

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 548

52nd Legislature, 1st Session, 2015

Tracking Number: .198538.2SA

Short Title: Private College Surety Bond Increase

Sponsor(s): Senator John M. Sapien

Analyst: Ian Kleats

Date: March 12, 2015

Bill Summary:

SB 548 amends:

- the *Post-Secondary Educational Institution Act* to increase the amount of surety bond required for private colleges, universities, and career schools; and
- the *Out-of-State Proprietary School Act* to increase the amount of surety bond required for proprietary schools.

Among its provisions, SB 548:

- increases the minimum surety bond of private colleges, universities, and career schools to \$1.5 million (up from \$5,000);
- increases the maximum surety bond of private colleges, universities, and career schools to 50 percent of the school's gross annual tuition revenue in New Mexico;
- increases the minimum surety bond of proprietary schools to \$1.5 million (up from \$10,000); and
- removes a limitation on the maximum amount of surety bond required for proprietary schools.

If enacted, SB 548 would become effective on June 19, 2015 – 90 days after the end of the legislative session.

Fiscal Impact:

SB 548 does not contain an appropriation.

Fiscal Issues:

As noted in "Background," below, the amount of surety bond required for private college, university, career school, and proprietary school operations within the state has not been updated since 1994. However, since that time, tuition rates have continued to increase; the Higher Education Department (HED) bill analysis highlights that, in at least five instances, the surety bond may have been insufficient to cover compensation for students seeking redress from private institutions of higher education.

With respect to the potential fiscal implications to private institutions, HED's bill analysis suggests that schools can expect to pay 1.0 percent to 15 percent of gross annual tuition revenues to obtain the surety bond. In establishing the cost for a surety bond, HED considers a school's past performance, number of student complaints, and financial statements.

Also worth noting is the removal by SB 548 of maximum surety bond levels for proprietary schools, which includes online institutions of higher education that do not maintain physical campuses in the state. Uncapped surety bond amounts may inhibit the ability of certain online postsecondary education providers from operating in the state.

Substantive Issues:

SB 548 would apply to surety bonds for colleges, universities, career schools, and proprietary schools covered by the *Post-Secondary Educational Institution Act* and the *Out-of-State Proprietary School Act*. As defined in those acts:

- “career school” means a private postsecondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum;
- “college” or “university” means a private postsecondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate, master’s or doctoral degree or comparable confirmation of completion of the curriculum; and
- “proprietary school” means a nonpublic out-of-state school, academy or similar institution offering within New Mexico a course of instruction or training through correspondence or similar methods or offering within New Mexico a course of instruction or training to be conducted outside New Mexico, but does not include a private out-of-state postsecondary educational institution offering instruction or training within New Mexico, to any student within this state.

Public postsecondary institutions are exempted from the provisions of the *Post-Secondary Educational Institution Act*, and the *Out-of-State Proprietary School Act* exempts courses recognized by the State Board of Education (now the Public Education Department) for the purpose of complying with the *Compulsory School Attendance Law*.

HED's bill analysis notes:

- The purpose of the surety bond is to assist students who have suffered because of the failures of private schools. Recently, increased competition between for-profit higher education institutions is causing many schools to fail, which can include the abrupt closure of schools without warning to the students or to HED. In many cases, the students are in the middle of a semester or term, and frequently the student's credits are not accepted at other public or private institutions of higher education.
- In 2014, hundreds of schools failed in the United States, including all the Corinthian, Anthem, Heald, Everest, WyoTech, and Anamark schools. From those schools, the \$25,000 surety bond held by HED was insufficient to compensate the losses of any more than two students. When a lawsuit was filed, the department tendered the surety bond to the registry of the district court to be divided as the court found to be equitable.

- HED is hoping to join the State Authorization Reciprocity Agreement (SARA) compact, which would require the enactment of legislation similar to SB 446 also introduced this session. In order to join SARA, New Mexico must file an application and must state it has adequate student protection for reimbursements of tuition when schools fail. This legislation may help assure the protection of students in New Mexico.
- In order to be authorized by HED, private schools must demonstrate financial stability. One indication of stability is a one-to-five rating promulgated by the US Department of Education. In addition to that rating, HED requires private schools to demonstrate at least \$50,000 of cash at all times.

Background:

With respect to proprietary schools:

- the enactment of the *Out-of-State Proprietary Schools Act* through Laws 1971, Chapter 304, established a surety bond of \$5,000; and
- Laws 1994, Chapter 108, changed this requirement to its current minimum of \$10,000 and maximum of \$25,000.

The amount of surety bond required for colleges, universities, and career schools through the *Post-Secondary Educational Institution Act* has not been updated since that section of statute was enacted by Laws 1994, Chapter 108.

Committee Referrals:

SEC/SJC

Related Bills:

SB 446a *Interstate Distance Education Act*