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Joint Committee on Finance

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Educational Approval Board (Wisconsin Technical College System)

[LFB 2017-19 Budget Summary: Page 484, #11]

CURRENT LAW

The Educational Approval Board (EAB) is an independent state agency that approves and supervises for-profit colleges and some in-state non-profit institutions, as well as solicitors recruiting students on behalf of an institution. Schools and solicitors representing schools reapply annually for approval from the Board. Additionally, the Board investigates student complaints, maintains student records following the closure of a school, and maintains a student protection fund comprised of fees collected from schools.

GOVERNOR

Delete \$342,600 PR in 2017-18 and \$694,000 PR in 2018-19 and 6.50 PR positions beginning in 2018-19 by eliminating EAB, effective January 1, 2018, or on the day after publication of the budget act, whichever is later.

Transfer functions of EAB to the Department of Safety and Professional Services (DSPS). Transfer PR appropriations relating to the examination and approval of proprietary school programs, student protection, and the preservation of student records to DSPS. Provide \$352,700 in 2017-18 and \$714,100 in 2018-19 and 6.5 PR positions in 2018-19 to reflect the transfer.

Allow DSPS to establish and charge fees for evaluating an educational institution, which must be sufficient to cover all costs incurred in examining and approving the schools. Allow DSPS to take possession of student records in danger of being destroyed or made unavailable, and charge a fee for providing a copy of the record based on the administrative cost of taking possession of, preserving, and providing the copy.

Delete the requirement for EAB to employ a person to perform the duties of an Executive Secretary and any other employees required to carry out EAB's responsibilities. Delete the requirement that the Executive Secretary be in charge of the administrative functions of EAB, and that EAB maintain its office with the Wisconsin Technical College System (WTCS) Board. Provide that the Secretary of DSPS or his or her designee would replace the Executive Secretary of EAB on the Distance Learning Authorization Board. Delete current law allowing a \$25 per diem for EAB members for each day on which they were engaged in the performance of their duties.

The bill specifies that EAB's assets, liabilities, tangible personal property, and records would become the assets, liabilities, property, and records of DSPS. All contracts entered into by EAB prior to January 1, 2018, remain in effect and would be transferred to DSPS. DSPS would be required to carry out any obligations under a contract until the contract was modified or rescinded, to the extent allowed under the contract. All rules and orders developed by EAB in effect on January 1, 2018, would remain in effect until their specified expiration dates or until amended or repealed by DSPS. Any matter pending with EAB on January 1, 2018, would be transferred to DSPS. All materials submitted to or actions taken by EAB would be considered to have been submitted to or taken by DSPS.

DISCUSSION POINTS

1. EAB originated with the passage of the G.I. Bill in 1944, which required states to approve programs of education in all institutions serving veterans before veterans could receive federal education benefits. Originally called the Governor's Educational Advisory Committee, the organization began investigating and overseeing for-profit schools in 1957 and issuing permits to school solicitors in 1961. The agency was renamed the Educational Approval Board in 1968, and its responsibilities expanded in 1971 to include approval of all proprietary schools operating in the state and in 1993 to include approval of out-of-state non-profit institutions and in-state non-profit institutions incorporated after January 1, 1992.

2. EAB approves and supervises post-secondary institutions that are located in Wisconsin and offer programs to Wisconsin residents, including for-profit colleges and non-profit institutions incorporated after January 1, 1992. Each of these institutions is required to seek approval from EAB prior to operating in Wisconsin and to annually renew their approval. Certain schools are exempt from EAB regulatory authority, including the following: (a) public colleges and universities; (b) non-profit colleges that were either incorporated in Wisconsin prior to January 1, 1992, or had their administrative headquarters and principal place of business in Wisconsin prior to 1970; (c) schools regulated by other state agencies, including cosmetology, barbering, real estate, and certified nursing assistant programs; (d) religious schools; and (e) avocational schools. State law establishes that EAB oversight does not apply to schools, courses of instruction, and training programs that are approved or licensed and supervised by other state agencies or boards.

3. Prior to 2016, EAB also approved out-of-state non-profit and for-profit colleges and universities offering distance learning programs to Wisconsin residents. However, in 2016, Wisconsin became one of the 41 states participating in the State Authorization Reciprocity

Agreement (SARA). Under SARA, each member state regulates postsecondary institutions located within the state and offering distance learning programs to residents of other states, and allows institutions located in other member states to enroll its residents without additional approval. Under 2015 Act 208, the Distance Learning Authorization Board (DLAB) was created to regulate Wisconsin institutions offering distance learning programs in other SARA member states. DLAB consists of representatives from EAB, the UW System, WTCS, tribal colleges, and the Wisconsin Association of Independent Colleges and Universities (WAICU).

