

EDUCATIONAL APPROVAL BOARD

2015-17 BIENNIAL BUDGET OPPOSING EAB ELIMINATION POSITION PAPER

SUMMARY

On February 3, 2015 the Governor submitted to the Legislature his proposed state budget for the 2015-17 biennium. The Joint Committee on Finance (JCF) introduced the budget on behalf of the Governor as Assembly Bill 21 and Senate Bill 21. Included in the budget is a recommendation to eliminate the Educational Approval Board (EAB) and virtually all state oversight of private postsecondary education and training.

HISTORY

The EAB came into existence after WWII when the Governor's Educational Advisory Committee (GEAC) regulated for-profit schools for veterans who attended using their GI Bill benefits. In 1957, the Legislature expanded GEAC's responsibility to protect all Wisconsin residents from fraud and misrepresentation by overseeing for-profit schools.

The GEAC began issuing permits to schools in 1961 and was renamed the Educational Approval Council (EAC) four years later. Following the Kellet Commission's governmental reorganization bill in 1967, the EAC was given its current name. Changes made in 1971 made it mandatory for "all proprietary schools" to be approved before operating in the state.

Through its six decades-long experience in working with for-profit schools, the EAB has found that helping for-profits become "good institutions with quality programs" provides the best consumer protection for both students and the institutions. Today, the EAB is a nationally recognized leader in sensible and innovative oversight of private postsecondary education.

BUDGET LANGUAGE

According to the summary documents, the Governor's budget proposal to eliminate the EAB is intended to "reduce the regulatory and fiscal burden on private for-profit education entities," which would be accomplished by eliminating all of EAB's school approval, review and investigatory standards and by transferring the EAB's two other core functions – authorizing institutions and resolving student complaints – to other agencies.

The Budget in Brief indicates that "[s]chools requiring state authorization for federal financial aid purposes will be able to receive authorization from the new Department of Financial Institutions and Professional Standards [(DFIPS)]; otherwise, schools may operate without the impediment of a lengthy approval process." It also says that "[s]tudent concerns and complaints will be handled by the Department of Agriculture, Trade and Consumer Protection [(DATCP)]," which will have "broad authority to address complaints against for-profit and nonprofit private institutions of higher education."

If the Governor's budget proposal is adopted, **Wisconsin will be the only state in the nation without any meaningful oversight for private postsecondary education institutions.** To understand what kind of chaos EAB's elimination could cause, one only needs to look at the state of California as a case study when its oversight agency was eliminated and the for-profit institutions operated with no oversight.

DISCUSSION

Unfortunately, the EAB was not consulted about the Governor's budget proposal. In the absence of any discussion with the subject matter experts who work on a daily basis with the for-profit institutions and the students they enroll, the proposal is based on misconceptions and fails to understand its adverse impact and unintended consequences.

From the summary documents, the intent of the Governor's budget proposal is to decrease the regulatory and fiscal burden for-profit postsecondary education institutions face. However, an examination of the EAB's standards and fees shows that neither is a significant burden for EAB-approved institutions.

Fiscal Burden

The EAB is funded entirely by program revenue (PR); therefore it operates at no cost to taxpayers. Its operating budget of \$605,000 in FY 15 is supported by assessing fees for the work it performs. While institutions subject to EAB oversight pay these fees, they amount to less than \$1.70 for every \$1,000 that an institution generates from the tuition and fees from Wisconsin residents. Last year, EAB-approved institutions charged Wisconsin residents \$351.6 million in tuition and fees. Two years ago, institutions charged \$437.0 million in tuition and fees.

The proposal fails to take into consideration that under current law, 10 percent of the revenue received by the EAB goes directly into the state's general fund. As a result, the Governor's budget proposal is a net loss for Wisconsin's budget and will actually increase the budget deficit by roughly \$70,000.

Regulatory Burden

The notion that becoming an EAB-approved institution or maintaining that approval creates a burden is also misplaced. Upon learning of the proposal in the Governor's budget, many institutions are dismayed and have expressed concern that with no "level playing field," the postsecondary education landscape in Wisconsin will become the "wild-west." The vast majority of for-profit institutions welcome the EAB's oversight role because it provides legitimacy for the sector and has all institutions play by consistent set of standards.

