

Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION  
Das Williams, Chair  
SB 1247 (Lieu) – As Amended: June 5, 2014

SENATE VOTE: 33-3

SUBJECT: California Private Postsecondary Education Act of 2009.

SUMMARY: Extends the sunset date for the California Private Postsecondary Education Act of 2009 (Act) from January 1, 2015 until January 1, 2017; and, provides for an array of statutory changes to the governance structure, the protections provided to students, and the requirements placed on private postsecondary educational institutions (institutions). Specifically, this bill:

- 1) Reestablishes the Bureau for Private Postsecondary Education (BPPE) as the Board for Private Postsecondary Education (Board) and provides for transition to the Board.
  - a) Provides that the Board consists of 11 members, appointed as follows:
    - i) Three with a record of advocacy on behalf of consumers, one appointed by the Governor, one by the Senate Rules Committee, and one by the Assembly Speaker;
    - ii) Two current or former students of institutions, appointed by the Governor;
    - iii) Three representatives of institutions, appointed by the Governor;
    - iv) Two public members with experience or expertise in postsecondary education, appointed by the Governor;
    - v) One public member with knowledge or expertise in emerging fields of employment, appointed by the Governor.
  - b) Provides that a member of the BPPE Advisory Committee, which is deleted in this bill, is eligible to be appointed to the Board.
  - c) Provides for a transition period from the BPPE to the Board until July 1, 2015.
  - d) Provides that the executive officer of the Board shall be appointed by the Governor and subject to confirmation by the Senate Committee on Rules.
- 2) Makes the following changes to institutions exempt from the Act:
  - a) Prohibits an institution, as specified, that receives federal veteran aid funding, as specified, from claiming an exemption from the Act.
  - b) Clarifies that an exempt flight school may not accept prepayment of more than \$2,500.
- 3) Requires the Board to contract with the Office of the Attorney General to establish training that ensures staff can investigate complaints.

- 4) Requires the Board, by January 1, 2016, to initiate the procedures governing approval or denial of all applications that are pending as of January 1, 2015.
- 5) Requires the Board to post a list of all institutions denied an approval to operate, and describe the reasons for the denial, on the Board internet website. Requires a disclosure on the website informing students that the institutions were denied approval to operate, are not in compliance with the law, and that students are discouraged from enrolling in unapproved institutions.
- 6) Requires the Board to establish a task force to identify standards for educational and training programs specializing in innovative subject matter and instructing students in high demand technology fields and report to the Legislature, by January 1, 2016, regarding appropriate levels of oversight of these institutions. Allows the Board to delay application processing until January 1, 2016.
- 7) Requires an unaccredited institution offering a degree that is approved by BPPE as of January 1, 2015 to obtain and provide evidence of accreditation by January 1, 2017.
- 8) Requires the Board to adopt regulations that ensure the following students, and any other students deemed appropriate, are eligible for payment from the Student Tuition Recovery Fund (STRF):
  - a) In the event of a school closure, a student who attended the institution within 120 days;
  - b) A student to whom an institution has been ordered to pay refunds by the board but has failed to do so;
  - c) Students who have been awarded restitution, refunds or monetary awards by an arbitrator or court, but who have been unable to collect the award from the institution;
  - d) Students whose programs have been discontinued at the campus they attended before they were able to complete the program; and,
  - e) Students who suffered losses due to an institution's violation of this act.
- 9) Requires the Board to report to the Legislature by October 1, 2015 regarding efforts to streamline the Board's approval process for institutions while ensuring the same or similar data information is reported to students in a clear and conspicuous manner.
- 10) Removes authority for the Board to adjust annual fees for individual institutions based on cost of providing oversight of individual institutions.
- 11) Requires announced and unannounced compliance inspections to be conducted at least every five years, rather than every two years, and requires the Board to adopt regulations that set forth inspection policies to ensure that student protections are the highest priority and that inspections are conducted based on risk and potential harm to students.
- 12) Requires the Board to establish a timeline by which complaints are processed, and to establish procedures to prioritize complaints as urgent, high-priority, and routine.

