

HOUSE BILL NO. 686

Introduced: 02/08/83

Referred to Committee on Education & Cultural Resources:  
02/08/83

Hearing: 2/16/83  
Died in Committee

1 House BILL NO. 686  
 2 INTRODUCED BY Senator - For. Manuel Ritoria  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FROM THE  
 5 DEPARTMENT OF COMMERCE TO THE COMMISSIONER OF HIGHER  
 6 EDUCATION THE ADMINISTRATION OF POSTSECONDARY EDUCATIONAL  
 7 INSTITUTIONS, INCLUDING THE ADVISORY COUNCIL FOR SUCH  
 8 INSTITUTIONS; AMENDING SECTIONS 20-30-101, 20-30-104,  
 9 20-30-201, AND 20-30-202, MCA; REPEALING SECTION 2-15-1804,  
 10 MCA; AND PROVIDING AN EFFECTIVE DATE."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Functions of department of  
 14 commerce transferred to commissioner of higher education.

15 (1) The functions of the department of commerce in the  
 16 administration of the postsecondary educational institutions  
 17 under Title 20, chapter 30, are transferred to the  
 18 commissioner of higher education.

19 (2) Unless inconsistent with this act, any reference  
 20 to "department of commerce" or "department" (of commerce) in  
 21 Title 20, chapter 30, is changed to "commissioner of higher  
 22 education" or "commissioner" (of higher education).

23 Section 2. Section 20-30-101, MCA, is amended to read:

24 "20-30-101. Legislative purpose and definitions. (1)  
 25 It is the policy of this state to encourage and enable its

1 citizens to obtain and receive an education commensurate  
 2 with their abilities and desires. It is recognized that  
 3 institutions offering postsecondary educational, vocational,  
 4 and professional instruction perform a useful and necessary  
 5 service to the citizens of the state in achieving this  
 6 objective. It is found that certain institutions have either  
 7 by unscrupulous, unfair, and deceptive practices or through  
 8 substandard instruction deprived the citizens of this state  
 9 of educational opportunity and subjected them to financial  
 10 loss. The actions of such institutions also reflect  
 11 unfavorably upon the reputable postsecondary institutions  
 12 which are in the great majority. Thus it is the purpose of  
 13 this chapter to provide for the protection, education, and  
 14 welfare of the citizens of this state.

15 (2) As used in this chapter, unless the context  
 16 clearly indicates otherwise, the following definitions  
 17 apply:

18 (a) "Advisory council" or "council" means the  
 19 proprietary postsecondary educational advisory council  
 20 created by 2-15-1984 provided in 20-30-104.

21 (b) "Agent" means any person owning any interest in,  
 22 employed by, or representing a postsecondary educational  
 23 institution in this or another state who, by solicitation in  
 24 any form made in this state, seeks to enroll or enrolls a  
 25 resident of this state in such postsecondary institution or

1 who offers to award educational credentials on behalf of  
 2 such institution for remuneration or who holds himself out  
 3 to the residents of this state as representing a  
 4 postsecondary institution for any such purpose.

5 (c) "Application" means either an application for the  
 6 initial issuance of a license or permit or for the renewal  
 7 of a license or permit.

8 (d) ~~"Department" means the department of commerce~~  
 9 ~~"Commissioner" means the commissioner of higher education.~~

10 (e) "Education or educational services" means a class,  
 11 course, or program of training, instruction, or study.

12 (f) "Educational credential" means a degree, diploma,  
 13 certificate, transcript, report, document, letters of  
 14 designation, marks, appellations, series of letters,  
 15 numbers, or words which signify, purport, or are generally  
 16 taken to mean enrollment, attendance, progress, or  
 17 satisfactory completion of the requirements or prerequisites  
 18 for education through a postsecondary educational  
 19 institution.

20 (g) "Grant" means sell, award, confer, bestow, or  
 21 give.

