
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

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Subject: Private postsecondary education: community-based organizations

SUMMARY

This bill exempts an institution owned, controlled, operated, and maintained by a “community-based organization” from the California Private Postsecondary Education Act (Act) and from oversight by the Bureau for Private Postsecondary Education (BPPE) if it meets specified criteria and complies with specified requirements.

BACKGROUND

Existing federal law defines a “community-based organization” as a public or private nonprofit organization of demonstrated effectiveness that is representative of a community or significant segments of a community and provides educational or related services to individuals in the community. (Title 20, United States Code, § 7801)

Existing state law:

- 1) Establishes the Act and requires BPPE to, among other things, review, investigate and approve private postsecondary institutions, programs and courses of instruction and authorizes BPPE to take formal actions against an institution/school to ensure compliance with the Act, including seeking closure of an institution/school if determined necessary. The Act also provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and that BPPE shall administer the Student Tuition Recovery Fund to provide refunds to students affected by the possible closure of an institution/school. (Education Code (EC) § 94800 et seq.)
- 2) Exempts the following from oversight by the Bureau:
 - a) An institution that offers solely avocational or recreational educational programs.
 - b) An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.
 - c) A bona fide organization, association or council that offers pre-apprenticeship training programs on behalf of one or more Division of Apprenticeship Standards-approved labor-management or apprenticeship programs that is not on the Eligible Training Provider List (ETPL) currently

but has met requirements for placement on the list, that is on the ETPL and that has not been removed from the ETPL for failure to meet performance standards.

- d) A postsecondary educational institution established, operated, and governed by the federal government or by this state or its political subdivisions.
- e) An institution offering either test preparation for examinations required for admission to a postsecondary educational institution or continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by a government agency, other than BPPE, that licenses persons in a particular profession, occupation, trade, or career field, a state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field or a bona fide trade, business, or professional organization.
- f) An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation whose instruction is limited to the principles of that religious organization and the diploma or degree granted is limited to evidence of completion of that education. The institution is only eligible to offer degrees and diplomas in the beliefs and practices of the church, religious denomination, or religious organization and shall not award degrees in any area of physical science. Any degree or diploma granted by an institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The degree must reflect the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."
- g) An institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less when no part of the total charges is paid from state or federal student financial aid programs.
- h) A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or a law school or law study program that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners.
- i) A nonprofit public benefit corporation that is qualified under Section 501(c)(3) of the United States Internal Revenue Code, is organized specifically to provide workforce development or rehabilitation services and is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation.

- j) An institution that is accredited by the Accrediting Commission for Senior Colleges (ACSC) and Universities, Western Association of Schools and Colleges (WASC), or the Accrediting Commission for Community and Junior Colleges (ACCJC).
 - k) Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration (FAA) regulations and do not require students to enter into written or oral contracts of indebtedness and do not require or accept prepayment of instruction-related costs in excess of \$2,500. (EC § 94874)
- 3) Also provides an exemption from the California Private Postsecondary Education Act (Act) and oversight by Bureau for Private Postsecondary Education (BPPE) for an institution that is accredited by the ACSC and WASC, or ACCJC that meets all of the following:
- a) Has been accredited by a United States Department of Education (USDE) recognized accrediting agency for at least 10 years and has not been placed on probation or on monitoring or sanctioned.
 - b) Is headquartered in California and has operated continuously for at least 25 years.
 - c) Is privately held and was previously granted an approval to operate by the BPPE or the former Bureau and has not changed ownership since its last approval.
 - d) Has not filed for bankruptcy protection.
 - e) Maintains an equity ratio composite score of at least 1.5.
 - f) Derives at least 12.5 percent of its revenues from sources other than state or federal student assistance like Title 38 and CalGrant monies.
 - g) Does not have a cohort default rate over 13 percent for the most recent 3 years.
 - h) Has a graduation rate that exceeds 60 percent.
 - i) Has not been subject to any legal or regulatory actions by a state Attorney General that resulted in monetary settlement, fines or other documented violations.
 - j) Provides a pro rata refund of unearned institutional charges to students who complete 75 percent or less of the period of attendance.
 - k) Complies with other reasonable criteria established by the California State Approving Agency for Veterans Education.

