

## CONCURRENCE IN SENATE AMENDMENTS

AB 70 (Berman, et al.)

As Amended August 20, 2020

Majority vote

### SUMMARY:

Prohibits the Bureau for Private Postsecondary Education (BPPE) from verifying an exemption from BPPE oversight for a nonprofit that operated as a for-profit institution unless the Attorney General (AG) verifies certain information and provide notifications, as specified.

### Major Provisions

- 1) Defines nonprofit corporation and public institution of higher education specifically for purposes of the California Private Postsecondary Act of 2009 (Act).
- 2) Specifies that only an institution of higher education meeting the act's definition of nonprofit corporation or public institution of higher education is exempt from the requirements imposed on an out-of-state private postsecondary educational institution.
- 3) Prohibits the BPPE, commencing January 1, 2022, from verifying the exemption of, or contracting to handle complaints for, a nonprofit institution that operated as a for-profit institution during any period on or after January 1, 2010, unless the AG verifies specified information, and would require the AG to provide written notification to the institution and the bureau of its verification within 90 days of receipt of all information the AG determines is necessary for the verification.
- 4) Authorizes, commencing January 1, 2022, the appeal of actions taken by the bureau and the AG to the superior court.

### The Senate Amendments:

Amendments taken in the Senate delay implementation of the BPPE's exemption verification responsibilities and any appeal of BPPE decisions detailed in 3) and 4) above until January 1, 2022.

Amendments taken in the Senate also extends from 18 months to three years the time that a that a nonprofit institution seeking verification from the BPPE may not have entered into any contracts, loans, or leases with the former for-profit institution's owners and managers, and specifies that this provision does not apply to a nonprofit institution that previously operated as a for-profit institution that is owned by or controlled by a public institution of higher learning.

### COMMENTS:

*Background.* The Century Foundation published a report in September of 2015 titled *The Covert For-Profit*. Prompted by news of several conversions of for-profit colleges into nonprofits, The Century Foundation obtained Internal Revenue Service and United States Department of Education records and communications that called into question the legitimacy of some of these conversions. The Century Foundation wrote that "...through four case studies, based on hundreds of pages of documents obtained from government agencies, the examination reveals a dangerous regulatory blind spot, with the two federal agencies each assuming, wrongly, that the other is monitoring the integrity of the "nonprofit" claims of these colleges."

Since *The Covert For-Profit* was released, several large national for-profit colleges that serve California students have transitioned, or begun the transition, to a nonprofit status.

**According to the Author:**

According to the author, "Rampant deceptive or unfair treatment of students is rare at legitimate nonprofit and public colleges because financial restrictions make it difficult for school leaders to profit from bad behavior. Being a nonprofit has traditionally required an institution to devote all of its revenues to its educational purpose, and prohibit any form of profit-taking, so that those in control are not tempted to take advantage of students or the public."

"These restrictions have been so effective in protecting students that state and federal laws frequently provide funding only to nonprofit and public institutions, or apply stricter guidelines if for-profit colleges seek access to taxpayer funds. Some for-profit colleges, however, are starting to use a 'nonprofit' or 'public' label to attract students who are suspicious of for-profit colleges, and to escape regulatory oversight."

"A decline in enforcement of nonprofit status by the federal Internal Revenue Service is allowing some for-profit colleges to get away with using complicated financial schemes and shell corporations to lay claim to nonprofit status, but without adopting the restrictions that actually protect students."

"California cannot rely on the U.S. Department of Education to solve this problem. Despite the poor record of some federally-funded for-profit colleges and scandals that have plagued the for-profit industry, Secretary of Education Betsy DeVos and the Trump administration refuse to admit that investor control of colleges is hazardous to students and taxpayers and require greater oversight and scrutiny. Therefore, California must step up and step in to protect our students and ensure that appropriate oversight remains."

**Arguments in Support:**

A group of student, veteran, civil rights, and higher education advocates wrote in support of AB 70, noting that the this legislation would prevent "...institutions from misleading students and taxpayers by defining what constitutes a 'nonprofit corporation' and 'public institution of higher education' in California, an essential step in developing a standard for what a college must demonstrate in order to claim to be a nonprofit or public institution...The federal government's failure to recognize that investor control of colleges requires greater oversight and scrutiny puts Californians at risk. AB 70 would prevent these covert for-profit institutions from evading state oversight and deceiving students."

**Arguments in Opposition:**

None on file.

**FISCAL COMMENTS:**

The Senate Committee on Appropriations noted ongoing General Fund costs and Legal Services Revolving Fund costs to the Department of Justice in the hundreds of thousands of dollars.

**VOTES:**

**ASM HIGHER EDUCATION: 11-0-1**

**YES:** Medina, Choi, Arambula, Bloom, Berman, Irwin, Kiley, Levine, Low, Santiago, Weber

**ABS, ABST OR NV:** Patterson

**ASM APPROPRIATIONS: 18-0-0**

**YES:** Gonzalez, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

**ASSEMBLY FLOOR: 78-0-2**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood

**ABS, ABST OR NV:** Cervantes, Rendon

**SENATE FLOOR: 39-0-1**

**YES:** Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Jones

**UPDATED:**

VERSION: August 20, 2020

CONSULTANT: Kevin J. Powers / HIGHER ED. / (916) 319-3960

FN: 0003355