

ESSB 5460 – “Belt Tightening” Law
SBCTC General Guidance, Provisions, and Q&A on Implementation

General Guidance

The intent of the legislature in enacting ESSB 5460 is to halt certain activities in order to reduce current year spending. The legislation includes some special exemptions for higher education, but it does not exempt us altogether. As a system we need to honor the spirit and intent, as well as the letter, of this new law in order to maintain our good relations with the legislature and with the public.

The legislation freezes most spending on personal service contracts, equipment costing more than \$5,000, out-of-state travel, and hiring. These freezes will be in effect until July 1, 2009 – a little more than four months.

The legislation allows the use of local funds (see Q&A item #6 below for more information) for hiring, out-of-state travel, personal service contracts, and equipment. However, decisions regarding the use of local funds for these purposes should be made cautiously. When making such decisions, the colleges are strongly encouraged to consider the short duration of the freeze and the potential ramifications of using local funds to pay for an activity that would otherwise be prohibited.

Provisions of ESSB 5460

Limits on salary increases. All positions exempt from Civil Service Law are prohibited from receiving salary increases until February 18, 2010, regardless of fund source. The types of positions that are exempt from Civil Service provisions and therefore are prohibited from receiving salary increases include faculty, exempt employees, temporary/hourly employees, student employees and technical college classified staff. **However, salary increase and step increases in existing CBAs must be honored - please see item #1 in Q&A below.**

The following provisions are **in effect until July 1, 2009**. Exemption requests should be routed through State Board office staff.

- **Hiring Freeze:** Except for positions “directly related to academic programs,” vacancies and new positions supported by state funds or tuition cannot be filled.
- **Personal Services Contracts Freeze:** State agencies and institutions are prohibited from entering into a contract or other agreement for the acquisition of personal services using state funds or tuition. The freeze does not apply to contracts or agreements where the costs are funded exclusively from private or federal grants, where the costs are necessary to receive or maintain federal funds, or where the costs are paid with local funds.
- **Out-of-State Travel and Training:** State agencies and institutions are prohibited from making expenditures using state funds or tuition for out-of-state travel and out-of-state training. The freeze does not apply to expenditures from private or federal grants, or from local funds.

- **Equipment Purchase Freeze:** State agencies and institutions are prohibited from entering into any contract or other agreements for the acquisition of any equipment costing more than \$5,000 in state funds or tuition. The freeze does not apply to purchases necessary for maintaining federal funds, or purchases paid with local funds.

Exemptions: Exemptions to the hiring, personal services, travel/training and equipment freezes can be granted by the director of OFM. The community and technical colleges should submit requests for exemptions to the State Board office, and the State Board will work with OFM to get exemptions on behalf of the colleges.

Q&A on Implementation

Salary Freeze

1. Are there exemptions to the salary freeze?

Yes. In addition to classified staff at community colleges, salary increases provided in existing Collective Bargaining Agreements (CBAs) must be honored. Generally, a college must continue to honor its contractual obligations until the contract expires and then it must re-negotiate the contract terms consistent with existing laws. A college should review the CBA to ensure it is *obligated* and there are no dependency references – e.g., “this increase is dependent upon Legislative action or funding.” If your CBA includes this kind of language, then you are *not obligated* and the legislation prohibits such increases for the next 12 months.

2. Are technical college classified employees impacted by the salary freeze?

Yes. The bill specifies there are to be no salary increases for one year for any employee exempt from the civil service law (Chapter 41.06 RCW). Classified staff at technical colleges are exempt from Chapter 41.06 RCW, and are therefore subject to the salary freeze. However, salary increases and step increases in CBAs in effect on February 18, 2009 must be honored. Contracts negotiated after February 18, 2009 must be consistent with the prohibitions in ESSB 5460.

3. Our negotiated agreement stipulates that once faculty members receive tenure they receive a one-step increase. If any faculty members are granted tenure in the next 12 months, can they receive the increase as provided in the contract?

Yes. See response to question 1 above.

4. Some CBAs at technical colleges provide for technical college staff step increases. In such a case, can these employees receive salary increases?

Yes. See responses to questions 1 and 2 above.

5. Can salary increases be provided for employees paid with funds other than state or tuition funds?

No. The salary freeze applies to all fund sources.

Funds Subject to Hiring, Personal Services, Out-of-State Travel, and Equipment Freezes

6. The hiring, equipment purchase over \$5000, personal services contracts, and out-of-state travel freezes apply to expenditures made with state and tuition funds. Are there other funds the colleges may use to make these expenditures?

Yes, the colleges may use local, private or federal funds to make expenditures on hiring, equipment purchases, personal services contracts and out of state travel. Local funds include, but are not limited to, fund 148 (dedicated local account), fund 145 (Grants and Contracts, *see note below**), and fund 522 (Student Activities Fund).

In addition, colleges may make expenditures for activities that are necessary to receive or maintain federal funds.

~~The legislation also allows personal services contracts and out of state travel funded exclusively from private or federal grants. This exception is not provided in the legislation for equipment purchases or hiring.~~

Expenditures from the following state and tuition funds are subject to the freeze:

- 001 (General Fund-State)
- 08A (Education Legacy Trust Account)
- 120 (Administrative Contingency Account)
- 489 (Pension Funding Stabilization Account)
- 149 (Operating Fee Account)
- 060 (Capital Projects Account)

* Job Skills and Customized Training program funds are subject to the freeze even though they are accounted for by the colleges in fund 145. SBCTC will be seeking an exemption from the freeze for these programs.

Hiring Freeze

7. ESSB 5460 says that vacancies and new positions supported by state funds or tuition cannot be filled unless they are “directly related to academic programs.” What does “directly related to academic programs” mean?

