

Date of Hearing: April 12, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1996 (Gordon) – As Amended March 15, 2016

**SUBJECT:** Private postsecondary education: exemptions

**SUMMARY:** Provides an exemption from the California Private Postsecondary Education Act (Act) for a nonprofit institution that is accredited by the Accrediting Commission for Schools, Western Association of Schools and Colleges, and does not award degrees or diplomas, and is paid from state or federal student financial aid programs for fewer than 20 percent of its students who receive vocational training.

**EXISTING LAW:** Establishes the Bureau for Private Postsecondary Education (BPPE), under the California Private Postsecondary Education Act (Act), until January 1, 2017; and, provides for the oversight and regulation of private postsecondary educational institutions (institutions) to ensure protection of the public and students. (Education Code Section 94800 et seq.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:** *Background.* BPPE is responsible for oversight of private postsecondary educational institutions operating with a physical presence in California. Established by Assembly Bill 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 contained numerous exemptions to state-level oversight, including for avocational or recreational programs, educational programs offered for members of a business or professional association, preapprenticeship programs offered by specific types of organizations, test preparation providers, religious institutions, low-cost programs that do not receive public funds, 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 (STRF) 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 BPPE oversight due to its 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 STRF.

*Purpose of this bill.* According to the author, JobTrain is a 50-year old nonprofit training and career development support center serving low income individuals in the Bay Area. JobTrain offers middle income job pathways for people who are often working two to three minimum wage jobs and who cannot afford to personally pay for college or other training. According to the author, JobTrain had been previously granted an exemption from oversight by BPPE based

on its accreditation from the Accrediting Commission for Schools, Western Association of Schools and Colleges (WASC). JobTrain was notified by BPPE that its exemption expired on December 31, 2015. According to the author, in order to remain eligible to receive public funding under the Workforce Investment and Opportunity Act (WIOA) the institution must remain on the Eligible Training Provider List (ETPL). To be placed on the ETPL, an institution must either have an exemption or approval from the BPPE.

*Exemption vs. approval.* As previously noted, to remain on the ETPL and be eligible to receive public funds, JobTrain must be either exempt or approved by BPPE. The author has provided the following rationale for JobTrain's need for exemption, rather than regulation and approval, from BPPE:

- 1) Ability-to-Benefit (ATB) Examination. The Act requires, prior to enrollment, students without a high school diploma or equivalent to take and pass an ATB examination. The intent of the test is to measure, before a student has agreed to payment, whether the student has the basic skills needed to benefit from higher education and succeed in the institution. According to the author, upon BPPE approval "JobTrain would need to stop serving a significant minority of the students they serve; these are individuals who cannot pass the ability-to-benefit test (grade 7 level reading and writing) yet have been among the most successful in obtaining higher wage jobs through JobTrain's program."

In response to similar concerns, AB 752 (Salas, Chapter 560, Statutes of 2015) required BPPE to review, by July 1, 2016, the examinations for ATB students prescribed by USDE and, if appropriate, publish a list of alternative examinations for working adults that do not have high school diplomas and are seeking to enroll in job and skills training programs, but are having difficulty passing the USDE-approved ATB examinations.

- 2) Accredited by WASC-ACS. The author notes that JobTrain has been accredited by the reputable WASC-ACS since 2001.

WASC-ACS is not recognized by the United States Department of Education for purposes of participation in federal financial aid programs. According to its website, WASC-ACS provides accreditation of 189 postsecondary institutions. Committee staff was unable to determine how many of these institutions would meet the other criteria of this bill (does not award degrees or diplomas, and receives state or financial aid funds for fewer than 20% of its students who receive vocational training). Committee staff was also unable to determine which of these institutions meet the same outcome and quality standards of JobTrain.

- 3) Limited financial aid. According to the author, financial aid is a small portion of JobTrain's revenues, further reducing the risk of misuse of public educational funds. Aside from WIOA, JobTrain student tuition is funded by donations, grants, and fee for service contracts, but not by student financial aid. WIOA funds can only be paid for training programs approved by the Local Workforce Development Board and meeting performance requirements set by Employment Development Department, which currently requires a 70% placement rate measured using the BPPE methods.

*BPPE Sunset Review of exemptions.* The BPPE is currently undergoing Sunset Review by the Legislature. Among the issues raised in the Sunset Report is the issue of exemptions from BPPE oversight. According to the Sunset Report, "Licensing laws 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 or impose punitive requirements on businesses and individuals but rather to establish a baseline of licensee quality and competency and corresponding enforcement provisions for consequences of violating the regulatory framework. Professionals and businesses required to be licensed are not able to justify a lack of disciplinary action or sanctions to then skirt their licensure requirement. 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 Bureau's workload is focused on those schools that require attention, may not benefit the public and provide accountability for public monies utilized at these institutions."

*Rather than provide an exemption to JobTrain, the author and committee could instead, consistent with the action taken in AB 1835 (Holden), approved by this committee on April 5, 2016, provide a limited-term exemption to the ATB examination requirements while JobTrain works with BPPE to ensure that the ATB requirements do not negatively impact students.*

*Alternatively, if the author and committee desire to provide an exemption to Job Train, to avoid unintended consequences that may result from other institutions qualifying for the exemption outlined in this bill, the author has indicated willingness to accept an amendment to limit the scope of this exemption solely to JobTrain. In addition, JobTrain would be required to continue to meet the accreditation, funding, and certificate requirements, as outlined.*

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Acrobat Outsourcing  
California State Council of Laborers  
Canada College  
Community Legal Services in East Palo Alto  
JobTrain  
Laborers' International Union of North America  
Nova Workforce Development  
San Mateo County Board of Supervisors  
Sequoia District Adult School  
12 Individuals

##### **Opposition**

None on File

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