

- e) Admitting only students of one sex if the institution traditionally and continually from its establishment had that policy.
- 5) Specifies that the provisions of this bill do not apply if the purpose of a religiously-controlled postsecondary educational institution is to prepare students to become ministers of the religion or to enter upon some other vocation of the religion and if the application of the bill would not be consistent with the religious tenets of the organization.
- 6) Specifies that the provisions of this bill do not prevent a religiously-controlled postsecondary educational institution from prohibiting the use of the institution's real property for any purpose that is inconsistent with the religious tenets of the organization.

FISCAL EFFECT:

Given the consequences to the institutions that could be impacted by this bill and the legal issues raised by this bill (see the Assembly Judiciary Committee analysis), the probability of litigation against the state appears fairly high. The state could therefore incur significant legal costs, at least in the low hundreds of thousands of dollars.

It appears that religious postsecondary educational institutions that participate in the Cal Grant program and have policies that do not comply with the antidiscrimination provisions of the bill could: (a) choose not to continue their Cal Grant participation and thereby no longer enroll Cal Grant awardees, or (b) continue Cal Grant participation and be subject to possible litigation through an action brought by an aggrieved student or employee.

To the extent some institutions would no longer participate in the Cal Grant program, their students that would otherwise be awarded Cal Grants could discontinue their education, remain at the institution and lose their award eligibility, or transfer and maintain their awards at another Cal Grant participating institution—either public or private. Under these first two scenarios, the state would realize unknown, but potentially significant Cal Grant savings. (The maximum Cal Grant award at such institutions will be about \$8,000 starting in 2017-18.)

To the extent some of the Cal Grant-eligible students described above would instead attend a California Community College or the California State University (CSU), the state would bear the costs of those students attendance, which could be significant. For every 100 additional CCC or CSU students, state costs would be \$475,000 (GF-Prop 98) at the CCC or \$750,000 (General Fund) at the CSU. These costs would be offset to some extent by savings from lower Cal Grant awards amounts at the CCC and CSU.

COMMENTS:

- 1) **Purpose.** According to the author, this bill seeks to ensure that students who attend religiously-based colleges or universities have the same rights, and have the same protections against unlawful discrimination, as students who attend non-religiously-based schools, whether public or private. The bill would achieve this by specifying that Government Code Section 11135 – which prohibits discrimination in any state-operated or state-funded program or activity – applies to any religious college or university that receives or benefits from state assistance. Recognizing that private religious schools have a right to exercise their religion, the bill affords reasonable accommodations from the strictest applications of existing anti-discrimination law. For example, a religious school could reserve certain

housing for married students only, enforce rules of moral conduct consistent with their religious tenets, or require certain religious practices so long as those rules were applicable to all students regardless of sexual orientation or gender identity.

This bill is sponsored by Equality California. Supporters argue the bill is necessary to ensure that students at religious colleges and universities have the same rights and protections as their peers in other colleges. Supporters believe LGBT students should not face the additional burden of facing official discrimination from the colleges they have chosen to attend. More generally, supporters see this bill as a progressive and logical extension of civil rights to LGBT students. No one would seriously argue that a college that overtly discriminated on the basis of race should benefit from state and taxpayer funds. By the same token, supporters argue it does not seem consistent with California law and policy to permit discrimination on the basis of gender identity and sexual orientation, much less to allow such institutions to reap the benefits of state funds.

- 2) The **Equity in Education Act** prohibits, among other protections, a person from being subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid. An exemption is provided for an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.
- 3) **Federal Title IX of the Education Amendments of 1972** (Title IX) prohibits discrimination, on the basis of sex, in educational programs or activities receiving Federal financial assistance. Various exemptions are provided, including for fraternities and sororities, military institutions, traditional male or female institutions, and institutions controlled by religious organizations. An exemption is provided for religious colleges that fall within specified guidelines. Federal guidance issued in 2014 clarified that the Title IX discrimination prohibition “extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.”

In response to the USDE guidance, a number of religious institutions have applied for exemption to Title IX. According to a report from the Human Rights Campaign, 56 schools nationwide have requested an exemption, 33 have received an exemption from the law as it pertains to protecting students on the basis of gender identity, and 23 have obtained an exemption based on laws pertaining to protecting students on the basis of sexual orientation. Schools most commonly requested exemptions from provisions of the law relating to housing, access to facilities, and athletics.

- 4) **Opposition.** Groups that generally support the purpose of this bill, i.e preventing discrimination against LGBT students, whether at religious or non-religious schools, have expressed concern with certain provisions of the bill, in particular the various exemptions or "carve-outs" from the general application of Government Code Section 11135.

Other opponents contend that religious colleges and universities have a right to demand that students who choose to attend their schools conform to the religious teachings of those schools; if a student cannot abide by those teachings, then the student should attend a

different school. The religious-based schools argue that their approach to education is holistic, and as such spiritual and educational life is not neatly separated. They believe that laws requiring them to tolerate conduct that is inconsistent with their religious belief as a condition of receiving state funds effectively constitutes an "unconstitutional condition" – that is, it is asking them to forgo a constitutional right as a condition of receiving a public benefit that would otherwise be available to them. Finally, opponents contend that the private right of action authorized by this bill will subject religious schools to costly litigation.

Finally, Loma Linda University and Azusa Pacific University have expressed concern that, with enactment of this bill, many students of limited means who wish to attend religious institutions would no longer be able to use their Cal Grants.

- 5) **Related Legislation.** AB 1888 (Low) required, as a condition of voluntary participation in the Cal Grant Program, each Cal Grant participating public and private higher education institution to in part certify to CSAC that it had not received or applied for a Title IX waiver from federal nondiscrimination requirements. AB 1888 was held on this committee's Suspense file.

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