Because of the EAB's delegated authority, the time it takes to approve an institution seeking initial approval can be as little as 5 to 10 business days, depending on the completeness of the materials submitted by the institution. At the same time, the EAB provides expertise in helping and advising small business owners in how to be successful in creating and operating a school, and in designing a school catalog so business policy and procedures are fully disclosed thereby helping the school protect itself.

Furthermore, the EAB has designed its approval process in a manner that recognizes authorizations granted by other entities, such as states, the federal government and accrediting agencies. It does so to alleviate duplication of effort and costs for institutions. In fact, the EAB is frequently told by institutions that it is one of the most efficient and reasonable state regulatory agencies in the county.

When it comes to institutions having to annually renew their approval, the EAB employs an innovative, nationally recognized web-based application which offers institutions an extremely efficient process. The EAB has offered help and advice to other states as they have pursued developing online application processes.

Oversight

While the summary documents seem to indicate that functions of the EAB would be assumed by either DFIPS or DATCP, the bill itself repeals almost all of the regulatory functions that exist in statute. EAB functions for false academic credentials, prohibited terms, and student complaints would be transferred to DATCP.

At the same time, DFIPS would be responsible for “authorizing” institutions. Since the bill eliminates all other EAB regulatory functions, schools would no longer need to comply with any educational-type standards in order to be approved. For example, there would be no requirements related to a refund policy for students, a written curriculum and program review, and school catalog to disclose costs and rules of the institution.

Under the bill, DFIPS would “authorize” private schools to operate in Wisconsin. The bill language mentions institutions that participate in the federal Title IV financial aid programs would need “authorization” from the newly created DFIPS, but the ambiguous language implies non-degree granting institutions not receiving federal aid would not require any “authorization” to operate in Wisconsin.

While the bill states that DFIPS “shall promulgate the rules and establish standards necessary to administer this section,” neither DFI nor DSPS currently has the staff or expertise to draft rules for the private, for-profit postsecondary sectors. Since all EAB staff and expertise are eliminated in the proposal, DFIPS likely will have to incur taxpayer costs to hire staff for the transition and implementation of the new “authorization” responsibility for the private, for-profit sector.

IMPLICATIONS

Complaints

Currently, the EAB only receives about 50 complaints a year, and opens even fewer formal investigations, despite approving nearly 250 institutions that enroll roughly 60,000 students. The small number of complaints is a reflection of the EAB’s effectiveness in preventing problems from arising in the first place. Since EAB staff has knowledge of the institutions and a relationship with staff, the EAB can often work with the school and students to resolve problems before they become formal, written complaints. Without any oversight, the number of complaints likely would increase dramatically.

Under the bill, the statutory provisions pertaining to the use of false academic credentials and

prohibited terms would become the responsibility of the DATCP, which would also handle student complaints about formerly approved EAB schools. However, **DATCP's authority to investigate complaints would not be expanded beyond its current authority, which is limited to unfair marketing and trade practices.**

While the budget summary documents claim DATCP will have broad authority to address student complaints, the reality is the only type of complaints that DATCP will be able to address are very narrowly defined and will need to rise to an extremely high bar. Complaints pertaining to educational quality, program offerings, treatment of students, refunds, etc., which are by far the most common types of complaints the EAB currently receives, will no longer be addressed by any state agency. Students would be forced to use the legal system, thereby increasing EAB-approved institutions costs of doing business.

According to DATCP's website, the Bureau of Consumer Protection already receives approximately 150,000 complaints yearly. With the likely increase in EAB-related complaints, it is unlikely that DATCP's current staffing levels will be sufficient to handle the influx and there may be a need to hire additional staff.

Closed Schools and Change of Ownership

In the past decade, the EAB has dealt with the closure of five institutions, affecting hundreds of students. Unfortunately, such closures are more common in the for-profit sector than the other sectors of education, and often occur abruptly with little or no notice. In addition, purchases, mergers, and acquisitions of larger for-profit entities take place frequently. One of the EAB's functions is to make sure students are protected when schools close and when there are ownership changes.

For example, on August 22, 2014, Anthem College closed its Brookfield campus giving students, staff, and the EAB two days' notice. For months, the EAB had been working with local partners because the campus was marked for closure or sale. In the two days after learning the doors would be locked, the EAB acted quickly and decisively on behalf of the 180 students that had been enrolled at Anthem by setting up teach-outs at Milwaukee Career College (MCC) for the Surgical Technologist and Medical Assisting programs; by arranging to have the program equipment relocated to MCC; and by working with Herzing University to accept Massage Therapy transfer students.

