



**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on Colleges and Universities...**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

**Assembly**

**Record of Committee Proceedings**

**Committee on Colleges and Universities**

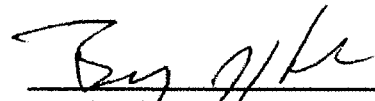
**Clearinghouse Rule 05-112**

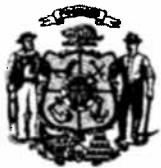
Relating to student protection fees paid by schools subject to the approval of the EAB.

Submitted by Educational Approval Board.

January 30, 2006      Referred to Committee on Colleges and Universities.

March 1, 2006      No action taken.

  
\_\_\_\_\_  
Brad Hub  
Committee Clerk



## State of Wisconsin / Educational Approval Board

30 West Mifflin Street  
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*Jim Doyle*  
Governor

*David C. Dies*  
Executive Secretary

January 19, 2005

The Honorable John Gard  
Speaker  
Wisconsin State Assembly  
211 West, State Capitol  
Madison, WI 53702

Dear Speaker Gard:

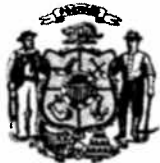
In accordance with s.227.19, *Wis. Stats.*, Clearinghouse Rule 05-112 is being submitted for legislative review. Should you have questions regarding the proposed order, please contact me at 266-7733.

Sincerely,

A handwritten signature in cursive script that reads 'David C. Dies'.

David C. Dies  
Executive Secretary

c: Representative Rob Kreibich



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### REPORT AND ANALYSIS OF CLEARINGHOUSE RULE 05-112

#### ▪ STATEMENT OF NEED FOR THE PROPOSED RULES

A statement explaining the need for adopting the proposed rules is provided in the analysis section of the enclosed order.

#### ▪ RESPONSE TO LEGISLATIVE COUNCIL REPORT

The Educational Approval Board (EAB) found the comments provided in the Legislative Council (LC) report to be helpful. Specifically, the report identified a general concern pertaining to the EAB's statutory authority, as well as several suggestions for improving the clarity of the rule language. The following discussion addresses these issues.

##### *Statutory Authority*

##### Comment 1.

Under current law, the EAB is required to promulgate rules establishing fees. Moreover, the EAB is specifically directed to specify a student protection fee. The LC report argues that under the proposed rule, though continuing the current student protection fee, the EAB would be authorized to set a fee without the promulgation of a rule under certain circumstances. A close reading of the statutory authority would seem to suggest that any fee should be set by rule, not just action of the board.

The proposed rule would allow the EAB to impose an alternative student protection fee if it determined necessary to maintain the viability of the appropriation. As referenced in the LC report, this action would be limited to situations in which appropriation balance did not exceed \$500,000. In addition, the fee would be capped at \$10,000 for an individual school.

Given that the restrictions noted above define the fee parameters, it can be argued that rule does in fact establish a definitive student protection fee. Nonetheless, the EAB has adopted language to further specify the manner by which the board can assess student protection fees. Under the revised rule language, the EAB has incorporated a multiplier component based on school revenues.

##### *Clarity, Grammar, Punctuation and Use of Plain Language*

##### Comment 5a & b.

The LC report seeks to clarify when the appropriation balance will be measured for purposes of imposing an alternative fee, and whether or not the board is required or merely authorized to do so. In addition, the

report suggests that the manner in which the \$10,000 is to be applied should be clarified. The EAB has made several changes to address these concerns.


**PUBLIC HEARING SUMMARY**

Given the limited scope of the proposed rule, the EAB elected to use the 30-day notice procedure permitted under s.227.16 (2)(e) *Wis. Stats.* In accordance with this procedure, the EAB submitted the proposed rule along with a complete analysis, initial regulatory flexibility statement and fiscal estimate to the Revisor of Statutes for publication in December 14, 2005 Wisconsin Administrative Register. There were no petitions filed with the EAB requesting a public hearing.

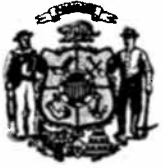
**FISCAL ESTIMATE / REGULATORY FLEXIBILITY ANALYSIS**

The fiscal note and regulatory flexibility analysis regarding the rule are attached.

STATE OF WISCONSIN  
EDUCATIONAL APPROVAL BOARD



David C. Dies, Executive Secretary



Jim Doyle  
Governor

## State of Wisconsin / Educational Approval Board

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David C. Dies  
Executive Secretary

### PROPOSED ORDER OF THE EDUCATIONAL APPROVAL BOARD AMENDING AND CREATING RULES

The Wisconsin Educational Approval Board (EAB) proposes an administrative rule order to amend EAB 4.06 (2)(b) and create EAB 4.06 (2)(b)1. & 2.; relating to student protection fees paid by schools subject to the approval of the EAB.