4. EAB consists of seven members appointed by the Governor and has an authorized staff of 6.50 PR positions. These include an executive secretary (1.0 FTE), who is responsible for the administrative functions of the Board, as required by law; school administration consultants (3.0 FTEs), who provide guidance to new schools, review and approve initial and renewal applications, and investigate complaints; a program and policy analyst (1.0 FTE), who analyzes data collected from schools, including student outcome data, and prepares publications and presentations on findings; and operations program associates (1.5 FTEs), who provide program support, including maintaining EAB's website, processing payments, and fulfilling student transcript requests.

5. EAB is funded through program revenue derived from fees paid by regulated schools. Ninety percent of fees collected from schools, including fees from the issuance of solicitor's permits and from schools applying for initial EAB approval or applying to renew their approval, are credited to an appropriation for the general operation of EAB. The remaining 10% of collected fees, equal to an estimated \$55,200 in 2016-17, is, by statute, transferred to the general fund. Additional revenue is collected from fees paid by individuals requesting a copy of a student record maintained by EAB. The fee is based on the administrative cost of taking possession of, preserving, and providing the copy of the record, and all revenue from these fees is maintained in an appropriation for the preservation of student records. In 2016-17, \$643,100 PR is budgeted in the appropriation for proprietary school programs and \$12,100 PR is budgeted in the appropriation for the preservation of student records.

6. The fees for initial school approval vary depending on the number and type of programs the school offers. Fees range from \$2,000 for one non-degree program to \$5,100 for one doctoral program, with a lower fee to approve each additional program offered by the same school. The annual renewal fee includes an initial payment of \$500 plus a second payment based on the school's adjusted gross annual revenue, set at \$1.99 for each \$1,000 of revenue in 2016-17. Adjusted gross annual revenue is defined as the total revenue from the sale of goods and services to Wisconsin students in the previous fiscal year, including tuition, fees, books, supplies, and equipment, less any refunds made to Wisconsin students. EAB staff indicates that the renewal fee is intended to equal a predictable amount for small schools with relatively little revenue and to increase proportionately for schools with a larger amount of revenue.

7. Because EAB no longer regulates out-of-state schools following the state's decision to join SARA, fewer schools are expected to seek approval from EAB in coming years, and as a result, EAB's revenue is expected to decline. Wisconsin was approved as a member of SARA in August, 2016. Between July 2016 and February 2017, EAB revenues totaled approximately \$342,600. However, in the three previous fiscal years (2013-14, 2014-15, and 2015-16), total revenues

averaged \$687,000 during the same seven-month time period. To address the anticipated revenue declines, the renewal fee payment based on adjusted gross annual revenue has increased from \$1.61 per \$1,000 of revenue in 2015-16 to \$1.99 per \$1,000 of revenue in 2016-17. Revenue from past years that exceeded budget projections is also being used to support EAB operations, and EAB staff indicates that 0.5 FTE position has been left vacant to reduce expenditures.

8. EAB's initial approval process requires schools to submit information about the following: (a) institutional planning, including the school's mission, intended market, strengths and weaknesses, and goals; (b) management, ownership, and governance, including an organizational chart, an explanation of how the school will function, and bylaws related to the school's governance; (c) fiscal soundness and stability, including financial statements; (d) a surety bond in the amount of the lesser of \$25,000 or 125% of unearned tuition, meaning tuition, fees, and other charges paid by Wisconsin residents to enroll in a program for which the student has not yet received instruction; (e) teaching personnel, including the qualifications instructors or faculty members must have to teach, and school recruiters; (f) the school's advertising and promotional material; and (g) any legally binding enrollment contract used by the school. Schools must also submit a school catalog containing the school's policy on specific areas, such as academic requirements, tuition and fees, and probation and dismissal, as well as curriculum and other information related to each program offered by the institution. Minimum standards required for EAB approval include the following: (a) the program, curriculum, and instruction are of sufficient quality, content, and length as to reasonably achieve the program's stated learning objectives; (b) the school has a sufficient number of qualified instructors; (c) the school has adequate facilities, equipment, and instructional materials; (d) the school has a policy for the refund of the unused portions of tuition, fees, and other charges that meets minimum requirements established by EAB; (e) the school is in sound fiscal condition; and (f) the school has procedures in place to evaluate its educational programs, improve instruction, and review overall operations, including consideration of feedback from students, alumni, and instructors. EAB provides student outcome information on its website for each approved program, as well as information about program costs, the availability of federal loans, and the student loan default rate.

9. The annual renewal process requires schools to verify and update general information about the school, submit financial statements, report the amount of revenue generated from Wisconsin students, and provide student outcome data. EAB also conducts periodic site visits of approved schools, during which EAB staff complete the following: (a) interview administration, staff, and students; (b) look at student records and the record keeping system, including records of student outcomes; and (c) check compliance issues. Site visits are conducted approximately every three years for non-accredited schools and at the halfway point of the accreditation period for accredited schools, in addition to initial visits for new schools during the first six months of operations and again during the second year of operations.

