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LEGAL UPDATE

November 2, 2011

To: **Presidents/Superintendents, Member Community College Districts**

From: **Marko Fong, Assistant General Counsel**

Subject: **Conversion to Trustee Area Voting Has Been Simplified**
Memo No. 06-2011(CC)

Due to the California Voting Rights Act (CVRA), there has been increased pressure on community college districts whose governing boards are elected through any form of “at large” voting to change to a district-based election system that can protect the community college district from the possibility of lawsuits under the Act and the legal fees that come with a successful suit.¹ The recent passage of AB 684 has added sections 72036 and 72036.5 to the Education Code. These new provisions make this conversion process easier for community college districts. Because it was passed as an urgency measure, this alternative process may be used immediately.

Previously, a community college district could only convert its election system or change its number of trustees and trustee areas under Education Code section 5019. This required the community college district to first take the proposal to the County Committee on School District Organization, which would then have to hold a hearing and vote on this matter then put the proposal up for approval in a subsequent general election. K-12 districts have been using the general waiver process under Education Code section 33050 to waive the requirement that the conversion to district based voting be affirmed through a general election. Community college districts did not have a comparable waiver provision.

¹ Elections Code sections 14025-14032. Also see Legal Update Memo 07-2009. Under CVRA Elections Code 14026 (b) defines district-based elections as “ a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.”

While community college districts may still follow the process under Education Code section 5019 if they wish, Education Code section 72036 now allows them to make the conversion to district-based elections through a simple resolution passed by the community college district's own governing board. Once the resolution is passed, the Board of Governors must then approve the community college district's resolution. The Chancellor's Office has posted a form to expedite that approval process under legal updates AB 684:

<http://cccco.edu/ChancellorsOffice/Divisions/Legal/LegalAdvisories/tabid/410/Default.aspx>
11-02

Community college districts that are created through a city or county charter should carefully review the terms of that charter to determine whether local election rules or state law applies with respect to the creation or modification of trustee areas.

The Below Limitations Apply to any Conversions Made Under Education Code Section 72036

1. The trustee areas created under this section may only have one trustee per trustee area. That trustee must live in the trustee area and must be elected only by voters from that trustee area. Because the statute was created to help community college districts with CVRA, it does not allow for any mixed systems or systems in which voters in a single trustee area elect multiple trustees.
2. Each trustee area must be substantially equal in population (the largest should be no more than 5% bigger than the smallest) as determined by the most recent decennial census. Once the trustee areas are established, the community college district must follow the provisions of Education Code section 5019.5 to adjust trustee area boundaries to reflect demographic changes within the district after the decennial census. Boundaries between trustee areas should be drawn to account for the presence of any significant minority population consistent with that group's right to participate effectively in the political process as defined under the Federal Voting Rights Act. If a trustee area can be created in which that minority group is a majority, the board should consider doing so. We recommend consultation with a demographic firm with a strong election law background to assist in setting such boundary lines.
3. The governing board may establish a primary system to determine which two candidates in each trustee area will run against one another in the general election.²
4. The statute also gives the governing board the power to determine the number of trustees and trustee areas so long as the total number of trustees is no less than 5 and no greater than 9.³ If the community college district uses this process to change its number of

² Section 72036 (b)

³ Section 72036 (c)

trustees, the governing board must subsequently have the same number of trustees as there are individual trustee areas.

Please contact any attorney in this office if you have questions about Education Code section 72036 or community college district election issues in general.