- 13) Provides that if the Board has reason to believe that an institution's noncompliance with the provisions of the Act significantly transcends the interests of the individual complainant or the Board has determined that the complexity of the case requires additional expertise and resources, the Board shall contract with the Attorney General for investigative and prosecutorial services.
- 14) Requires the Board to contract for an independent review of staffing resources and provide the Legislature, within 30 days of the review, a copy of this review along with an overview of how the board intends to ensure staff is sufficiently qualified for purposes of implementing the Act.
- 15) Provides for various clean-up, technical, and non-substantive changes to the Act.
- 16) Extends the sunset date of the Act to January 1, 2017.

EXISTING LAW provides for, until January 1, 2015, student protections and regulatory oversight of institutions in the state pursuant to the Act. The Act is enforced by BPPE within the Department of Consumer Affairs (DCA). (Education Code §94800 et seq.)

FISCAL EFFECT: Unknown. According to the Senate Appropriations Committee, the Governor's proposed 2014-15 budget would appropriate approximately \$11 million in state operations funding to the BPPE (Special Fund). This proposal increases BPPE funding by \$1.6 million (for 11 new positions) above the 2013-14 level; the 2013-14 Budget Act appropriation was approximately \$1.4 million more than the previous year.

COMMENTS: Double-referral. This bill is double-referred to the Assembly Business, Professions and Consumer Protection Committee.

Need for oversight. California's Master Plan for Higher Education provides for recognition and establishes the missions of the state's public and "independent" (non-profit, degree-granting, accredited) segments of higher education. In 1960, at the Master Plan adoption, for-profit postsecondary education primarily existed as small, local certificate programs.

Today, however, for-profit colleges are the fastest growing postsecondary schools in the nation. According to the Center for Analysis of Postsecondary Education and Employment (CAPSEE), for-profit colleges enroll a disproportionately high share of Black and Latino students, students from low-income households, single parents, older/return students, and first-generation college students. CAPSEE notes that these colleges offer baccalaureate and graduate-level degrees, in addition to certificate and diploma programs. CAPSEE notes that accredited for-profit institutions receive most of their revenue from taxpayer-funded sources; during the 2009-10 academic year, for-profit institutions received \$32 billion in federal grants and loans. According to the Veterans Legal Clinic, in 2011, eight of the 10 largest recipients of GI Bill money disbursed were for-profit colleges.

According to the National Conference of State Legislatures (NCSL), the over 12% of students that choose for-profit institutions (an increase of 225% since 2000-01) often do so because local community colleges have exceeded enrollment capacities, and for-profit colleges offer flexible scheduling, year-round enrollment, online options, small class sizes and convenient locations.

Additionally, according to the federal Government Accountability Office (GAO), for-profit colleges focus on recruitment and enrollment activities; among 30 companies investigated, 41.8% of revenue went to marketing, recruiting and profits, while only 17.7% to instruction activities. According to the a United States Senate analysis, "in 2010, the for-profit colleges examined employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff, more than two and a half recruiters for each support services employee."

The United States Department of Education (USDE) data shows students from for-profit colleges are twice as likely to default on student loans as students from public or private non-profit schools. Students at for-profit colleges also tend to borrow more, sometimes as much as \$60,000 for two-year associate degrees. USDE data also shows graduates of for-profits often have a tougher time finding employment compared to other sectors of higher education.

Concerns over the significant growth and questionable student outcomes at many for-profit and career colleges have led many and federal policymakers to seek to enact stronger oversight of these colleges and universities. At the federal level, rules ensuring students are "gainfully employed" upon graduation are in the process of being enacted; and, July 1, 2014, federal rules take effect to require all institutions that receive public student aid funds to (1) be "authorized" by the state in which they operate, and (2) to have a state-level student complaint process. Public institutions in California are authorized by, and complaints are investigated by, their system offices; independent institutions appear to be authorized by the California Student Aid Commission and complaints handled by the Office of the Attorney General. For-profit institutions can meet the authorization rules through regulation and oversight by the BPPE (under a voluntary pathway established in the 2013-14 Budget Act).

At the state level, reforms to protect students and public expenditures have also been enacted in recent years. Reforms to the Cal Grant Program link an institution's participation to the percentage of students borrowing federal loans and the number of students defaulting on those federal loans and the number of students graduating within 150% of the scheduled program length. In the 2014-15 academic year, 122 institutions (primarily for-profit colleges) are ineligible to participate in the Cal Grant Program; students at ineligible institutions are required to transfer to an eligible institution in order to receive their Cal Grant award.