#### RULE SUMMARY

Statutes Interpreted: Sections 38.50 (2), (3), (7) & (10), *Wisconsin Statutes*.

Statutory Authority: Sections 38.50 (2), (3), (10)(c)4. and 227.11 (2), *Wisconsin Statutes*.

The EAB was required to promulgate administrative rules specifying a student protection fee under s.38.50 (10)(c)4. This requirement is limited by s.38.50 (10)(cm), which requires the EAB to discontinue collecting student protection fees when the appropriation balance exceeds \$1,000,000. The related rule provisions are contained in s.EAB 4.06.

#### RULE ANALYSIS

Under s.EAB 4.06, schools regulated by the EAB are assessed a student protection fee. The amount of the fee is currently based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported by the schools. These fees are deposited into an appropriation under s.20.292(2)(gm) and are used to indemnify certain persons suffering loss from such events as a catastrophic school closure.

This proposed rule would allow the EAB to assess a student protection at a rate based on a multiplier equal to the percentage of all schools' total adjusted gross annual revenue needed to bring the appropriation under s.20.292 (2)(gm) to \$500,000, but not to exceed \$10,000 for an individual school.

At the present time, the appropriation for this student protection fund contains \$79,582. Based on reported school revenues for the 2006 renewal year, it is estimated that the FY 06 fund balance will increase to approximately \$141,300 as a result of the standard fee assessment. This increase is based on total reported school revenues of approximately \$123.5 million.

In addition, provisions contained in the 2005-07 biennial budget (2005 Wisconsin Act 25) will transfer \$250,000 of retained earnings from the EAB's general operating budget into the appropriation on June 30, 2006. After the transfer, the estimated balance for the student protection fund will be \$391,300.

Because the fund balance is currently less than \$500,000, the proposed rule would give the EAB the authority to assess a fee at a rate higher than the current rate of \$0.50 per \$1,000. However, the rule does not require the board to assess the higher rate, and once the fund balance is in excess of \$500,000, the board would be specifically prohibited from assessing a higher fee. In addition, the EAB would be limited in assessing any individual school a student protection fee that exceeds \$10,000.

### COMPARATIVE ANALYSIS

A 2003 survey of state regulators conducted by the National Association of State Administrators and Supervisors of Private Schools (NASASPS) indicates that roughly one-half of states have established some type of student protection (or tuition recovery) fund. In addition to a student protection fund, about one-third of states also require schools to be bonded. Wisconsin falls into the latter category.

A comparison of rules in adjacent states indicates that none currently have established student protection funds. However, with the exception of Iowa, which only requires private schools to be registered, the other states require schools to be bonded. Bonds in Minnesota range from \$10,000 to \$250,000. Illinois requires bonds ranging from \$10,000 to \$1.4 million. Information was not available for the state of Michigan. Comparatively, bonds required in Wisconsin range from \$1,000 to \$25,000.

Because the governance of postsecondary education is a responsibility of individual states, there are no existing or proposed federal regulations that are intended to be addressed in the activities regulated by this rule.

### IMPACT ON SMALL BUSINESS

The potential impact of this rule on small businesses is limited to the extent that such businesses meet the statutory definition of a school and are subject to the EAB approval. The EAB currently approves 140 for-profit and non-profit postsecondary schools. These schools consist of technical, career, distance-learning, and degree-granting institutions that offer more than 600 degree and non-degree programs to over 30,000 Wisconsin adults annually. Typical programs includes truck driving, massage therapy, home inspection, teacher licensure, IT certifications, CAD drafting, as well as traditional bachelor and master degrees.

### CONTACT INFORMATION

The person responsible for the processing of this rule is David C. Dies, executive secretary for the Educational Approval Board. Comments or questions regarding the rule may be directed to him at 608/266-1996 or <david.dies@eab.state.wi.us>.

### TEXT OF RULE

SECTION 1. EAB 4.06 (2)(b) is amended to read:

EAB 4.06 (2) (b) The fee shall be based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported in accordance with ss. EAB 4.01 (4) and 4.10 (2) (d) established as follows.

SECTION 2. EAB 4.06 (2)(b)1. and 2. are created to read:

EAB 4.06 (2)(b)1. Except as provided in subd. 2., at a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported in accordance with ss. EAB 4.01 (4) and 4.10 (2) (d).