Positions directly related to all instructional programs are exempt from the hiring freeze. “Academic programs” refers to any instructional program, including academic, workforce and basic skills. Positions directly related to academic programs could include instructors, counselors, librarians, tutors, and program coordinators.

The further the position is from actual instruction, the exemption becomes less clear. The types of positions in this gray area would include division chairs, deans, and academic VPs. The college should consider waiting until after the freeze is lifted July 1, 2009 to fill such positions. When in

doubt, submit an exemption request to the State Board and we can help determine whether it needs to be forwarded to OFM.

8. Can we fill part-time positions?

The same rules apply to part-time positions as to full-time positions:

- If you are simply renewing a contract, with no increases, you can proceed because the position is not vacant and already exists.
- If the part-time employee works within the college's academic program, they are exempt from the prohibition on new hires and vacancy filling.
- If the part-time employee is paid from non-state or non-tuition funds (e.g., bookstore, parking fund, etc.), you can proceed to fill the vacancy or create the new position.

9. I have an interim person in a position that is funded with state funds and is not directly related to academic programs. The position has been advertised and interviews were to be conducted in the next two weeks. We planned on replacing the interim person with a FT permanent person in the near future. Can I continue the recruitment process and fill it with a permanent position?

Your position would be considered a vacant position, even though it is currently filled with an interim appointment.

10. We have made an offer to someone to fill a position that is funded with state funds and is not directly related to academic programs. Can we proceed with the hire?

A similar question was asked during the Governor's staff meeting last week. The response from Victor Moore and Marty Brown was along the lines " . . . if you've made an offer and it's been accepted, then you've already filled the position . . . if you made the offer and it has not yet been accepted, then you should withdraw the offer." Clearly, OFM is going to be taking a hard line on new hires.

Out-of-State Travel and Training

11. If we have already purchased airline tickets and paid conference fees for out-of-state travel that will occur prior to June 30, can the travel take place or must we seek an exemption?

If the travel is funded from state or tuition funds, you must first get an exemption. OFM's guidance says if funds have already been spent on travel that is non-refundable, include that information in the exemption request.

12. Our faculty CBA calls for providing professional development funds to faculty. We have approved out-of-state travel supported by these funds. Can our faculty still travel out-of-state using these professional development funds?

No, not without an exemption. Although the out-of-state travel is pursuant to provisions of the CBA, the CBA does not specifically guarantee that the professional development be conducted out-of-state.

Equipment

13. Does the \$5,000 equipment purchase threshold apply against the cost of the equipment before or after taxes, freight, etc.?

For purposes of the freeze, it is the final cost to the college including applicable taxes, freight or installation charges that must be considered.

14. I have two equipment bids in process. The bids are out on the street and due in the next week. Can I proceed with these since they were approved by Cabinet and already let out on the street?

The legislation stops both of these because they exceed \$5,000 and were not completed prior to the effective date of the legislation. If you feel these are mission critical before June 30, 2009 we can help with the application for the exemption. If you can wait until after July 1 you may want to continue the process but amend the bid award date to be after July 1. That way you can be ready once the restriction is lifted.

15. Can we renew support and maintenance contracts, e.g. server support, anti-virus software, Campus Agreement, or software and support items under the bill?

The freeze applies to the purchase of a software license that (1) costs more than \$5,000, (2) is made with state funds or tuition, and (3) is appropriately coded to Sub-Object JC.

A renewal of software licensing/maintenance agreement is not subject to the freeze (per OFM definitions, these purchases should not be coded to Sub-Object JC).

(Note: There are helpful descriptions of software classifications in the FAM 10.30.50.d.13. Many colleges are using the optional K object classifications in FMS. Purchases coded to KC and KD using state or tuition funds are subject to the freeze.)

16. Are Worker Retraining Program funds, Job Skills Program grants, and Customized Job Skills grants subject to the equipment freeze?

Worker Retraining funds are subject to the freeze because they are state funds allocated to the colleges and spent as 001 or 08A funds. The college should seek an exemption before purchasing equipment costing more than \$5,000 with WRT dollars.

Job Skills Program grants and Customized Job Skills grants are also state funds provided to the colleges, but they are provided as grant and are accounted for by the colleges in fund 145. Until an exemption is granted by OFM, the freeze would apply to these funds.

17. Are equipment purchases limited to \$5,000 per unit or per order? For example if we order 10 PC's at \$1,000 each is that ok even though the total is over \$5,000 but the unit cost is under \$5,000?

The \$5,000 threshold for equipment applies to a single item. However, OFM has advised cabinet agencies that they will scrutinize purchases of, for example, 12 laptops costing \$1,000 each. The colleges are advised not to make such purchases without considering potential ramifications.

18. Must colleges seek an exemption for minor works preservation (RMI) and repair projects funded with Tuition Building fees that have unit item equipment purchases greater than \$5,000?

Yes, if the college is generating a purchase order paid with state funds (001, 08A, 120) or tuition building fees (149 or 060) for equipment items exceeding \$5,000 and where the equipment is appropriately accounted for in Object JC.

No, if the college is contracting for repairs and improvement that will be accounted for under the accounting Sub-Object Code JF Buildings. In addition, use of non-state resources to purchase equipment is exempted.

19. Must a college seek an exemption for equipment purchases made with capital funds associated with a major capital project?

Yes, if the purchase is made using appropriated capital funds (fund 057 or 357). We will seek an exemption from OFM for equipment purchases made with capital funds.

No, if the purchase is made using non-state funds and non-tuition revenue (any fund other than 001, 08A, 120, 149, and 060).