California early regulatory efforts. Independent institutions have operated in California for hundreds of years, largely under the rules and requirements governing non-profit entities. For-profit colleges and non-profit certificate programs entered the regulatory structure in the early 1990's. In response to a lack of meaningful state-level oversight, and a growing reputation as the diploma mill capitol of the world, California established the Private Postsecondary and Vocational Education Council (Council), an independent 20-member body, to oversee the sector.

According to the California Postsecondary Education Commission (CPEC) review of the Council in 1995, the Council adequately protected consumers while reflecting a balanced recognition of institutional rights. CPEC recommended a repeal of the sunset date, allowing the law to operate indefinitely, and strengthening the law to ensure appropriate enforcement powers and punitive measures to address violations.

However, in 1996, in response to concerns raised by the institutional trade association that fees were too high and regulation too burdensome, Governor Pete Wilson vetoed legislation to extend the sunset date of the Council (AB 2960, Firestone and Campbell), noting that despite the

Council having done much to rid California of its prior diploma mill status, the Council's activities were negatively impacting institutional owners livelihood.

In 1997, AB 71 (Wright) and AB 1286 (Calderon) were introduced. Initially, AB 71 extended the sunset date for the Council while AB 1286 transferred the responsibilities of the Council to the Bureau for Private Postsecondary and Vocational Education (BPPVE) within the DCA. It was reported that the Governor's Office supported moving the functions of the Council to the DCA. Ultimately, AB 71 was amended to transfer Council functions to the BPPVE within the DCA, and was subsequently signed into law by Governor Wilson.

Regulatory efforts at DCA by BPPVE. The BPPVE operated at DCA from 1998 through 2007. In 2000, the California State Auditor found that DCA was not fulfilling its oversight responsibilities. In 2002, an internal DCA audit made a number of recommendations to BPPVE to improve operations and during the 2002 Legislative sunset review hearings, BPPVE committed to, among other activities, simplify and streamline procedures and adopt regulations that ensured comprehensive and effective application of the law. In 2005, an Operations Monitor report found that BPPVE had not addressed many of the fundamental problems with oversight and enforcement; finding that the BPPVE both inadequately protected consumers and impeded the expansion of quality postsecondary and vocational educational opportunities. In 2007, the BPPVE was allowed to sunset. At the time of its sunset, the BPPVE had not addressed many of its fundamental problems with oversight and enforcement. However, as the Monitor's report identifies, many of the root causes of enforcement and oversight failures can be traced back to lack of funding, insufficient staffing, and confusing and conflicting provisions of law.

Establishment of the BPPE. On January 1, 2010, AB 48 (Portantino), Chapter 310, Statutes of 2009, created the Act; the bill established new minimum standards and disclosure requirements for institutions and provided the BPPE an array of enforcement tools to ensure institutions comply with the new law. Specifically, BPPE:

- 1) Licenses approximately 1,200 non-exempt private postsecondary educational institutions, serving over 300,000 students, operating in California. The Licensing process is designed to ensure that institutions meet minimum operating standards. Accredited institutions are provided approval by means of their accreditation (meaning BPPE does not review these institutions at the point of licensure).
- 2) Conducts announced and unannounced compliance inspections of licensed/approved institutions on a two-year cycle. Inspections are designed to ensure institutions are in compliance with minimum operating requirements. If a compliance inspection uncovers a minor violation, the institution is provided a notice and the opportunity to correct. If a compliance inspection uncovers a material (major) violation, the compliance inspector makes a referral for an investigation of the violation.
- 3) Investigates complaints received by the general public and internal investigative referrals. Most investigations are handled internally by BPPE staff; however, BPPE does have authority (and has utilized) the DCA Division of Investigations for complaints that require undercover investigations and/or the presence of a sworn peace officer.
- 4) Disciplines institutions that have been found in violation of law through citations (handled by BPPE staff) and formal actions (BPPE is represented by the Office of the Attorney General).

- 5) Administers the Student Tuition Recovery Fund (STRF) to provide refund to students affected by the closure of an institution.
- 6) Collects data through Annual Reports provided by licensed/approved institutions.

It should be noted that the Act provides a significant amount of discretion to the BPPE/DCA in regards to the use of oversight and enforcement powers. As outlined in the committee analysis of AB 48, "The degree to which the student protections outlined in this bill will result in greater protection for students will depend largely on the degree to which the Bureau takes action to ensure institutional compliance with this Act."