22 (h) "Institution" means an academic, vocational,  
 23 technical, home study, business, professional, or other  
 24 school, college, or university or any person, association,  
 25 or corporation offering educational credentials or

1 educational services but does not include any institution  
 2 established and maintained under the laws of this state.

3 (i) "License" means written approval issued by the  
 4 department commissioner to operate or to contract to operate  
 5 a postsecondary institution in this state.

6 (j) "Offer" means, in addition to its usual meaning,  
 7 to advertise, publicize, solicit, or encourage any person,  
 8 directly or indirectly, in any form, to perform the act  
 9 described.

10 (k) "Operate" means to establish and maintain any  
 11 facility in this state for the purpose described and  
 12 includes a contract with any person, association, or  
 13 corporation to establish and maintain such facility.

14 (l) "Permit" means written approval issued by the  
 15 department commissioner to any person to act as an agent for  
 16 a postsecondary educational institution.

17 (m) "Postsecondary education" means the education or  
 18 educational services offered to persons who have completed  
 19 or terminated their secondary education or who are beyond  
 20 the age of compulsory school attendance, for the attainment  
 21 of academic, professional, or vocational objectives."

22 Section 3. Section 20-30-104, MCA, is amended to read:  
 23 "20-30-104. Advisory Proprietary postsecondary  
 24 educational advisory council -- duties -- organization --  
 25 compensation. (1) There is created a proprietary

1 postsecondary educational advisory council.

2 ~~(2) The council is composed of five members appointed~~  
 3 ~~by the governor and one ex officio member. Two members~~  
 4 ~~shall represent the Montana proprietary school association,~~  
 5 ~~one member shall represent the advisory council for~~  
 6 ~~vocational education, one member shall represent the Montana~~  
 7 ~~personnel and guidance association, and one member shall be~~  
 8 ~~from the public at large who has no connection with~~  
 9 ~~education. The ex officio member is the superintendent of~~  
 10 ~~public instruction.~~

11 ~~(3) Members of the council shall serve for 5 years.~~

12 ~~(1) The advisory council shall advise the~~  
 13 ~~department commissioner of policies, rules, and procedures~~  
 14 ~~necessary for carrying out the provisions of this chapter.~~

15 ~~(2) The council's organization, meetings, quorum,~~  
 16 ~~and compensation are as provided in 2-15-122."~~

17 Section 4. Section 20-30-201, MCA, is amended to read:

18 "20-30-201. Powers and duties of department  
 19 commissioner. To administer this chapter, the department  
 20 commissioner shall have the following powers and duties:

21 (1) to establish minimum criteria~~---in---consultation~~  
 22 ~~with the commissioner of higher education,~~ conforming to the  
 23 minimum standards in 20-30-202, which applicants for a  
 24 license or permit shall satisfy before a license or permit  
 25 shall be issued, provided the requirements of the

1 Administrative Procedure Act for rulemaking procedures have  
 2 been complied with;

3 (2) to receive, to investigate as ~~to~~ ~~he~~ may deem  
 4 necessary, and to act upon applications for a license or  
 5 permit;

6 (3) to maintain a list of licensed institutions, of  
 7 persons possessing permits, and of accrediting agencies  
 8 recognized under 20-30-102(1), provided that an institution  
 9 and its agent exempt from this chapter may be included in  
 10 such list upon the filing of an affidavit of exemption;

11 (4) to negotiate and enter into reciprocal interstate  
 12 agreements with like ~~officers or~~ agencies in other states if  
 13 such agreements are or will affect the purposes of this  
 14 chapter, provided that nothing contained in such agreement  
 15 shall be construed as limiting the powers and duties of the  
 16 department commissioner with respect to investigating or  
 17 acting upon any application for a license or for a permit or  
 18 with respect to the enforcement of any provision of this  
 19 chapter or regulations adopted hereunder;

20 (5) to receive and cause to be maintained for a  
 21 reasonable length of time, not less than 10 years, copies of  
 22 academic records pursuant to 20-30-105;