10. EAB currently approves 217 post-secondary institutions, of which 203 are active and 14 are inactive. Inactive schools do not complete the annual renewal process, and cannot currently enroll students or advertise, but can become active again without repeating the EAB's initial application process. Approximately 21,700 new students enrolled in an EAB-approved institution during the 2015 cohort period, consisting of all students who first enrolled in a program in a

specified 12-month period beginning in 2015. It is estimated that approximately 47,000 Wisconsin residents were enrolled in these institutions in 2015, including both new and continuing students. Schools approved by EAB collected \$143.7 million in tuition revenue from Wisconsin students over a 12-month period beginning in 2015.

11. EAB maintains a student protection fund in a separate continuing appropriation. This fund was established by the Legislature in 2003 Act 33 and is intended to compensate students, parents, or sponsors who experience losses following the unexpected closure of a school, the refusal of a school to issue a refund to which a student is entitled, or fraud or false representation used to procure a student's enrollment. Institutions approved by EAB contribute a dedicated fee equal to \$0.50 per \$1,000 of the school's adjusted gross annual revenue to replenish the fund if the fund balance decreases to below \$1 million. EAB staff indicates that the current fund balance is approximately \$1.1 million, and the most recent student protection fee was collected from schools in 2010. Approximately \$128,500 was paid out from the student protection fund in 2015-16, and \$17,400 has been paid since August, 2016. EAB staff indicates that additional expenditures are expected in the remainder of the 2016-17 fiscal year as a result of the recent closure of Globe University.

12. EAB also investigates student complaints against approved schools. All approved schools are required to develop a process for resolving student complaints, and prior to filing a complaint with EAB, students are required to attempt to use the school's identified processes to resolve the disagreement. Once a student contacts EAB with a complaint, the Board's school administrative consultants investigate it and use mediation to attempt to reach an agreement between the school and the student. In some cases, a complaint mediation review is held before the Board, and the Board makes a final determination. Staff indicates that EAB received 43 student complaints in 2015-16, and has received 44 since August, 2016.

13. Under the bill, EAB would be eliminated, and its functions would be transferred to DSPS. Major statutory responsibilities that would be transferred include the following: (a) investigating the adequacy of courses and courses of instruction offered by schools to Wisconsin residents and establishing minimum standards for those courses of instruction; (b) investigating and establishing minimum standards for schools' facilities, equipment, instructional materials, and instructional programs; (c) establishing rules, standards, and criteria to prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction; (d) establishing rules restricting the negotiability of promissory instruments received by schools in payment of tuition and other charges; (e) establishing minimum standards for refund of the unused portion of tuition, fees, and other charges if a student does not enter a course or course of instruction, withdraws, or is discontinued from the course; (f) requiring schools offering courses and courses of instruction to Wisconsin residents to furnish information concerning their facilities, curricula, instructors, enrollment policies, tuition and other charges and fees, refund policies, and policies concerning the negotiability of promissory instruments received in payment of tuition and other charges; (g) approving courses of instruction, schools, changes of ownership or control of schools, and teaching locations meeting the requirements, standards, and rules established by the Department and publishing a list of approved schools and courses of instruction and a list of schools authorized to use the terms "college," "university," "state," or "Wisconsin" in their names, including publishing

the list on the Department's Internet site; (h) issuing permits to individuals soliciting the enrollment of individuals in a school; and (i) requiring schools to furnish a surety bond in an amount as provided by rule. DSPS has indicated that it would retain a similar staffing structure as EAB does currently, and does not anticipate significant changes to the regulatory and oversight activities performed by EAB.

14. A proposal to eliminate EAB was also included in the 2015-17 biennial budget bill. Under that proposal, functions related to investigating consumer complaints and school violations would have been transferred to the Department of Agriculture, Trade and Consumer Protection. The bill also proposed creating a Department of Financial Institutions and Professional Standards, and transferring authority to authorize schools to the new agency. Under the bill, the authorization process would have been optional for schools, and some primary functions of EAB would have been deleted. The proposal was removed from the bill during Committee deliberations.

15. Under current law, DSPS is responsible for licensing aesthetic, barbering, cosmetology, electrology, and manicuring schools. These schools are required to obtain an initial credential, and to renew this credential every two years, based on a schedule specified in statute. An application for licensure by a school of barbering, cosmetology, aesthetics, electrology, or manicuring must include: (a) proof of an admissions policy that complies with DSPS's standards, and copies of the relevant school catalogues, contracts used to enroll students, curriculum, and a detailed floor plan; (b) the articles of incorporation and the most recent annual financial report; and (c) a credentialing fee established through a biennial fee setting process, with passive review by the Joint Committee on Finance. Requirements for school and specialty school catalogues and contracts are also specified in statute, and certain deceptive trade, sales, and admission practices are prohibited.