The Bureau's ability to enforce the Act appears to have been significantly impacted by delays in staffing and overall understaffing. The Act became effective on January 1, but it wasn't until the passage of the 2010-11 Budget Act, on October 8, 2010, that BPPE was appropriated funding to support operations. At that time, a statewide hiring freeze impacted BPPE's ability to fill positions in a timely manner. It wasn't until May 2012 that BPPE had filled all 57 authorized positions. Of note, BPPE was initially provided 71 positions to support operations; subsequent statewide personnel reductions (required of the Administration despite the BPPE operating fund having more than adequate revenue to support 71 positions) reduced positions to 57. Significant backlogs in the processing of licensing applications led to the authorization of 9 additional limited-term positions in the 2013-14 Budget Act. Currently, the 2014-15 Budget Act proposes an additional 11 positions to support enforcement activities.

BSA review of the BPPE. In March 2014, the California State Auditor released an audit report, as required by AB 48, which reviewed the effectiveness and efficiency of BPPE operations. The report found that BPPE has consistently failed to meet responsibilities to protect the public's interest. Specifically, the report notes that BPPE failed to conduct compliance inspections, failed to identify and sanction unlicensed institutions, failed to appropriately respond to complaints against institutions, and failed to ensure students were provided with accurate disclosures prior to enrollment. The Auditor made a number of recommendations to BPPE/DCA; generally BPPE/DCA agreed with the auditor's assessment and recommendations. Since release of the audit report, the BPPE Bureau Chief has worked to identify solutions and take corrective actions.

Major issues addressed in this bill. The major changes to the Act proposed in this bill were discussed on April 21, 2014, at a Joint Oversight Hearing that included the Senate Business, Professions and Economic Development Committee, the Senate Education Committee, the Assembly Business, Professions and Consumer Protection Committee, and the Assembly Committee on Higher Education (Sunset Hearing). These changes include:

- 1) Bureau to Board. This bill would reconstitute BPPE as a board comprised of members from specified categories with experience and expertise in postsecondary education. As discussed at the Sunset Hearing, after numerous audits and analyses by internal and outside agencies, multiple legislative investigations and significant public comment, "it has become abundantly clear that the bureau structure at DCA for oversight of private postsecondary institutions does not work." The author believes that an independent board structure would allow for increased public accountability and could provide clear direction to a regulatory entity about its functions, operations, priorities and organization, providing inherent leadership and a clear

path to fulfill its mission through the transparent decision making process undertaken by board members, in compliance with public meeting requirements.

The California Coalition of Accredited Career Schools (CCACS) argues that transitioning the BPPE to a Board would be disruptive and impact ongoing BPPE responsibilities. CCACS also argues that there has not been proper analysis as to why a board would function better to protect the interests of students and the public.

The Center for Public Interest Law (CPIL) argues that a Board will ensure meaningful and sensible sunset review through the ability to hold board members responsible for Board actions, and transparency and accountability through Bagley-Keene Open Meeting requirements. CPIL notes that "the seemingly intractable administrative and operational problems that have afflicted this government agency warrant trying a different accountability structure. A board may not be better but we know that the BPPE has recently been insufficient, as repeatedly documented by outside monitors, most recently the Bureau of State Audits. It is time to try something new."

***To address board transition and management, ensure sufficient postsecondary education expertise, and provide ongoing support to the Board and Executive Officer, Committee staff recommends establishing between three and five deputy positions.***

***Committee staff also recommends providing statutory guidance to carry over existing BPPE regulations in Education Code section 94877, but providing the Board clear authority to amend those regulations, or promulgate new regulations, as necessary.***

Committee staff notes that, according to CPIL, "over the past four decades, owing to pressure from the Legislature mindful of the problem of regulatory capture, the composition of the state's regulatory boards has changed, such that non-health boards consist of a majority of public members. In SB 1247, there needs to be a clearer majority of those who do not directly or indirectly have ties to the entities being regulated. The author may wish to review this matter in the Assembly Business, Professions and Consumer Protection Committee.

- 2) Licensing backlog. According to the California State Auditor, BPPE faces a significant backlog in licensing applications. BPPE has established internal timelines for application review, but these timelines have not been met in large part due to the existing application backlog. In the 2013-14 Budget Act, BPPE was appropriated funding to support 8 additional licensing analysts. These positions have been filled and, according to the Chief, BPPE is working to clear the licensing backlog. This bill would require all applications pending on January 1, 2015 to be acted on by January 1, 2016.