- l) Verifies its exemption with the Bureau for Private Postsecondary Education (BPPE). (EC § 94947)

ANALYSIS

This bill exempts an institution owned, controlled, operated, and maintained by a “community-based organization” from the California Private Postsecondary Education Act (Act) and from oversight by the BPPE if it meets specified criteria and complies with specified requirements. Specifically, this bill:

- 1) Requires the institution to meet the following criteria:
 - a) The institution has programs on or is applying for some or all of their programs to be on Eligible Training Provider List (ETPL).
 - b) The institution is registered as a nonprofit entity qualified under Section 501(c)(3) of the federal Internal Revenue Code.
 - c) The institution does not offer degrees.
 - d) The institution does not offer educational programs designed to lead directly or specifically to positions in a profession, occupation, trade, or career field requiring licensure if BPPE approval is required for the student to be eligible to sit for licensure.
 - e) The institution would not otherwise be subject to BPPE oversight if it did not receive federal Workforce Innovation and Opportunity Act (WIOA) funding.
 - f) The institution can provide a letter from the local workforce development board (Local WDB) that demonstrates the institution has met the initial criteria of that local WDB.
- 2) Requires an institution granted an exemption above to comply with all of the following requirements:
 - a) Provide the California Employment Development Department all required tracking information and data necessary to comply with performance reporting requirements under WIOA for programs on the ETPL.
 - b) Comply with the ETPL policy developed by the California Workforce Development Board.
 - c) Not charge a student who is a recipient of WIOA funding any institutional charges for attending and participating in the program.

STAFF COMMENTS

- 1) Need for the bill. According to the author, “This bill is follow up legislation to AB 1996 (Gordon) from last year, which provided a narrower exemption for JobTrain,

a 52-year old nonprofit training and career development support center serving low income individuals. This bill responds to the Governor's veto message and was carefully crafted to provide an exemption that is broader than one-provider but still warranted for a specific class of private postsecondary providers like JobTrain. AB 868 would allow JobTrain and other institutions owned, controlled, operated, and maintained by community-based organizations that meet the limited criteria to offer programs on the Eligible Training Provider List (ETPL) in order to provide access to individuals who receive federal Workforce Innovation and Opportunity Act (WIOA) funding."

- 2) **Response to the Governor's Veto.** As indicated by the author, this bill is a direct response to the Governor's veto of AB 1996 (Gordon, 2016), which would have provided an exemption from Act and oversight by Bureau for Private Postsecondary Education (BPPE), until January 1, 2022, for an institution that met specified criteria, including operating as a nonprofit for at least 50 years, maintaining its status as a nonprofit institution that is accredited by the Accrediting Commission for Schools, Western Association of Schools and Colleges (WASC-ACS), does not award degrees or diplomas, and only receives state or federal student financial aid programs for fewer than 20 percent of its students. Essentially, that bill created an exemption for a single entity, JobTrain. In his veto message, the governor stated:

"While I understand the desire to escape from the burdens of regulation, conferring this new, exclusive statutory exemption on a single qualifying nonprofit lacks fairness. Hundreds of private postsecondary providers on the state's Eligible Provider Training List have gained the necessary approval from the state to operate. Many have revenues under \$5 million and also have nonprofit status. Rather than supporting this one-provider exemption, I will direct the relevant departments and agencies to work together to consider whether further exemption from portions of the Act or the Act itself are warranted for this class of private postsecondary providers."

This bill responds to the Governor's concerns by altering the criteria for the proposed exemption to encompass more institutions owned, controlled, operated, and maintained by a community-based organization.

- 3) **The California Private Postsecondary Education Act (Act) and the Bureau for Private Postsecondary Education (BPPE or Bureau).** The BPPE is responsible for oversight of private postsecondary educational institutions operating with a physical presence in California. Established by AB 48 (Portantino, Chapter 310, Statutes of 2009) after numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, the bill took effect January 1, 2010, to make many substantive changes that created a foundation for oversight and gave the BPPE enforcement tools to ensure schools comply with the law.

AB 48 established Bureau for Private Postsecondary Education's (Bureau or BPPE's) authority to regulate private postsecondary institutions and enforce the provisions of the new California Private Postsecondary Education Act (Act) and to respond to the major problems with the former laws governing the industry in California. The Act provides for prohibitions on false advertising and inappropriate recruiting and requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also provides BPPE with enforcement powers necessary to protect consumers. The Act directs BPPE to:

- Create a structure that provides an appropriate level of oversight, including approval of private postsecondary educational institutions and programs;
- Establish minimum operating standards for California private postsecondary educational institutions to ensure quality education for students;
- Provide students a meaningful opportunity to have their complaints resolved;
- Ensure that private postsecondary educational institutions offer accurate information to prospective students on school and student performance; and,
- Ensure that all stakeholders have a voice and are heard in the operations and rulemaking process of BPPE.

BPPE is also tasked with actively investigating and combatting unlicensed activity, administering Student Tuition Recovery Fund (STRF) and conducting outreach and education activities for students and private postsecondary educational institutions within the state.

