary faculty.

Related Legislation: AB 420 (Wildman), Chapter 738, Statutes of 1999, required CPEC to conduct a study of part-time faculty salaries. AB 1343 (Mendoza), pending in the Assembly,

requires CSU and CCC to determine a minimum salary goal for part-time and temporary faculty and to close the salary gap with full-time faculty by 2014-15.

Request for amendments by author: The author requests the committee take amendments to 1) address minor technical issues and 2) to remove sections establishing a role for the CCCCO in collective bargaining.

Proposed amendments from the author:

Technical: Page 2, line 5, strike "less than" replace with "up to"

Technical: Page 3, line 38, after "Section 84362" add "except in accordance with Section 87481 and Section 87482 of the Education Code."

Substantive: Page 4, line 10, strike "While" and on line 13, strike "in the event that no bargaining unit represents non-tenure track temporary employees, the chancellor's office shall enter into, and conclude, negotiations on behalf of non-tenure track temporary faculty employees in the district."

REGISTERED SUPPORT / OPPOSITION:

Support

California Part-Time Faculty Association (Sponsor)
Communication Workers of America, AFL-CIO, District 9
California Teachers Association and its Community College Association (Sponsor)
Numerous California Community College Faculty

Opposition

California Federation of Teachers
Community College League

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