***To address ongoing licensing timelines, Committee staff recommends enacting statutory guidance on appropriate timelines for accredited and unaccredited application processing; appropriate timelines can be taken from BPPE current goals.***

- 3) Unlicensed activity. BPPE is required under the Act to proactively identify unlicensed institutions. However, according to the State Auditor, as of January 2014, BPPE did not have a program, nor the dedicated staff and resources, to identify and take action against institutions operating without a license. BPPE's goals related to unlicensed activity are to bring the institution into compliance with the law and have them seek approval, but in some

instances compliance may not be the best option and BPPE may need to take stronger steps to ensure that students are not taken advantage of or deceived. Some schools operating without approval would never be able to obtain approval and swift action, according to due process, may need to be taken. This bill would allow the Bureau to post institutional denials on the Web site, with a specified consumer disclosure, to make consumers aware when an institution is operating without a license and is unable to meet minimum operational standards.

***Committee staff recommends an amendment to clarify that institutional denial information shall be posted on the website once the decision has been made final.***

- 4) Coding academies. A number of online programs, as well as brick and mortar schools, provide technology-related skills and training opportunities in an attempt to meet the need for employees with a background in these specialized areas. These "coding boot-camps" are not accredited and do not accept Title IV money; however, many students borrow significant sums of money through private loans, credit cards, or friends and family, to pay for the program and the time away from work. In January, BPPE issued cease and desist letters to a number of coding boot-camps, with the intention of bringing them into compliance with the Act by becoming licensed. Some of these institutions have initiated the application process while others have contacted the Legislature seeking an exemption from state-level oversight. This bill would require the Board to establish a task force to review whether these types of education and training programs should be provided special consideration under the Act. Committee staff notes that it is unclear why institutions offering programs in technology should be treated any differently than institutions offering programs in other high demand fields, and suggests that the author consider removing.

The bill would also authorize the Board to delay processing applications for these institutions until the work of the task force is completed (January 1, 2016). ***However, Committee staff recommends removing this provision; institutions that have sought Bureau approval should not have their applications delayed at the discretion of the Board.***

- 5) Veterans serving institutions. This bill would require that for-profit institutions and non-degree granting non-profit institutions receiving veteran benefits be approved by the Board and subject to the Act. This change is largely consistent with the policy approved in AB 2099 (Frazier), heard earlier this year; except that AB 2099 authorizes for-profit institutions that meet the Cal Grant standard (cohort default rate and graduation rate) to continue to be exempt from the Act.

According to a recent report by the Legislative Analyst's Office (LAO), cohort default rates are susceptible to manipulation by larger institutions. According to LAO, many large for-profit institutions employ "default management" strategies to keep their rates below thresholds. Strategies include forbearance and deferment, with most students ultimately increasing their total debt, and combining campuses of multi-site institutions in ways that minimize the aggregate default rate. Some institutions encourage use of private loans, which have less favorable terms for students but are not included in default rate calculations.

According to information provided by the author, for-profit schools have come under particular scrutiny for practices used to recruit military veterans. Recently, Attorney General Kamala Harris filed suit against Corinthian Colleges, Inc. (CCI) for false and predatory

advertising, intentional misrepresentations to students, securities fraud and unlawful use of military seals in advertisements. According to the complaint, CCI included official Army, Navy, Air Force, Marine Corps and Coast Guard seals in mailings and on Web sites.

The for-profit trade association (California Association of Private Postsecondary Schools, CAPPS) opposes this change, arguing it is unfair and punishes an otherwise exempt institution. CAPPS argues there is no policy justification for this change.

The Veterans Legal Clinic supports this proposal and argues that " If a business elects to enroll veterans, ensuring the business has at least been subject to some kind of pre-screening for its quality, is required to provide the veteran overall school performance information required by California law prior to the veteran enrolling, and offering the veteran a place to file a complaint and get it resolved short of litigation, these are the least things we can do to protect them and their one-time benefits."

The Veterans Legal Clinic has also recommended altering the definition of "default" to include forbearance on repayment of student loans – as an attempt to address cohort default rate manipulation. However, this change appears unnecessary based on the requirement that all for-profit colleges that accept Title 38 funds be approved by the Board. Should this requirement be amended, the author may wish to reconsider this recommendation.