16. DSPS is also responsible for providing administrative support to various boards and councils, including the Board of Nursing, which is responsible for regulating schools of nursing. The Board of Nursing's responsibilities related to these institutions include the following: (a) establishing minimum standards for schools, including related clinical units and facilities; (b) making and providing periodic surveys and consultations to such schools; (c) placing qualified schools on a list of schools approved by the Board of Nursing; and (d) studying nursing education and initiating rules and policies for its improvement. Additionally, the Board of Nursing has the authority to require a site survey as part of the approval process.

17. Some have argued that transferring the functions of EAB to DSPS could be beneficial to the Board's oversight work because of the greater organizational capacity of DSPS, a larger agency with its own legal counsel and IT services. In each of its five agency requests issued between 2007-09 and 2015-17, EAB requested authority for a staff attorney to provide legal counsel and representation, review legal questions regarding student complaints and school compliance, and review administrative rules and statutes. However, the requests were denied, and no such request was made in EAB's 2017-19 agency budget request. EAB staff indicates that the Board currently receives legal services from the Department of Justice at no cost when legal expertise is required. The most recent estimate provided by DOJ, included in EAB's 2015-17 agency budget request, indicated that DOJ attorneys provided approximately 1,250 hours of assistance to EAB in 2013-14

and 2014-15.

18. EAB staff indicates that IT services, including staff support, web hosting, and database server hosting, is currently provided by the Department of Veterans Affairs (DVA). The cost of the contract with DVA is equal to approximately \$3,200 in the 2016-17 fiscal year. An additional \$100 annually is paid to Microsoft for email and file services, including educational software licenses. DVA has indicated that it will no longer provide IT services to EAB beginning in early 2018, and as a result, EAB staff have begun planning for a transition to cloud-based IT services. In its 2017-19 agency budget request, EAB requested an increase in expenditure authority of \$8,000 PR annually to fund the increased cost of IT services after the transition from DVA.

19. Some have expressed concern that institutional knowledge and experience of EAB's members and staff would be lost under the proposal. Under the bill, the seven-member Board would be eliminated. Position authority equal to 6.50 FTE positions would be transferred to DSPS, but while EAB staff could apply for positions at DSPS, no provision of the bill would require that they be retained. It could be argued that it would be preferable to retain current staff members because of their knowledge of issues and practices related to oversight of higher education institutions. The Committee may wish to consider modifying the bill to require that incumbent employees holding positions on January 1, 2018, are transferred to DSPS.

20. Prior to 2005, EAB was attached administratively to DVA. Under 2005 Act 25, the Board and its position authority was transferred to WTCS. The Committee may wish to consider a similar approach, under which the Board and its current staff would be retained but would be administratively attached to DSPS. This approach would have the effect of maintaining the current seven-member Board appointed by the Governor in its advisory role. Currently, a number of boards are administratively attached to DSPS, including the Board of Nursing.

ALTERNATIVES

1. Approve the Governor's recommendation to eliminate EAB and transfer its functions, PR appropriations, and position authority to DSPS.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR-- WTCS	-\$1,036,600	- 6.50	\$0	0.00
PR -- DSPS	<u>1,066,800</u>	<u>6.50</u>	<u>0</u>	<u>0.00</u>
Total	\$30,200	0.00	0	0.00

2. Modify the Governor's recommendation by requiring that incumbent employees holding positions on January 1, 2018, would be transferred to DSPS; specify that employees would retain the same rights and status as under EAB and that employees who have attained permanent status would not be required to serve a probationary period.

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR-- WTCS	-\$1,036,600	- 6.50	\$0	0.00
PR -- DSPS	<u>1,066,800</u>	<u>6.50</u>	<u>0</u>	<u>0.00</u>
Total	\$30,200	0.00	0	0.00

3. Modify the Governor's recommendation to transfer EAB to DSPS as an attached board. Under this approach, the Board and its current staff would be retained.

ALT 3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR-- WTCS	-\$1,036,600	- 6.50	\$0	0.00
PR -- DSPS	<u>1,066,800</u>	<u>6.50</u>	<u>0</u>	<u>0.00</u>
Total	\$30,200	0.00	0	0.00

4. Delete provision.

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR -- WTCS	\$0	0.00	\$1,036,600	6.50
PR -- DSPS	<u>0</u>	<u>0.00</u>	<u>- 1,066,800</u>	<u>- 6.50</u>
Total	0	0.00	- \$30,200	0

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