



## **REGULAR MEETING AGENDA ITEM**

June 11, 2009

TAB 3

Discussion  Action 09-06-10

### **Topic**

Consideration of Financial Emergency Declaration

### **Description**

State law provides for an expedited or streamlined layoff process applicable to tenured or probationary faculty for use during a financial emergency. This law, RCW 28B.50.873 (Attachment A), was first adopted in 1981 following successive drops in forecasted revenue and a severe shortfall in the State budget. The law provides authority to the State Board for Community and Technical Colleges to declare a financial emergency if one of three conditions are met:

- The Governor reduces allotments (agencies' spending authority);
- The Legislature reduces appropriations from one biennium to the next in constant dollars, using the Implicit Price Deflator; or
- The Legislature reduces appropriations within a biennium in constant dollars, using the Implicit Price Deflator (from the first year of a biennium to the second year of a biennium).

The expedited process provides for limited appeal, consolidated hearings (if requested) and a 60-day timeline from notice to hearing conclusion.

### **Key Questions**

- Do the actions of the Legislature and Governor in passing ESHB 1244 (Operating Budget for the 2009-2011 biennium) trigger a financial emergency declaration as described in RCW 28B.50.873?
- Is a declaration of financial emergency an appropriate mechanism, consistent with the Board's desire to provide colleges with tools needed to address budget reductions?

### **Analysis**

#### **What the statute authorizes**

A declaration of financial emergency by the State Board enables local trustees to assess their institution's fiscal situation and determine if they will exercise the authority granted in law to implement an expedited layoff process of tenured or probationary faculty. If a local board exercises this option, notice is given to the affected faculty members consistent with applicable laws, local policies, and collectively bargained agreements. The notice must clearly state that the faculty member's separation is not due to job performance. The law does not change collective bargaining agreement provisions addressing lay-off units, seniority or recall rights. A declaration of financial emergency does not mandate layoffs or require the colleges to take any additional personnel actions unless the local trustees deem those actions necessary.

Calculations behind a financial emergency declaration

Engrossed Substitute House Bill 1244, passed the legislature on April 25, 2009, and was signed by the Governor on May 19, 2009. The total 2009-11 operating budget appropriation is \$1,374,879,000 which includes state and federal funds. The final 2007-09 Community and Technical Colleges funding level was \$1,407,570,000. Therefore, the community and technical college system budget was reduced by 2.3% from one biennium to the next. If the 2007-09 biennial budget were adjusted for inflation, as is called for in the financial emergency statute, then the reduction from one biennium to the next is actually 3.9%.

When the Governor signed the budget as passed by the Legislature, the reduction in appropriation to the Community and Technical Colleges from the 2007-09 biennium to the 2009-11 biennium, met the threshold for declaring a financial emergency as it is a "reduction by the legislature from one biennium to the next. . . . based on constant dollars using the implicit price deflator."

Attachment B shows the calculations used in determining the financial emergency trigger. Though the statute allows for the inclusion of an inflation factor (Implicit Price Deflator), the cuts to the community and technical college system resulted in an actual biennium to biennium decrease in current dollars (unadjusted for inflation). Therefore with or without the inflation adjustment, the financial emergency is triggered.

Historical Data Requested by the Board

At the Board's May 6<sup>th</sup> work session on this topic, Board members requested some historical data related to system expenditures, full- and part-time faculty effort, and students served. Attachment C displays historical data back to 1979. From the data, staff concludes:

- Following the 1981-83 budget cuts, funding support for the colleges was flat for nearly ten years;
- The college system was given a lower student enrollment target during the 1981-83 cuts and that student target was flat for nearly a decade;
- Funding per student (adjusted for inflation) was flat for nearly 25 years and only began to rise significantly in the last five years;
- Part-time faculty dropped faster than full-time faculty during the 1981-83 cuts and this caused a temporary increase in the overall percentage of courses taught by full-time faculty; and
- After the 1981-83 cuts there has been a slow and steady decline in the percentage of courses taught by full-time faculty.

Staff was unable to locate specific campus data that would describe exact actions taken between 1981 and 1983 related to the financial emergency declaration.