- 6) Unaccredited degrees. This bill would require unaccredited institutions offering degrees to obtain accreditation by January 1, 2017. According to the author, unaccredited degrees can limit a student's career options. Some career fields and employers require degrees from accredited colleges; this is especially true in professions like education and health care, where certification or licensure is a pre-requisite for employment. The author believes students will be better served, and the Bureau's workload decreased, by amending the Act to require that degree granting programs be accredited. Unaccredited programs would still be able to operate in the state and receive approval, but instead could offer certificates or other types of completion awards other than a degree.

CAPPS opposes this requirement, arguing that "the legislature has no expertise or reason to eliminate non-accredited degrees other than an opinion (not factually proved) that these degrees would be better as accredited. Many existing non-accredited degrees are specialty degrees that are not included in the scope of accreditation of any National Accreditor or WASC." Committee staff notes that this requirement would not prohibit instruction in these areas, but would require institutions that are unable to obtain accreditation to refer to these educational attainments as "degrees".

CAPPS notes that an accreditation cycle may take longer than two years. *Committee staff understands that accreditation, depending on the type of institution and the rigorosity of the accreditor, may require a timeline beyond two years. It is not the intent of the author to discourage institutions from seeking accreditation from accreditors with high quality standards. Therefore, Committee staff recommends an amendment authorizing the Board to extend the two-year timeline for an individual institution upon satisfactory evidence provided by the institution that progress toward accreditation is being made.*

- 7) Student Tuition Recovery Fund. One important tool to assist students is the Student Tuition Recovery Fund (STRF). The STRF is designed to relieve or mitigate losses suffered by

students; the Bureau has regulations that limit student claim eligibility to cases when an institution has closed abruptly. These restrictions may be the result of insufficient funding in the former-Bureau recovery fund. Currently, STRF has over \$25 million; there appears no reason to strictly restrict student eligibility for STRF claims. This bill would expand the uses of STRF to include all students who have suffered a loss due to an institution's violation of the Act.

***Committee staff recommends clarifying language to specify that STRF awards cannot exceed the student tuition/attendance costs; to clarify that judgments must be based on a violation of law and reviewed by the Board prior to claims processing; and to provide the Board authority to seek repayment to STRF from the institution found violating the law.***

- 8) Disclosures to students. Many schools regulated by BPPE are subject to multiple requirements for disclosures from multiple entities; these institutions may be subject to duplicate and conflicting data submissions by these multiple regulatory bodies. For example, an institution may be required to report student outcome data by BPPE, USDE, the California Student Aid Commission (CSAC), and the institutional accrediting agency. A cursory review shows that there may be a number of disclosure requirements that can be simplified and streamlined to better provide students the real-time data they need to make informed decisions about enrolling in a particular educational program. This bill would require the Board to report to the Legislature on or before October 1, 2015 regarding streamlining reporting.

***To clarify the author's intent, committee staff recommends the following amendments:***

94929.9. (a) The board shall report to the Legislature on or before October 1, 2015 on whether data reporting and disclosure requirements under the Act efforts to streamline could be appropriately consolidated with reporting required by other regulatory bodies, including, but not limited to, reporting required by the United States Department of Education, the California Student Aid Commission, or accrediting agencies. ~~The board's approval process for institutions while ensuring~~ It is the intent of the Legislature that the same or similar data information, as is required to be reported to the board pursuant to this article, is being reported to students in a clear and conspicuous manner.

(b) (1) A report to be submitted to the Legislature pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed January 1, 2019.

- 9) Individual institutional fee adjustment. BPPE is currently granted broad authority to reduce an institution's fees if it determines that the annual cost of providing oversight and review of an institution is less than the amount of money the institution pays. This provision leaves BPPE in the uncomfortable position of having a large pot of unspent money and negotiating with unhappy licensees who use that factor to try to require the Bureau to reduce their fees. The former BPPVE faced a number of criticisms for regulatory functions being potentially left to staff and this provision has the potential to create a haphazard system of fee collection, and leaving what should be a consistent approach to the discretion of staff. If this provision were used by schools on a regular basis, the current BPPE, facing its many regulatory challenges, could very well be asked to reduce fees for the bulk of its licensee population.

This bill deletes the provision authorizing BPPE staff to decrease fees if it determines that the cost of regulation of an institution is less than the cost of fees.