The EAB continues to oversee the situation to this day and is covering the costs associated with the teach-out and transfer of students with monies from its Student Protection Fund¹. In addition, the EAB negotiated with the alternative lender (Tuition Options) that many students had taken out loans through Anthem College, to write-off the debt they owed due to the institution's closing. To date, the EAB has committed more than \$500,000 to help students harmed by Anthem's abrupt closure.

The changes proposed in the budget do not provide the state an ability to address school closures such as Anthem College. Under the proposed bill, nearly 180 students would have been abandoned with a significant debt burden and there would be no state agency or state-administered student protection fund to assist the students.

Implementation

While the Executive Budget document seems to suggest the elimination of the EAB would **take place no later than** January 1, 2016, the bill itself contains language that clearly indicates the changes to repeal the EAB's authority would **take effect on** January 1, 2016. Specifically, the bill contains a provision under Section 9452 specifying that the changes eliminating the EAB "take effect on January 1, 2016, or on the day after publication, whichever is later."

The inconsistency has been brought to the attention of the DOA budget office, which responded in an email that "[t]he transfer of functions and elimination in relation to the board will be effective on or before January 1, 2016, which aligns with the creation of the new entity, the Department of Financial Institutions and Professional Standards. As with the formation of the new agency, **it is unclear as to when the transfer of functions and elimination of the board will take place**, but the language gives flexibility between the passage of the bill and January 1, 2016 for such actions to occur." (emphasis added)

Since the EAB was not consulted about its proposed elimination, questions about its transfer of functions and records to the new agencies remain unanswered. For example, how will new rules for the DFIPS be devised, drafted and implemented so for-profit institutions can be "authorized" in Wisconsin?

EAB Operations

While the actual date of when the EAB effectively would be eliminated is unclear, what is known is that the EAB would continue operations for some period of time during the first six months of FY 16. However, a review of the Chapter 20 schedule contained in the actual bill provides no funding to support such operations.

How the EAB's work will get done after the budget is passed is also unclear. If the proposal eliminating the EAB is included in the final version of the budget, what work should be done during the transition? For example, should the renewal of approval process for 2016 that begins in mid-July for institutions move forward? While this would not seem to make sense given institutions would no longer need EAB approval in 2016, not doing so would mean revenues to support the EAB during the first six months operations would not be generated.

The fact that no funding is authorized in the Chapter 20 schedule for FY 16 under the EAB's general operating appropriation [see s.20.292 (2), *Wis. Stats.*] also has been brought to the attention of the DOA budget office, which has indicated "**there is likely to be a technical errata submitted** for FY16 to provide funding for the first six months."

Collateral Impact

Currently, a number of other state agencies and boards rely on the EAB to approve schools that enroll Wisconsin residents, including the Department of Veterans Affairs (DVA), the Department of Transportation (DOT), the Board of Nursing, the Massage Therapy Board, and others. By eliminating the EAB, these entities will no longer be able to rely on knowing an institution has been formally evaluated, reviewed and approved to operate. In some cases, this will result in a significant amount of additional work for these other entities. For

example, the State Approving Agency within the DVA relies heavily on the EAB's approval of an institution as part of their review to determine if a veteran can use GI Bill and other benefits at an institution.

Eliminating the EAB will also have a direct impact on the other higher education sectors in the state, particularly the technical colleges and the in-state nonprofit colleges and universities. Although the impact on UW System institutions likely would not be as great, it too would be impacted by the EAB's elimination, particularly in the area of online, degree-granting education because the EAB currently oversees out-of-state, private colleges and universities, which seek to enroll Wisconsin residents – some 90+ institutions and 26,000 Wisconsin residents.

By eliminating the current rules by which for-profit institutions must comply, it will open the door for them to more aggressively compete both on-ground and online with the state's public and nonprofit institutions absent any checks and balances. Given the aggressive marketing and recruiting tactics employed by some for-profit institutions, enrollments at public and nonprofit sector institutions could well decline.

Should the EAB ultimately be eliminated, Wisconsin will be the only state in the nation without some type of meaningful oversight of for-profit institutions. As a result, the state will become a haven for sub-standard institutions, degree mills, and dubious foreign institutions looking for a United States location as past history shows in states with little or no regulation.