EAB 4.06 (2)(b)2. If at any time the appropriation balance of s.20.292 (2)(gm) is less than \$500,000, at a rate determined by the board based on a multiplier equal to the percentage of all schools' total adjusted gross annual revenue needed to bring the appropriation under s.20.292 (2)(gm) to \$500,000, but not to exceed \$10,000 for an individual school.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2) (intro.) Stats.

Dated at Madison, Wisconsin, January 17, 2006

STATE OF WISCONSIN  
EDUCATIONAL APPROVAL BOARD



David C. Dies, Executive Secretary





Jim Doyle  
Governor

## State of Wisconsin / Educational Approval Board

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Executive Secretary

### **CLEARINGHOUSE RULE 05-112** **FINAL REGULATORY FLEXIBILITY ANALYSIS**

In accordance with s.38.50 (10)(c)4., *Wis Stats.*, the Educational Approval Board (EAB) has promulgated administrative rules specifying a student protection fee. The related rule provisions are contained in s.EAB 4.06. Under the current rule, the fee amount paid by schools subject to regulatory oversight by the EAB is based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported by the schools.

The potential impact that this proposed rule might have on small businesses is limited to the extent that such businesses meet the statutory definition of a school and require EAB approval. The EAB currently approves 140 for-profit and non-profit postsecondary schools. These schools consist of technical, career, distance-learning, and degree-granting institutions that offer more than 600 degree and non-degree programs to over 30,000 Wisconsin adults annually. Typical programs includes truck driving, massage therapy, home inspection, teacher licensure, IT certifications, CAD drafting, as well as traditional bachelor and master degrees.

Of the 140 schools approved by the EAB, all but eight meet the definition of a small business as defined in statute. This proposed rule would allow the EAB to assess a student protection at a rate based on a multiplier equal to the percentage of all schools' total adjusted gross annual revenue needed to bring the appropriation under s.20.292 (2)(gm) to \$500,000, but not to exceed \$10,000 for an individual school.

The manner in which this rule will affect schools is discussed in the enclosed fiscal estimate.

## Fiscal Estimate - 2005 Session

Original                     
  Updated                     
  Corrected                     
  Supplemental

CR Number    To be assigned.		
<b>Subject</b> Student Protection Fees		
<b>Fiscal Effect</b>		
<b>State:</b> <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<b>Local:</b> <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs                      3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs                      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<b>5. Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>		
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	<b>Affected Ch. 20 Appropriations</b> s.20.292(2)(gm)	
<b>Agency/Prepared By</b> EAB/ David Dies (608) 267-7733	<b>Authorized Signature</b> David Dies (608) 267-7733	<b>Date</b> 11/29/2005

**Fiscal Estimate Narrative**  
**EAB 11/29/2005**

CR Number	To be assigned.	Estimate Type	Original
<b>Subject</b>			
Student Protection Fees			

**Assumptions Used in Arriving at Fiscal Estimate**

In accordance with s.38.50 (10)(c)4., the EAB has promulgated administrative rules establishing a student protection fee. This provision is limited by s.38.50 (10)(cm), which requires the EAB to discontinue collecting fees when the appropriation balance exceeds \$1,000,000. Under s.EAB 4.06, schools are assessed a student protection fee. The amount of the fee is based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported by the schools. These fees are deposited into an appropriation under s.20.292(2)(gm) and are used to indemnify certain persons suffering loss from such events as a catastrophic school closure.

This proposed rule would allow the EAB to assess a student protection fee at a rate the board determines necessary to protect the viability of the appropriation, not to exceed an amount of \$10,000 for any individual school and only if the appropriation balance is less than \$500,000.

At the present time, the student protection fund appropriation contains \$79,582. Based on reported school revenues for the 2006 renewal year, it is projected that the FY 06 fund balance will increase to approximately \$141,300 as a result of the standard fee assessment. This increase is based on total reported school revenues of approximately \$123.5 million.

In addition, provisions contained in the 2005-07 biennial budget (2005 Wisconsin Act 25) will transfer \$250,000 of retained earnings into the appropriation on June 30, 2006. After the transfer, the estimated balance for the student protection fund will be approximately \$391,300.

Because of the permissive nature of the proposed rule order, it is not possible to determine the fiscal effect. Based on a FY 06 fund balance of \$391,300, the EAB would not be able to assess more than \$108,700 before the \$500,000 cap is reached. However, the EAB has indicated that its primary intent is to address a situation in which the balance falls below the \$500,000 due to a catastrophic school closure. In addition, no one school could be assessed more than \$10,000. To gain some insight about how the proposal might affect an individual school, one should consider the student protection fees assessed in 2005 totaled \$55,746, ranging from no fee to \$9,941. While the average fee was \$446, the median fee was only \$58.

**Long-Range Fiscal Implications**

See the fiscal estimate assumptions narrative.