- 4) ***Exemptions in the California Private Postsecondary Education Act (Act).*** The Bureau has oversight of all of the non-exempt, private postsecondary institutions located in California. AB 48 contained numerous exemptions to state-level oversight, including for avocational or recreational programs, educational programs offered for members of a business or professional association, pre-apprenticeship programs offered by specific types of organizations, test preparation providers, religious institutions, low-cost programs that do not receive public funds, Western Association of Schools and Colleges (WASC)-accredited institutions, specified nationally accredited nonprofit institutions, and flight schools. An exempt institution is not regulated by the BPPE. Students enrolled in exempt institutions are not protected by the Act, including the Student Tuition Recovery Fund which provides reimbursement to students for BPPE-regulated institutions that violate the law or close abruptly.

For example, Heald College, which was owned by Corinthian Colleges, Inc. (CCI), enjoyed an exemption from Bureau for Private Postsecondary Education (BPPE) oversight due to its Western Association of Schools and Colleges (WASC)-accreditation. When initially granted exemption, Heald College was a non-profit institution. It was subsequently purchased by CCI, and the accreditation-based exemption was not affected by the change in ownership. When Heald closed abruptly and filed bankruptcy in 2015, students enrolled in the institution were not eligible to make tuition recovery claims against the Student Tuition Recovery Fund (STRF).

The exemptions in the California Private Postsecondary Education Act (Act), and attempts to create additional exemptions, have been an ongoing source of consideration for the Legislature, as identified below. Licensing requirements exist to protect the public from potentially harmful services rendered by unqualified businesses and individuals. The intent of licensure is not to punish good actors, nor to impose punitive requirements on businesses and individuals, but rather to establish a baseline measure of quality and competency and corresponding enforcement provisions for consequences of violating the regulatory framework. Exemptions in the Act may serve as an artificial measure of quality and in some cases, while the intention may have been to ensure that the BPPE's workload is focused on those schools that require attention, may not benefit students or provide accountability for public monies utilized at these institutions.

The Act has one single category of the institution and establishes the same standards and requirements for all of the institutions under the Bureau's oversight. Yet many of the institutions supportive of exemptions were exempt under the prior Bureau regulatory framework and seek to continue operating as they always have, subject to oversight by accreditors and state and federal oversight agencies responsible for approving the expenditure of public monies, but not the BPPE.

- 5) ***Workforce Innovation and Opportunity Act (WIOA) and California's Eligible Training Provider List (ETPL)***. The federal Workforce Innovation and Opportunity Act (WIOA), formerly known as the federal Workforce Investment Act (WIA) of 1998, provides for workforce investment activities, including activities in which states may participate and also contains various programs for job and employment investment, including work incentive programs, as specified. WIOA was signed into law in 2014 and generally takes effect July of this year. WIOA supersedes WIA and also authorizes the Job Corps, YouthBuild, Indian and Native Americans, and Migrant Seasonal Farmworker programs, in addition to the core programs. The new federal WIOA aims to modernize our workforce development system bringing together and enhancing several key employment, education and training programs. WIOA also seeks to make the workforce system more comprehensive in its approach to service delivery and more responsive to the demands of our economy.

ETPL was established in compliance with WIA for the purpose of providing customer-focused employment training for adults and dislocated workers. Training providers who are eligible to receive Individual Training Accounts

through Workforce Innovation and Opportunity Act (WIOA) are listed on the California's Eligible Training Provider List (ETPL). The California Employment Development Department is responsible for accepting information on training providers from local boards, compiling a single statewide list of eligible training providers and disseminating the statewide ETPL to local boards for distribution to their One-Stop Career Centers, effectively directing training resources into programs intended to lead to employment in high-demand, high-priority jobs and occupations that provide economic security, particularly those facing a shortage of skilled workers. The subsequent eligibility criteria is required to use performance and outcome measures to determine whether a provider is qualified to remain on the list.

Initial and subsequent eligibility criteria for placement on the ETPL shall consider:

- The relevance of the training program to the workforce needs of the state.
- Needs to plug skills gaps and skills shortages at the state, local and regional levels.
- The likelihood that the training program will lead to job placement in a job providing economic security or job placement in an entry-level job that has a well-articulated career pathway or career ladder to a job providing economic security.
- The need for basic skills and bridge training programs that provides access to occupational skills training for individuals with barriers to employment and those who would otherwise be unable to enter occupational skills training.
- To the extent feasible, utilize criteria that measure training and education provider performance, including, but not limited to measures of skills or competency attainment and program completion; measures of employment placement and retention; measures for continued training or education and for those that have entered the labor market, measures of income.

Local workforce development boards are responsible for reviewing and verifying applications submitted by training providers, determining if the applicant meets the criteria for initial eligibility and forwarding the information to California Employment Development Department (EDD) for training providers and programs that meet the criteria. The EDD also has the authority to remove training providers for nonperformance.