Background Information

Attachment A – RCW 28B.50.873

Attachment B – Calculations for Financial Emergency for the 2009-11 Biennium

Attachment C – Historical Data

Recommendation/Outcomes

The State Board has advanced policy goals to enable colleges to make the best student-centric decisions at the local level. The State Board should continue to respect the colleges' position to make local decisions as the employer, consistent with collectively bargained agreements and recent budget allocations. For the reasons above and the continuing risk associated with dependence on state appropriations, staff recommends approval of Resolution 09-06-10, declaring a financial emergency.

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**RCW 28B.50.873****Reduction in force of tenured or probationary faculty members due to financial emergency — Conditions — Procedure — Rights.**

The college board may declare a financial emergency under the following conditions: (1) Reduction of allotments by the governor pursuant to \*RCW 43.88.110(2), or (2) reduction by the legislature from one biennium to the next or within a biennium of appropriated funds based on constant dollars using the implicit price deflator. When a district board of trustees determines that a reduction in force of tenured or probationary faculty members may be necessary due to financial emergency as declared by the state board, written notice of the reduction in force and separation from employment shall be given the faculty members so affected by the president or district president as the case may be. Said notice shall clearly indicate that separation is not due to the job performance of the employee and hence is without prejudice to such employee and need only state in addition the basis for the reduction in force as one or more of the reasons enumerated in subsections (1) and (2) of this section.

Said tenured or probationary faculty members will have a right to request a formal hearing when being dismissed pursuant to subsections (1) and (2) of this section. The only issue to be determined shall be whether under the applicable policies, rules or collective bargaining agreement the particular faculty member or members advised of severance are the proper ones to be terminated. Said hearing shall be initiated by filing a written request therefor with the president or district president, as the case may be, within ten days after issuance of such notice. At such formal hearing the tenure review committee provided for in RCW 28B.50.863 may observe the formal hearing procedure and after the conclusion of such hearing offer its recommended decision for consideration by the hearing officer. Failure to timely request such a hearing shall cause separation from service of such faculty members so notified on the effective date as stated in the notice, regardless of the duration of any individual employment contract.

The hearing required by this section shall be an adjudicative proceeding pursuant to chapter 34.05 RCW, the Administrative Procedure Act, conducted by a hearing officer appointed by the board of trustees and shall be concluded by the hearing officer within sixty days after written notice of the reduction in force has been issued. Ten days written notice of the formal hearing will be given to faculty members who have requested such a hearing by the president or district president as the case may be. The hearing officer within ten days after conclusion of such formal hearing shall prepare findings, conclusions of law and a recommended decision which shall be forwarded to the board of trustees for its final action thereon. Any such determination by the hearing officer under this section shall not be subject to further tenure review committee action as otherwise provided in this chapter.

Notwithstanding any other provision of this section, at the time of a faculty member or members request for formal hearing said faculty member or members may ask for participation in the choosing of the hearing officer in the manner provided in RCW 28A.405.310(4), said employee therein being a faculty member for the purposes hereof and said board of directors therein being the board of trustees for the purposes hereof: PROVIDED, That where there is more than one faculty member affected by the board of trustees' reduction in force such faculty members requesting hearing must act collectively in making such request: PROVIDED FURTHER, That costs incurred for the services and expenses of such hearing officer shall be shared equally by the community or technical college and the faculty member or faculty members requesting hearing.

When more than one faculty member is notified of termination because of a reduction in force as provided in this section, hearings for all such faculty members requesting formal hearing shall be consolidated and only one such hearing for the affected faculty members shall be held, and such consolidated hearing shall be concluded within the time frame set forth herein.

Separation from service without prejudice after formal hearing under the provisions of this section shall become effective upon final action by the board of trustees.

It is the intent of the legislature by enactment of this section and in accordance with RCW 28B.52.035, to modify any collective bargaining agreements in effect, or any conflicting board policies or rules, so that any reductions in force which take place after December 21, 1981, whether in progress or to be initiated, will comply solely with the provisions of this section: PROVIDED, That any applicable policies, rules, or provisions contained in a collective bargaining agreement related to lay-off units, seniority and re-employment rights shall not be affected by the provisions of this paragraph.

