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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/13

SPONSOR SJC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Public Peace, Health, Safety, Welfare of State SB 638/SJCCS

ANALYST Hartzler-Toon

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$136.2	\$136.2	\$272.4	Recurring	Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act: Higher Education Department, Policy Development and Institutional Financial Oversight

Duplicates HB 467, Registration of Accredited Colleges

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Higher Education Department (HED)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Judiciary Committee's substitute for Senate Bill 638 (SB 638) amends the Post-Secondary Educational Institution Act, Sections 21-23-2 et seq. NMSA 1978, to comply with amendments to federal law (20 U.S.C. 1001 and 1002, 34 C.F.R. 600.9) regulating for-profit postsecondary institutions. The bill (1) removes full or partial exemptions from state laws for out-of-state institutions with a physical presence in New Mexico and (2) requires private, for-

profit postsecondary institutions to register with the state and adopt procedures for resolving student complaints. The bill also makes technical corrections, referring to the HED and not the former Commission on Higher Education.

### **FISCAL IMPLICATIONS**

Senate Bill 636 does not contain an appropriation. However, the bill will require the HED to revise its regulations and implement the registration and validation process described in the bill. These operational costs will be supported by other state funds, or those fees paid by the institutions regulated under the Post-Secondary Educational Institution Act. Both the LFC and Executive recommended the HED's FY14 expansion request for other state funds, totaling \$136,200, to support additional FTE and costs.

While SB 638 amends every section of the Post-Secondary Educational Institution Act, the bill does not increase initial registration or licensure renewal fees authorized in Section 21-23-6.3 NMSA 1978 and generally described in NMAC 5.100.2.31 (2005).

### **SIGNIFICANT ISSUES**

More students are attending private, for-profit postsecondary institutions to secure certificates and degrees. As student attendance has increased, so has student indebtedness and loan default rates. Further, many private, for-profit postsecondary institutions have not delivered the types of education and training marketed to students. These actions led the federal government to

- refine the institutional programs eligible for receiving federal financial aid under Title IV of the Higher Education Act, as amended;
- make sure only eligible students were receiving federal financial aid; and
- require that states authorize private, for-profit institutions eligible to provide educational programs.

Senate Bill 638 addresses this last component. The HED notes that SB 638 imposes various duties on the institution seeking licensure under the Post-Secondary Educational Institution Act, mandates the submittal of certain information to the HED, and requires the HED approve an institution's student complaint policies. The bill also applies these requirements to some regionally-accredited institutions that are currently exempt under the Post-Secondary Educational Institution Act. According to the department, SB 638 should address the federal criteria for the state authorizing private, for-profit institutions.

### **PERFORMANCE IMPLICATIONS**

The department does not have performance measures for the private and proprietary schools program. The LFC has recommended that measures be developed, particularly if additional FTE are authorized for FY14.

### **ADMINISTRATIVE IMPLICATIONS**

The federal law will be enforced as of July 1, 2013. The department must amend its regulations in accordance with federal law.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The HED's operating budget includes funding for the private and proprietary schools program. For FY14, House Bill 2 includes (1) an appropriation to the HED's private and proprietary schools program that funds an additional 2 FTE and associated operating costs and (2) budget adjustment authority allowing for increases totaling up to \$20 thousand from the other state funds category to review regulations and conduct program enforcement. House Bill 2, as passed by the House, funds a total of 4 FTE working in this program. Current and proposed positions and operating costs are funded with other state funds, the initial and renewal licensure fees paid by the regulated schools.

House Bill 467, as passed by the House Education Committee, is a duplicate of SB 638.

**OTHER SUBSTANTIVE ISSUES**

The National Consumer Law Center's report "State Inaction: Gaps in State Oversight of For-Profit Higher Education" recognizes federal and state roles in protecting students and taxpayers from certain for-profit institutions. States frequently rely on consumer protection laws to ensure schools do not make false representations about enrollment, completion, job placement, equipment and teachers, and manipulation of fees and other records. New Mexico may wish to follow other states' leadership on amending the state's consumer protection laws to explicitly address private, for-profit postsecondary institutions authorized by the HED to offer services.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The HED reports that it can request an extension from the U.S. Department of Education, the department authorized to enforce applicable federal laws. It is unlikely that the state would receive an extension, since provisions of the federal rule requiring these changes has been litigated in federal court for years. The provisions to be enforced have not been subject to litigation.

THT/blm