

Date of Hearing: January 23, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 70 (Berman) – As Amended January 6, 2020

Policy Committee: Higher Education

Vote: 11 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill seeks to ensure a postsecondary institution that has recently converted its tax status from for-profit to nonprofit is not exempt from state oversight if it continues to engage in profit-seeking behavior. Toward this end, the bill applies a special definition of nonprofit to postsecondary institutions and specifies only institutions meeting this definition may be exempt from the state's private postsecondary oversight body, the Bureau of Private Postsecondary Education (BPPE). Specifically, the bill prohibits the BPPE from verifying the exemption from its oversight a nonprofit institution that operated as a for-profit institution during any period on or after January 1, 2010, unless the Attorney General (AG) determines the institution meets the special definition.

FISCAL EFFECT:

- 1) Ongoing General Fund costs, potentially in the hundreds of thousands of dollars annually, for the AG to comply with the bill's requirements. The AG likely would have higher up-front costs due to any backlog of institutions warranting review.
- 2) Minor and absorbable costs to BPPE. Some BPPE processes may be slowed by waiting for AG approval and verification, but would not result in significant costs.

COMMENTS:

- 1) **Background.** The BPPE was created in 2009 under the Department of Consumer Affairs to oversee most of the state's private postsecondary institutions, including nationally accredited schools, unaccredited schools and various specialized schools. The BPPE is charged with ensuring minimum educational quality standards, providing students with an effective complaint resolution process and preventing public deception associated with fraudulent or substandard degrees. Because they are not private institutions, nonprofit postsecondary institutions are not subject to BPPE oversight.

Some formerly for-profit postsecondary institutions have taken steps to gain nonprofit status from the Internal Revenue Service (IRS) and some have gained this status. Nonprofit status for institutions can have various benefits, such as federal income tax exemptions, more access to some public dollars and reputational advantages. A perceived benefit to nonprofit status in California, at least in the eyes of a nefarious postsecondary actor, is exemption from BPPE oversight.

There is evidence some formerly for-profit postsecondary institutions have been granted nonprofit status by the IRS but continue to flow money to publically traded affiliates and engage in other profit-seeking behavior.

This bill seeks to ensure institutions that recently converted from for-profit to nonprofit IRS status must do more than submit an IRS tax-exemption letter to the BPPE to prove they are a nonprofit institution and therefore exempt from BPPE oversight. To do this, the bill requires the AG to verify that recently converted institutions are not engaged in profit-seeking behavior before allowing BPPE to grant an exemption from its oversight.

The bill's proponents estimate, currently, six IRS-classified nonprofit institutions in California have engaged in profit-seeking behavior. Of these six, the proponents estimate three may seek an AG review for exemption from BPPE oversight. (The other three likely would not wish to submit disclosures required by this bill and would instead opt to BPPE oversight.) Based on past trends, about one for profit institution converts to nonprofit status annually, and therefore may require AG review.

This bill is substantively similar to AB 1341 (Berman), which was held on the Senate Appropriations Committee Suspense file in 2019. The bill was part of an Assembly bill package designed to provide more accountability and state oversight of private postsecondary institutions. Differences between this bill and AB 1341 include (a) the ability for institutions to appeal actions taken by the BPPE and the AG to the superior court and (b) a requirement that the AG provide written notification to the institution and the BPPE of its verification within 90 days of receipt of all information the AG determines is necessary for verification.

- 2) **Prior Legislation.** AB 1340 (Chiu), Chapter 519, Statutes of 2019, requires institutions regulated by the BPPE to report identifying, program enrollment and loan debt information to BPPE; authorizes BPPE to match student information with wage data provided by the Employment Development Department; and requires BPPE to make information available on its website when the Director of the Department of Consumer Affairs certifies that an updated information technology system is capable of processing data.

AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019, replaces current requirements, as of July 1, 2022, for the information out-of-state institutions must to provide the BPPE if they enroll California students in online programs. This bill also authorizes the BPPE to place these out-of-state private postsecondary institutions on a probationary status and revoke authorization to enroll California students.

AB 1346 (Medina), Chapter 521, Statutes of 2019, expanded the definition of economic loss and extended STRF eligibility to certain students residing in California and attending a campus of a Corinthian Colleges, Inc. institution on or after January 1, 2010.

AB 1342 (Low), of this session, requires a nonprofit corporation that operates or controls a private postsecondary educational institution to obtain AG approval before entering into certain agreements or transactions, including an agreement or transaction to sell or convey its assets to a for-profit corporation entity. The bill was held in the Senate Committee on Appropriations.

AB 1343 (Eggman), of this session, prohibits a private postsecondary educational institution, beginning January 1, 2023, from enrolling residents of California not already enrolled as of that date, unless the institution meets certain requirements. The bill is pending action in the Senate Committee on Business and Professions.

AB 1345 (McCarty), of this session, establishes and revises existing restrictions on private postsecondary school institutions from providing specified financial incentives, compensation, commission, bonus or payment contingent upon quotas based on securing student enrollments, admissions, financial aid awards or sales of educational materials. The bill was held in the Senate Committee on Appropriations.

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