Nothing in this section shall be construed to affect the right of the board of trustees or its designated appointing authority not to renew a probationary faculty appointment pursuant to RCW 28B.50.857.

[1991 c 238 § 72; 1990 c 33 § 559; 1989 c 175 § 81; 1981 2nd ex.s. c 13 § 1.]

**Notes:**

\***Reviser's note:** RCW 43.88.110 was amended by 1991 c 358 § 2 changing subsection (2) to subsection (3).

**Purpose -- Statutory references -- Severability -- 1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Effective date -- 1989 c 175:** See note following RCW 34.05.010.

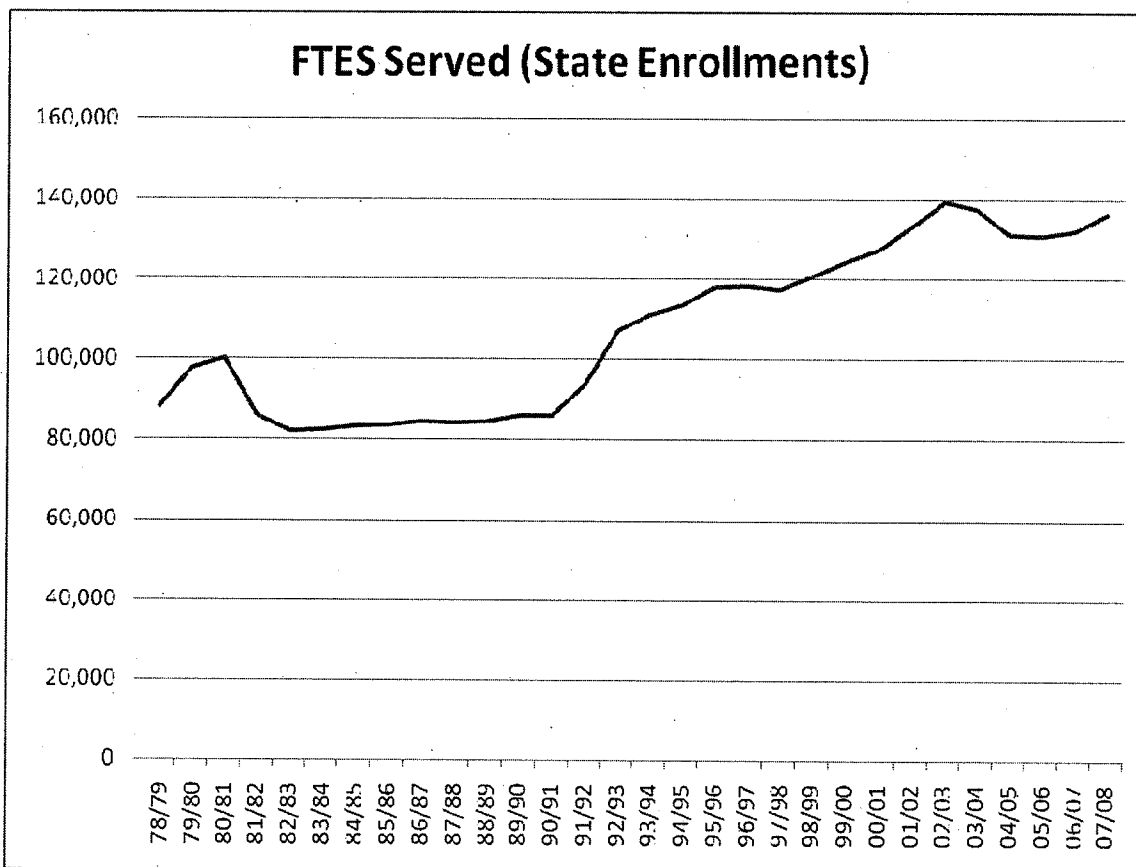
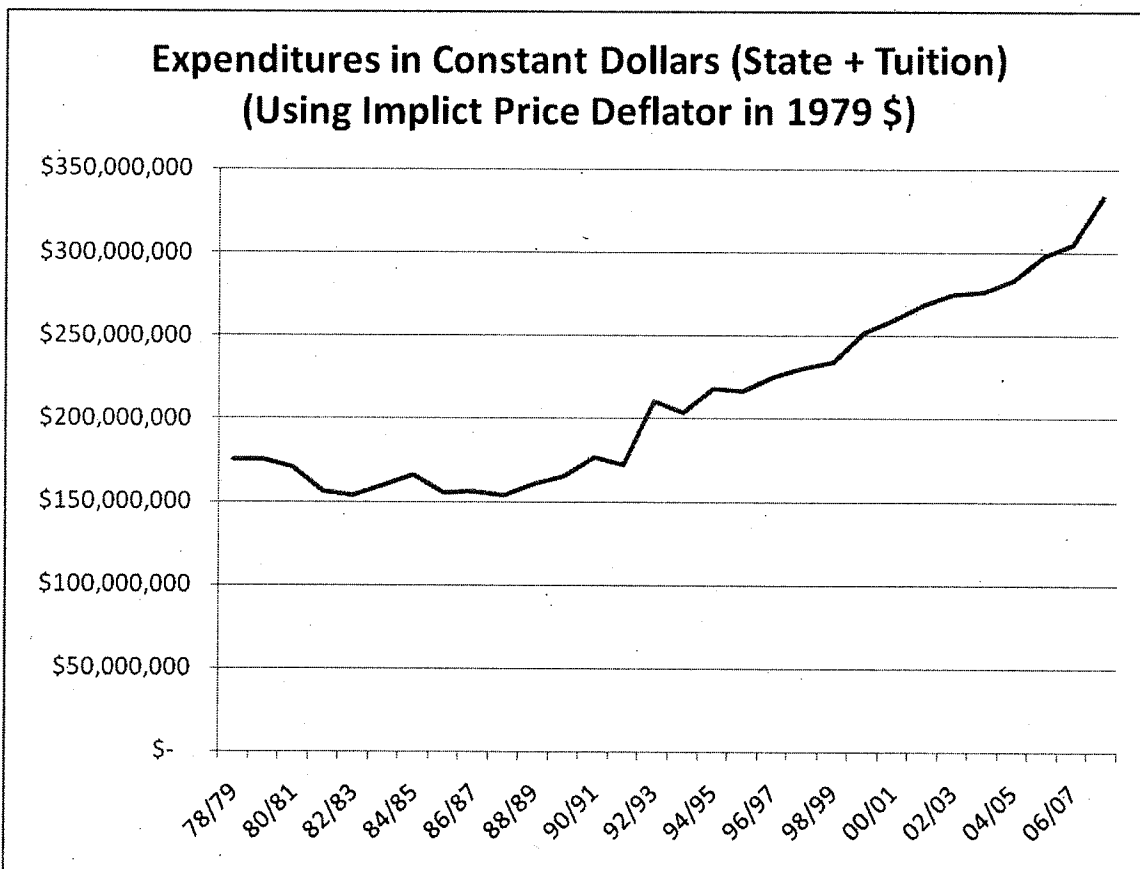
**Severability -- 1981 2nd ex.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 13 § 3.]

