

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 868 (Berman) – As Amended March 23, 2017

**SUBJECT:** Private postsecondary education: community-based organizations

**SUMMARY:** Provides an exemption from the California Private Postsecondary Education Act (Act), including exemption from oversight and student protections provided by the Bureau for Private Postsecondary Education (BPPE), for an institution that meets specified requirements. Specifically, **this bill:**

- 1) Exempts a community-based organization, as defined in Section 7801 of Title 20 of the United States Code, as that section exists on March 1, 2017, that satisfies all of the following criteria:
  - a) The institution has programs on or is applying for some or all of their programs to be on the Eligible Training Provider List (ETPL) established and maintained by the California Workforce Development Board.
  - 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, as defined in Section 94830.
  - 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 bureau approval is required for the student to be eligible to sit for licensure.
  - e) The institution would not otherwise be subject to oversight of BPPE under this chapter if it did not receive funding under the federal Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. Sec. 3101 et seq.). For purposes of this requirement, funds received through the federal WIOA (29 U.S.C. Sec. 3101 et seq.) do not count towards the total referenced in subdivision (f) or any other fee charge limitation condition for an exemption from this chapter.
  - f) The institution can provide a letter from the local workforce development board that demonstrates the institution has met the initial criteria of that board.
- 2) Specifies that an institution granted an exemption pursuant to (1) shall comply with all of the following requirements:
  - a) The institution shall provide to the Employment Development Department all required tracking information and data necessary to comply with performance reporting requirements under the WIOA, codified in Chapter 32 (commencing with Section 3101) of Title 29 of the United States Code, for programs on the ETPL.

- b) The institution shall comply with the ETPL policy developed by the California Workforce Development Board.
- c) The institution shall not charge a student who is a recipient of funding under WIOA any institutional charges, as defined in Section 94844, for attending and participating in the program.

**EXISTING LAW:** Establishes the BPPE, under the Act, until January 1, 2021; 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 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 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 (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.

*WIOA and ETPL.* The federal 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. The new federal WIOA aims to modernize our workforce development system by bringing together and enhancing several key employment, education and training programs.

Following passage of the federal WIA in 1998, the state established the California Workforce Investment Board, now the Board and charged the Board with the responsibility for developing a unified, strategic planning process to coordinate various education, training, and employment

programs into an integrated workforce development system that supports economic development. Local chief elected officials in a local workforce development area were required to form, pursuant to specified guidelines, a Local Workforce Investment Board (Local WIB) to plan and oversee the workforce investment system at the local level. Under WIA, funds were distributed to the states based on formulas that consider unemployment rates and other economic and demographic factors. WIA required that 85 percent of federal funds go to the Local WIBs, with the remainder allocated for state discretionary purposes. Local WIBs created one or more One-Stop Career Centers (One-Stops) in the local workforce area, which provide access to career information, counseling, funding for education, training and supportive services. Job training programs include classroom training, customized training, and on-the-job training (also known as incumbent worker training). Training funds are often distributed through vouchers to job seekers to enroll in eligible training programs. Local WIBs determine which training programs are eligible to receive the vouchers.

California's ETPL lists qualified employment training providers for purposes of public employment monies. Training providers who are eligible to receive Individual Training Accounts (ITAs) through WIOA are listed on the ETPL. EDD 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-Stops, 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.

The Local WIBs 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 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 BPPE or be exempt from the Act in order to be placed on the ETPL.

*Purpose of this bill.* According to the author, "...this bill is follow up legislation to AB 1996 (Gordon), which was vetoed last year, provided a narrower exemption for JobTrain, a 50-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 community-based nonprofits that meet the limited criteria to offer programs on the [ETPL] in order to provide access to individuals who receive federal [WIOA] funding.

*Supporting arguments.* JobTrain, a community-based organization that would benefit under the provisions of this legislation, writes "...JobTrain had been listed on the ETPL since 2001 and had been exempt from registration and oversight by the Bureau until JobTrain was informed that the exemption expired on December 31, 2015, due to a sunset date and not because of any issue the Bureau or any other body has with JobTrain's vocational training program. The loss of the exemption means that JobTrain cannot be on the ETPL, which in effect means that individuals who receive Individual Training Account funding through the federal Workforce Innovation and Opportunity Act cannot be referred to JobTrain and cannot take advantage of our successful

vocational training programs. Individuals who are eligible for Individual Training Accounts are most in need and have barriers to employment...JobTrain is an example of those types of institutions that are required to be approved by the Bureau because of the receipt of WIOA funding, but whose business model and goals are non-traditional compared with other institutions regulated by the Bureau.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Canada College  
Community Legal Services in East Palo Alto  
Infostretch Corporation  
J&J Air Conditioning  
JobTrain  
Nova Workforce Development  
Warren Slocum, Supervisor, District 4  
5 Individuals

**Opposition**

None on File

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