- 10) **Compliance inspections.** BPPE is currently mandated to perform at least one announced and one unannounced compliance inspection on each approved institution during each two-year cycle. BPPE is not meeting its statutory mandate. While staffing and organizational challenges have played a part, BPPE also lacks any necessary prioritization processes or standards by which to allocate its limited staff to first inspect the schools that may need the most attention. This bill would require compliance inspections to occur on a five year cycle and grant the Board flexibility in determining when to conduct announced and unannounced inspections based on an evaluation of risk to students.
- 11) **Complaint processing.** Accepting, processing and acting on complaints from students is one of the key mechanisms by which BPPE can ensure that licensees are in compliance with the Act and that students have options for action in the event that they are the victims of fraud or taken advantage of by schools. The timely processing of complaints provides BPPE with critical information about their licensees and could assist in prioritizing workloads. BPPE faces significant delays in the time it takes to process complaints which could result in necessary action being taken against institutions or the activation of necessary steps to assist students. This bill would require the Board to establish a timeline by which complaints must be processed, and establish procedures to prioritize complaints based on potential harm to students and consumers.

***Committee staff recommends an amendment authorizing the Board to contract with the Attorney General, or other appropriate agency, to provide necessary staff training. Committee staff also recommends specific training focused on checking the accuracy of the data contained in consumer disclosures.***

This bill would also require the Board to contract with the Attorney General for investigative/prosecutorial services if noncompliance transcends the individual complainant (reaches "class action" status) or the complexity of an investigation requires additional expertise. CPIL supports this amendment, noting "BPPE has neither the resources nor litigation expertise of the Consumer Rights Division of the Attorney General's office; the division currently suing Corinthian. This explicit referral is therefore a welcome channeling of complaints to the law enforcement agency best and most appropriate for them, leaving the BPPE as the appropriate and primary location for addressing individual student complaints." The accredited institutional trade association, CCACS is requesting removal of this provision, arguing "this provision is unnecessary and further diminishes the agency's ability to conduct the regulatory program it is authorized to implement."

- 12) **Staffing resources.** According to BPPE, even with recent increases to staffing levels, additional positions may be necessary to meet current mandates because of backlogs created during the budget and hiring delays. The BPPE notes that a current review of the BPPE workload and process improvements began on May 13, 2014, and is expected to take approximately five months to complete. This information is intended to inform future BPPE staffing and process improvements. This bill, consistent with BPPE current plans, would require the Board to contract for an independent review of staffing resources and provide the Legislature, within 30 days of the review, a copy of this review along with an overview of how the board intends to move forward.

***Committee staff recommends an amendment clarifying that submission of the independent review currently underway at BPPE will satisfy the requirements in this section.***

***To address concerns raised by institutions regarding fee amounts, Committee staff recommends requiring this report to include a review by the Board regarding estimated costs of full implementation of Board activities and estimated fee revenues with existing fee levels. The Legislature can use this information to review appropriate fee amounts.***

***The committee may wish to establish a deadline for the report required under this provision; Committee staff recommends March 1, 2015.***

- 13) Sunset extension. This bill would extend the sunset date for the act by two years, until January 1, 2017, at which time the Board would come back before the Legislature for review of the Board's implementation of the law and interpretation of Legislative intent.

***The Committee may wish to consider establishing a five year sunset to provide the new Board adequate time to bring itself up and running. The Legislature retains the authority to propose legislation regarding the Act at any time, regardless of sunset date. To ensure the Board is meeting Legislative intent and mandates, periodic reporting requirements could be established and/or enhanced.***

Major issues not addressed in this bill. A number of issues were raised during the Sunset Hearing which are not addressed in this bill, including:

- 1) Exemptions. Existing law provides exemptions from the Act for all regionally accredited institutions. At the time of passage of AB 48, consumer groups raised serious concerns about the lack of protections provided for students attending for-profit, regionally accredited institutions due to these exemptions. As passed by the Assembly, AB 48 provided an exemption for WASC-accredited institutions, but not institutions accredited by other regional accrediting agencies. At the time of drafting AB 48, there were no verifiable criteria to differentiate between regional accreditors and, as a result of concerns over constitutionality of the provision; AB 48 was amended by the Senate to grant an exemption to all regionally accredited institutions. In December 2013, the LAO noted that the business practices of regionally accredited institutions are the least well monitored, and that the Bureau has better recourse for student complaints than accrediting agencies. Specifically, among other recommendations, the LAO recommended that the Legislature establish criteria to distinguish low-risk from high-risk regionally accredited institutions and target business practice oversight to high-risk institutions. If the author and committee are interested in pursuing the LAO recommendation, low- and high-risk institutions could be identified by:
  - a) Accrediting agency transparency. While at the time of passage of AB 48, there were no discernable differences between regional accrediting agencies, one important difference exists today in regards to public accountability and transparency; in 2012, WASC became the only accrediting agency to require public disclosure of accrediting documents.
  - b) School ownership. As previously indicated, "independent" institutions have operated in California under general non-profit corporation requirements for many years. The legislature could focus Board business practice and consumer protection oversight on for-profit institutions.