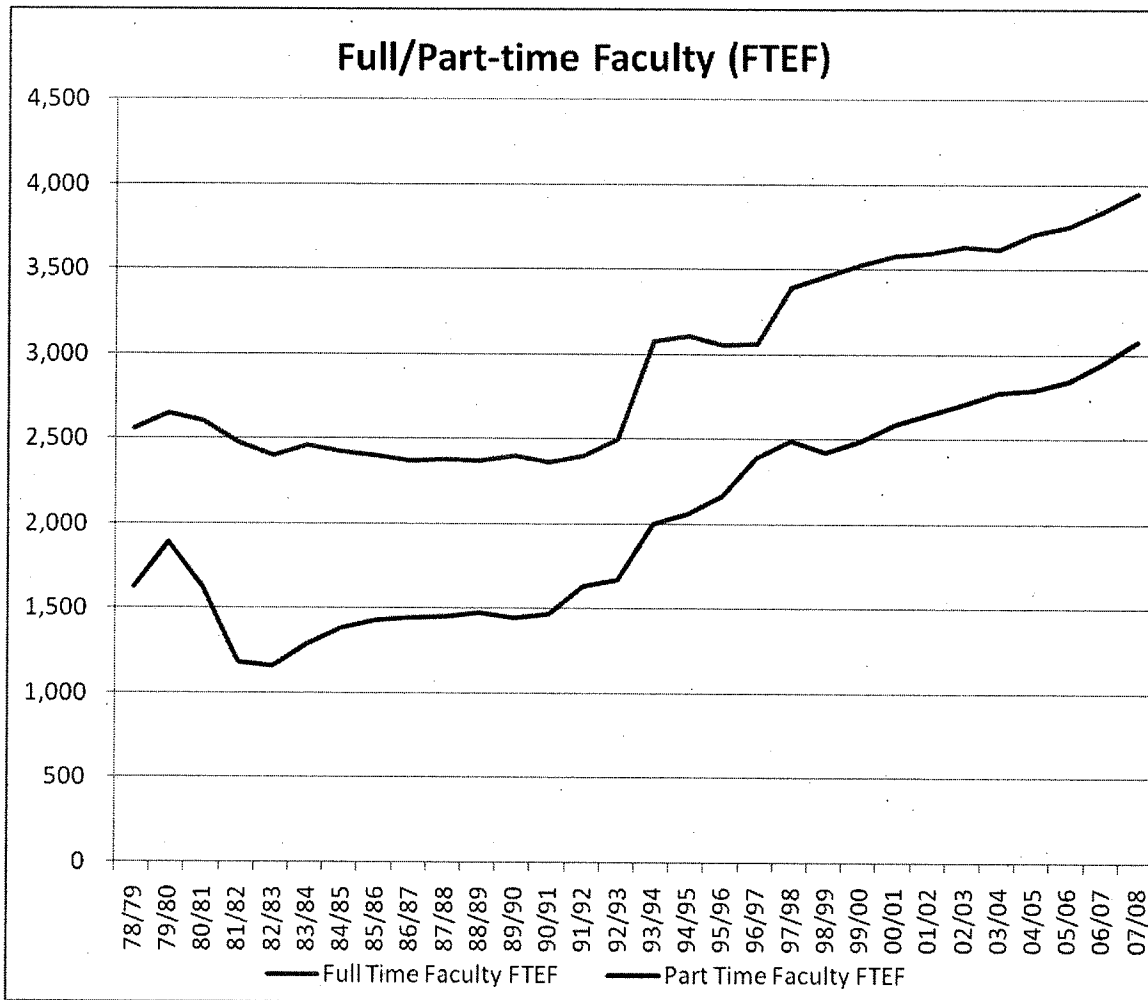
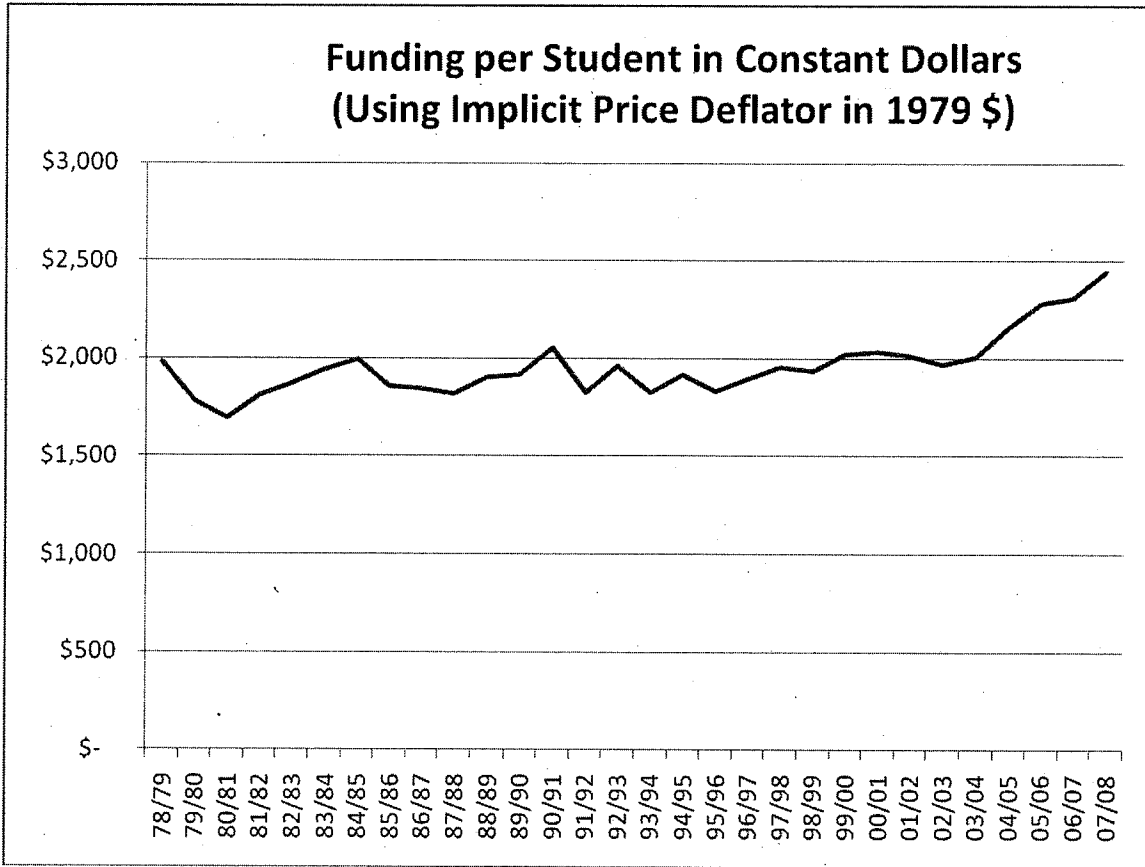
### Calculations for Financial Emergency for the 2009-11 Biennium