A private postsecondary education institution must either have approval from Bureau for Private Postsecondary Education (BPPE) or be exempt from the California Private Postsecondary Education Act (Act) in order to be placed on the ETPL. Institutions on the ETPL receive public monies. Many training providers on the ETPL are approved by BPPE. JobTrain, for example, had been listed on the ETPL since 2001, and had been granted an exemption by BPPE, thus not

subject to Bureau for Private Postsecondary Education (BPPE) oversight, until JobTrain was informed that their exemption expired on December 31, 2015. The loss of eligibility for an exemption from BPPE means that JobTrain and other “community-based organizations” cannot be on the California’s Eligible Training Provider List (ETPL).

- 6) **Previous legislation.** SB 1059 (Monning, Chapter 428, Statutes of 2016) provided an exemption for law schools accredited by the State Bar of California Committee on Bar Examiners from requirements that they be accredited by an accrediting agency recognized United States Department of Education (USDE) in order to receive Title 38 veteran benefits if the institution complies with specified disclosure and compliance requirements.

SB 1192 (Hill, Chapter 593, Statutes of 2016) was the sunset bill for BPPE and made various changes to the Act intended to improve the effectiveness of BPPE and opportunities for student success, including deleting one exemption category.

AB 1835 (Holden, 2016) would have provided an exemption for five years from minimum operating standards and accreditation requirements for approval by BPPE to institutions that grant doctoral degrees in psychoanalysis, if all of the institution’s students hold master’s or doctoral degrees before they enroll in the institution and if all of the institution’s students, other than research students regulated by the Medical Board of California, hold a valid professional license authorizing the individual to practice psychotherapy. AB 1835 was vetoed by the Governor, who stated: *“I am not convinced that conferring special treatment on this one subset of professionals is warranted, when other means exist to comply with state law.”*

AB 1996 (Gordon, 2016) would have provided an exemption from California Private Postsecondary Education Act (Act) and oversight by BPPE, until January 1, 2022, for an institution that met specified criteria, including operating as a nonprofit for at least 50 years, maintaining its status as a nonprofit institution that is accredited by the Accrediting Commission for Schools, Western Association of Schools and Colleges (WASC-ACS), does not award degrees or diplomas, and only receives state or federal student financial aid programs for fewer than 20 percent of its students.

SB 410 (Beall, Chapter 258, Statutes of 2015) changed the definition of graduates for purposes of reporting student information as required under the Act.

AB 509 (Perea, Chapter 558, Statutes of 2015) provided an exemption from the Act and BPPE oversight for a bona fide organization, association, or council that offers pre-apprenticeship training programs on behalf of one or more Division of Apprenticeship Standards -approved labor-management apprenticeship programs, provided that the entity meets the requirements for the ETPL and has not been removed from the ETPL for failure to meet performance standards.

AB 752 (Salas, Chapter 560, Statutes of 2015) required BPPE by July 1, 2016, to review the list of examinations prescribed United States Department of Education and if BPPE determines there is no examination appropriate for ATB students with

limited English proficiency, to approve an alternative examination for these students.

SB 1247 (Lieu, Chapter 840, Statutes of 2014) extended the operation of the Bureau until January 1, 2017; and, among other changes, set forth requirements for accreditation for institutions offering degrees.

SB 71 (Committee on Budget and Fiscal Review, Chapter 28, Statutes of 2013) enacted various budget-related items, including a provision allowing exempt institutions to voluntarily seek operating approval from the Bureau. The bill provided a temporary delay in those institutions reporting certain information on the Student Performance Fact Sheet.

SB 675 (Wright) of 2011 would have required private postsecondary institutions subject to the Act to administer a test of English language proficiency to a non-native speaker of English, as defined, prior to enrolling the student. SB 675 failed passage in the Senate Business & Professions Committee.

SB 619 (Fuller, Chapter 309, Statutes of 2011) exempted flight instructors and flight schools that do not require students to enter into contracts of indebtedness and do not require prepayment of fees in excess of \$2,500 from regulation by the Act and Bureau for Private Postsecondary Education (BPPE).

AB 1013 (Committee on Higher Education, Chapter 167, Statutes of 2011) authorized the Bureau to publish its own list of acceptable ability-to-benefit examinations if the United States Department of Education does not have a list of relevant examinations that pertain to the intended occupational training.

AB 1889 (Portantino) of 2010 contained similar provisions as AB 1013 above, as well as provisions regarding doctoral degrees offered by unaccredited institutions, the calculation of placement rates, and Bureau employment requirements. *AB 1899 was vetoed by Governor Schwarzenegger due to concerns over Bureau employment requirements.*

SUPPORT

Cañada College
Community Legal Services in East Palo Alto
East Palo Alto Vice Mayor Ruben Abrica
Infostretch
J&J Air Conditioning
JobTrain
NOVA Workforce Development Board
San Mateo County Supervisor Warren Slocum

OPPOSITION

None received