

California Legislature Takes Summer Break With Key Higher Education Bills Still in Air

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The California Legislature began its summer recess on July 12 with a package of bills with broad implications for all institutions operating under BPPE authority still awaiting further Senate action. All seven of the original bills passed the Assembly with little resistance, but several of the proposals have undergone substantial amendments in the Senate and one of the most contentious bills has been withdrawn by its author. Despite these developments, the remaining package could have substantial impact on many institutions located or enrolling students in the State.

The Legislature will reconvene August 12, and under its rules, all pending bills must pass the Senate Appropriations Committee by August 30 and be voted on by both chambers by September 13. With these deadlines looming, we've summarized the trajectory of the bills over the past few months, as well as the likely next steps.

[AB 1340](#) – Gainful employment

Where it started: [AB 1340](#) was intended to add state-level gainful employment (GE) requirements, similar to those imposed under federal law, to institutions subject to the California Private Postsecondary Education Act (CPPEA). Institutions subject to the CPPEA that offer programs to prepare students for gainful employment (as defined by the federal GE regulations) would have been required to satisfy either the federal debt-to-earnings rate thresholds established by the 2015 GE Rule or the graduation placement rate requirements provisions of the 1989 Maxine Waters Act (which have not been in effect since 2007). Institutions failing to satisfy either requirement would have been prohibited from enrolling California residents in the failing GE program. The bill also would have required institutions subject to the CPPEA to report certain student data to BPPE.

Where it is now: After undergoing several amendments in the Assembly, the bill passed and was sent to the Senate. The Senate Business, Professions and Economic Development Committee (BPED) amended the legislation to remove institutions' obligations to comply with either the GE Rule or requirements under the 1989 Maxine Waters Act and reduces institutions' reporting requirements to BPPE. Under the current draft, institutions must report to BPPE certain information regarding the institutions' graduates, including the program in which the student was enrolled and the graduates' student loan debt. BPPE will also disclose program- and institution-level statistics regarding the earnings levels of graduates and student debt information on its own website.

What's next: AB 1340 was referred to the Senate Appropriations Committee and is scheduled for a hearing on August 12. Since the bill was first introduced, the US Department of Education rescinded the federal GE Rule, and it is unclear what, if any, impact the rescission would have on the passage of AB 1340.

[AB 1341](#) – Nonprofit conversions

Where it started: The intent of [AB 1341](#) has been clear from its introduction: increase scrutiny of institutions that claim to be or have plans to convert to nonprofit status. The original version of the bill added a new definition of "nonprofit corporation" that would give the California Attorney General (AG) discretion to determine an institution is not a nonprofit for California education regulatory purposes, even if it is recognized by the Internal Revenue Code as 501(c)(3) tax-exempt, charitable organization.

Where it is now: AB 1341 passed the Assembly without any amendments. On the Senate side, the BPED Committee made several clarifying amendments. Still, the substance of the bill remains largely intact in its original form. The bill still prohibits BPPE from verifying an institution's exemption from the CPPEA based on its nonprofit status or contracting to handle complaints for a nonprofit institution located in California if the institution previously operated as a for-profit institution during any period on or after January 1, 2010, unless the AG determines, based on highly discretionary standards, that the institution meets this new definition of "nonprofit corporation." It is unclear if the US Department of Education's July [guidance](#) regarding California's [complaint procedure](#) for out-of-state nonprofit and public schools will instigate additional amendments to this bill when the legislative sessions resumes.

What's next: AB 1341 was referred to the Senate Appropriations Committee and is scheduled for a hearing on August 12. It has been clear since the Assembly's first hearing on AB 1341 that the bill faces little opposition. The lack of substantive amendments in the Assembly and Senate suggest that AB 1341 will likely pass the Legislature and be sent to the governor.

[AB 1342](#) – Nonprofit transaction approval

Where it started: [AB 1342](#) explicitly authorizes the AG to approve certain transactions of nonprofit corporations that operate private postsecondary institutions in the state (including the sale, transfer or conveyance of assets). The AG review and approval process AB 1342 outlines is substantially similar to the current process nonprofit hospitals in California must follow when engaging in certain transactions with for-profit entities.

Where it is now: Of the bills included in the legislative package, AB 1342 is the only bill that has not been substantively amended since being introduced in February, and the analysis in our [original post](#) remains relevant.

What's next: AB 1342 has already been evaluated by the Senate Appropriations Committee and has been placed on "Suspense." The Senate Appropriations Committee places bills on Suspense if they determine the bill would have an annual cost of more than \$150,000. Bills placed on Suspense are then considered at one hearing after the state budget has been prepared and the Senate Appropriations Committee has a better sense of available revenue. Given the lack of opposition to the legislation, it is likely AB 1342 will pass the Senate, unless the Senate Appropriations Committee determines there is insufficient available revenue in the budget to cover the estimated annual cost of the legislation.