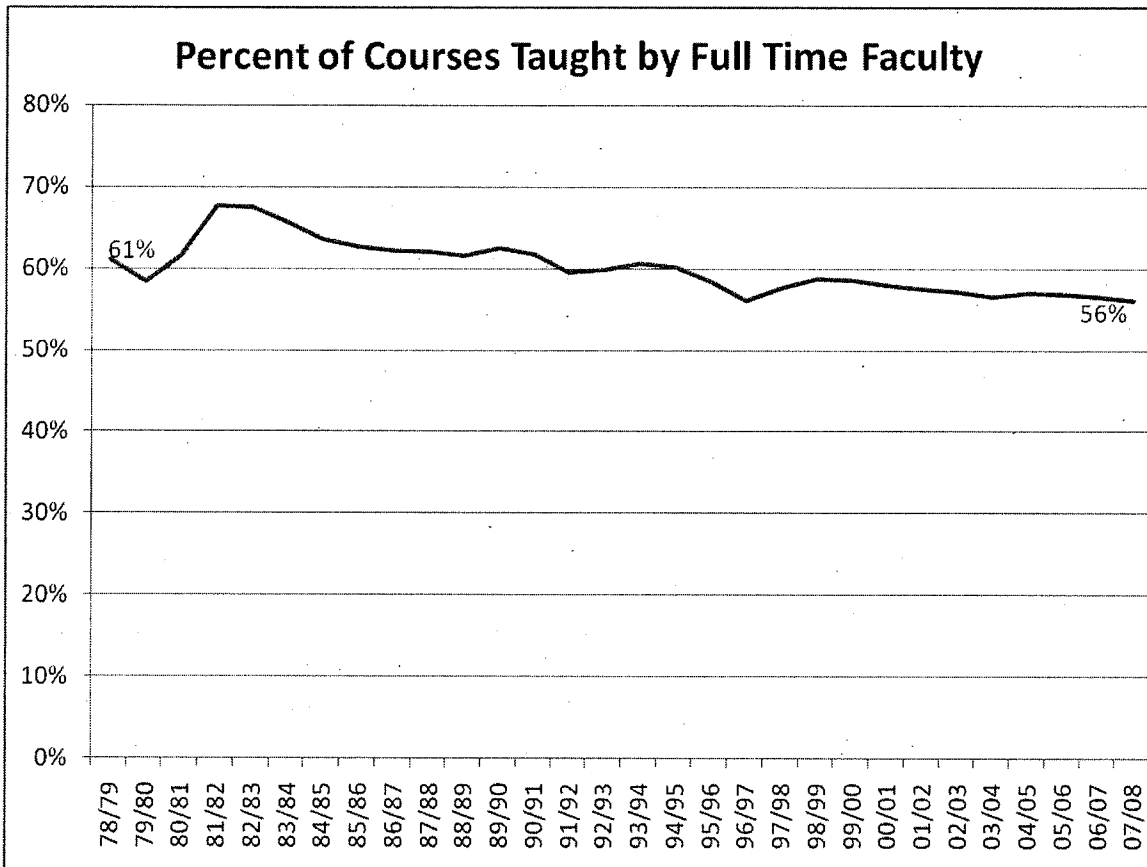
#### Final 2009-11 Budget for the CTC System