- c) Track record or performance criteria. As previously indicated, California has established performance criteria (cohort default rate and graduation rate) for institutions that participate in the Cal Grant program. The Legislature could establish similar criteria for institutions deemed "high-risk".
- 2) Fees. Numerous licensees have raised concerns regarding BPPE fee levels; in particular institutions have highlighted the BPPE Administrative Fund reserve as evidence of excessive fee levels. However, much of the BPPE reserve can be traced to delays in spending authority and hiring of staff. Considering that the BPPE is currently failing to fulfill its statutory mandates and there remain questions regarding the adequacy of current staffing levels, reducing fee levels is probably premature at this point. Committee staff recommends the Committee consider re-evaluating fees following receipt of the independent staffing review.
- 3) BreEZe. DCA is in the process of establishing a new integrated licensing and enforcement system, BreEZe, which would also allow for licensure and renewal to be submitted via the internet. BreEZe will replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology. BPPE currently utilizes a different database than the majority of DCA entities; Schools Automated Information Link, or SAIL, is a flawed system to manage all of the data, licensing, complaints and enforcement tools necessary for BPPE to fulfill its mission and statutory mandates, as it is unable to manipulate data and does not track basic information like enforcement actions and timelines. The State Auditor highlighted numerous instances where the inadequacies of SAIL prevent BPPE from having key information and performing key functions. According to DCA a complete assessment of the Bureau's data needs, and plans for conversion to BreEZe will take place in spring of 2015, a full year from now and five years after the BPPE was reconstituted.

***Committee staff recommends an amendment to require DCA to report to the Legislature by March 1, 2015, an update of anticipated timelines for BreEZe conversion and any intermediate efforts underway intended to improve information collection and tracking.***

- 4) Private Right of Action. The prior law contained a private right of action for students. A private right of action was not included in AB 48 as it was argued that the BPPE would have sufficient authority to protect students. It is true that BPPE has a number of options to enforce the Act and take action against institutions in violation of the Act. However, given the previously discussed struggles, BPPE has failed to meet its enforcement mandates, protect students who have been harmed by schools, and investigate complaints in a timely manner. Students in California may not fully be receiving the benefits of a robust regulatory structure. Consumer advocates have requested that the Legislature consider re-establishing a private right of action to ensure, in the absence of full implementation of the Act by the BPPE, students are protected.

Clarifying amendments. There are several areas in this bill where clarifying amendments may be necessary, including the following:

- 1) Transition provisions. Corrections to references to the prior law need to be updated and corrected to reflect this bill.

- 2) Education Code (EDC) §94816 redefines applicant to specify that an applicant is the owner of the institution and that approvals to operate are issued to an applicant. This change is intended to ensure the Board has sufficient oversight of those operating the institution. Committee staff suggests language be added to define "owner" as well as a clarification, to ensure compliance with federal regulations, specifying that an institution is approved to operate when an owner's application is approved.
- 3) Ability to benefit examinations. Given that these examinations are no longer approved by the federal government, statutory clarification on Board authority may be necessary.
- 4) EDC §94837 defines an educational program to mean courses or modules that provide education or training and experience leading to the award of a recognized educational credential, such as a degree or diploma. As many current educational programs provide training intended to lead to career enhancement or marketability, and award a certificate of completion, this definition should be amended accordingly.

***The committee may wish to direct Committee and author staff to draft and incorporate any necessary technical and clarifying amendments.***

REGISTERED SUPPORT / OPPOSITION:

Support

The Children's Advocacy Institute  
Center for Public Interest Law  
Veteran's Legal Clinic  
Young Invincibles

Opposition

California Coalition of Accredited Career Schools

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