[AB 1343](#) – 90/10 changes

Where it started: [AB 1343](#) was a spin on the US Department of Education's 90/10 metric, which imposes penalties on proprietary institutions that receive more than 90% of their revenues from Title IV sources. AB 1343 would have changed the formula from a 90/10 ratio to an 85/15 ratio and would include all federal and state funding (including workforce investment, Cal Grant, US Department of Veterans Affairs, and US Department of Defense funds) in the numerator (the 85 side of the ratio). Schools failing the 85/15 ratio would have been prohibited from enrolling new California students.

Where it is now: For many institutions, AB 1343 would have delivered a fatal blow by including all government revenue in the numerator. Given the grave consequences of the legislation, schools, students and other stakeholders mounted a significant, and ultimately successful, opposition to the bill. Although AB 1343 passed the Assembly, the bill's sponsor ultimately withdrew the bill.

What's next: AB 1343 will not see another committee hearing or vote for the remainder of this legislative session. That said, there likely will be efforts to revive the legislation or some version of it in future sessions.

[AB 1344](#) – Out-of-state registration

Where it started: In its [initial form](#), AB 1344 would have substantially altered the compliance obligations for out-of-state institutions (primarily proprietary institutions) that register with BPPE by subjecting those institutions to the entirety of the CPPEA. Significantly, this would mean registered institutions would also have to comply with any new requirements implemented by other bills in this legislative package.

Where it is now: Perhaps more than any other bill in this legislative package, AB 1344's amendments eliminate the most restrictive language in the original draft. After a series of amendments in the Assembly, AB 1344 no longer requires registered institutions to comply with the entirety of the CPPEA. Instead, the amended bill would increase the submission requirements for initial registration and provides the BPPE additional discretion in approving registration. Under the current draft of AB 1344, institutions seeking to register would need to disclose to BPPE:

- whether the institution or other institutions under the same control or ownership previously had authorization or approval revoked by a state or by the federal government
- whether any such institution had been subject to an enforcement action by a state agency or federal government within the last five years
- whether the institution is currently on probation, show cause or other adverse action by its accreditor, or has had its accreditation revoked or suspended with the last five years
- whether within the last five years the institution has settled or been adjudged to have a liability for a civil complaint alleging failure to provide educational services for more than \$250,000

Upon review of the information provided, BPPE would have discretion not to approve an out-of-state institution's registration. Further, once registered, institutions would need to disclose to BPPE the occurrence of any of the events described above within 30 days of their occurrence, which could then trigger disciplinary action, including potential suspension or revocation of registration.

What's next: AB 1344 was referred to the Senate Appropriations Committee and is scheduled for a hearing on August 12. Given that the bill has been modified to remove the most onerous provision (compliance with the entirety of the CPPEA) and to date there is no recorded opposition to the bill, we do not anticipate major obstacles to passage. That said, it is unclear if the US Department of Education's July [guidance](#) regarding California's [complaint procedure](#) for out-of-state nonprofit and public schools will instigate additional amendments to this bill when the legislative sessions resumes.

[AB 1345](#) – Incentive compensation

Where it started: As originally drafted, AB 1345 would have broadened BPPE's existing language prohibiting schools authorized to operate by that agency from providing any incentive compensation payments to any employee or third party for success in securing enrollments, continued enrollment, attendance, packaging financial aid and/or selling educational supplies and removed language that harmonized state law with the federal incentive compensation regulations. Importantly, the bill also has the potential to impact the relationship between schools regulated by BPPE and OPMs and other service providers.

Where it is now: AB 1345 has seen the majority of its amendments (or pending amendments) in the Senate, after a relatively uneventful journey through the Assembly. The recent flurry of activity is a testament to the level of concern over the scope of the bill and its inherent conflicts with federal regulation. Current amendments reflected in the published proposal would exclude any regionally accredited nonprofit institution from the prohibitions, but importantly, language [proposed by the author](#) during the Senate Education committee removed that exemption.

What's next: AB 1345 was referred to the Senate Appropriations Committee, but has not yet been scheduled for a hearing. This bill has substantial opposition and the author has indicated willingness to continue dialogue around additional amendments. At this point, it is unclear what form this bill will take or how it will fare in the Appropriations Committee.

[AB 1346](#) – Student Tuition Recovery Fund (STRF)

Where it started: [AB 1346](#) would broaden the scope of student eligibility for relief from the STRF by expanding the definition of "economic loss" to include any amounts paid in connection with attending the institution and all principal, interest and charges of any kind for a loan incurred by a student to pay those amounts.

Where it is now: The Assembly made some minor revisions to the bill before voting to pass the legislation. The bill has since sailed through the Senate policy committees without any additional amendments. The minor revisions made in the Assembly have no impact on the substance of the bill, and the analysis in our [original post](#) remains relevant.

What's next: AB 1346 was referred to the Senate Appropriations Committee and is scheduled for a hearing on August 12. The bill has received little pushback or feedback since its introduction and will likely pass easily through the remainder of the legislative process.

We have been closely monitoring this legislative package since we first wrote on the bills earlier this year, and we will continue to report on its progress when the Legislature returns, rested and ready, on August 12.

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