#### Detailed Steps in Determining a Financial Emergency Trigger

Step	Calculation of State Funds:	
1	2007-09 Funding Level after the 2008 supplemental budget (ESHB-2687, Sec. 605 & Following Governor Vetos)	\$1,439,674
2	2009 supplemental Budget Change	(\$32,104)
3	Final 2007-09 Funding Level (ESHB-1694, Sec. 602)	\$1,407,570
4	2009-11 IPD Inflation (from the March Forecast. Source: LEAP website)	1.63%
5	Financial emergency can be declared if 2009-11 funding is less than:	\$1,430,509
6	2009-11 Final State Funding (ESHB-1244, Sec. 605)	\$1,357,705
7	Change from the 2007-09 inflation adjusted biennium	-5.1%
<b>If Federal Funds are included in the Calculations:</b>		
8	Total State Funding (from step 6 above)	\$1,357,705
9	Federal Stimulus (ESHB-1244, Sec. 605)	\$17,171
10	Total State and Federal	\$1,374,876
11	Change from the 2007-09 inflation adjusted biennium including federal funds	-3.9%







**STATE OF WASHINGTON**  
**STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES**

**RESOLUTION 09-06-10**  
**(REVISED)**

A resolution relating to the declaration of a financial emergency throughout the community and technical college system.

**WHEREAS**, the State of Washington must operate with a balanced budget, with expenditures not exceeding revenues for the biennium; and

**WHEREAS**, a depressed state of the Washington economy has resulted in a substantial reduction in state resources for the 2009-11 fiscal period; and

**WHEREAS**, the Governor signed Engrossed Substitute House Bill 1244 on May 19, 2009, reducing the Community and Technical College system's biennial state appropriation from one biennium to the next as described in Attachment B; and

**WHEREAS**, the Board has expressed its intent to provide the policy tools needed by colleges to address budget reductions while minimizing impact to students; and

**WHEREAS**, colleges have engaged in collaborative processes to address the impact of budget cuts on staff and faculty and are encouraged to continue those efforts,

**THEREFORE BE IT RESOLVED** that the State Board for Community and Technical Colleges under the authority granted in RCW 28B.50.873 declares that a financial emergency exists for the community and technical college system for the 2009-11 biennium beginning July 1, 2009 and ending June 30, 2011;

**BE IT FURTHER RESOLVED** colleges that terminate tenured or probationary faculty due to a reduction in force based on this declaration of financial emergency shall report to the State Board the results of actions taken;

**BE IT FURTHER RESOLVED** that the State Board may take additional actions during the biennium to amend, restate, or remove this declaration subject to actions taken by the legislature or Governor between now and June 30, 2011.

**APPROVED AND ADOPTED** on June 11, 2009.

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Erin Munding, Chair

**ATTEST:**

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Charles N. Earl, Secretary