23 (6) to establish, with the advice of the advisory  
 24 council, rules and procedures necessary for the  
 25 implementation of this chapter which shall have the force of

1 law, provided the requirements of the Montana Administrative  
 2 Procedure Act for rulemaking procedures have been complied  
 3 with, and to hold hearings as it ~~he~~ may deem advisable in  
 4 developing such rules and procedures or to aid in any  
 5 investigation or inquiry; and

6 (7) to investigate as it ~~he~~ may deem necessary, on ~~his~~  
 7 ~~his~~ own motion or on the filing of a verified complaint  
 8 filed with ~~it him~~, any institution or person subject to or  
 9 reasonably believed by the department ~~commissioner~~ to be  
 10 subject to the provisions of this chapter; to subpoena any  
 11 persons or documents pertaining to such investigation, which  
 12 subpoenas shall be enforceable in a district court of this  
 13 state; to require answers in writing under oath to questions  
 14 or interrogatories propounded by the department  
 15 ~~commissioner~~; and to administer an oath or affirmation to  
 16 any person in connection with any investigation."

17 Section 5. Section 20-30-202, MCA, is amended to read:

18 "20-30-202. Minimum standards. (1) In establishing the  
 19 criteria required by 20-30-201, the department ~~commissioner~~  
 20 shall observe and shall require compliance with the  
 21 following minimum standards:

22 (a) A postsecondary educational institution must be  
 23 maintained and operated or, in the case of a new  
 24 institution, it must demonstrate that it can be maintained  
 25 and operated in compliance with the following minimum

1 standards:

2 (i) that the quality and content of each course or  
 3 program of instruction, training, or study are such as may  
 4 reasonably and adequately achieve the stated objective for  
 5 which the course or program is offered;

6 (ii) that the institution has adequate space,  
 7 equipment, instructional materials, and personnel to provide  
 8 education of good quality;

9 (iii) that the education and experience qualifications  
 10 of directors, administrators, supervisors, and instructors  
 11 are such as may reasonably insure that the students will  
 12 receive education consistent with the objectives of the  
 13 course or program of study;

14 (iv) that the institution provides students and other  
 15 interested persons with a catalog or brochure containing  
 16 information describing the programs offered; program  
 17 objectives; length of program; schedule of tuition, fees,  
 18 and all other charges and expenses necessary for completion  
 19 of the course of study; cancellation and refund policies;  
 20 and such other material facts concerning the institution and  
 21 program or course of instruction as are reasonably likely to  
 22 affect the decision of the student to enroll therein,  
 23 together with any other disclosures required by the  
 24 department ~~commissioner~~, and that such information is  
 25 provided to prospective students prior to enrollment;

1 (v) that upon satisfactory completion of training, the  
2 student is given appropriate educational credentials by the  
3 institution, indicating that the course or courses of  
4 instruction or study have been satisfactorily completed;

5 (vi) that adequate records are maintained by the  
6 institution to show attendance, programs, or grades and that  
7 satisfactory standards are enforced relating to attendance,  
8 progress, and performance;

9 (vii) that the institution is maintained and operated  
10 in compliance with all pertinent ordinances and laws  
11 relating to the safety and health of all persons upon the  
12 premises;

13 (viii) that the institution is financially sound and  
14 capable of fulfilling its commitments to students;

15 (ix) that neither the institution nor its agents engage  
16 in advertising, sales, collection, credit, or other  
17 practices of any kind which are false, deceptive,  
18 misleading, or unfair;

19 (x) that the chief executive officer, trustees,  
20 directors, owners, administrators, supervisors, staff, and  
21 instructors are of good reputation and character; and

22 (xi) that the institution has a fair and equitable  
23 cancellation and refund policy.

24 (b) An applicant for a permit to act as agent shall be  
25 an individual of good reputation and character and shall

1 represent only a postsecondary educational institution which  
2 meets the minimum standards established in this section and  
3 the criteria established under 20-30-201.

4 (c) No postsecondary educational institution may use  
5 the term "university" or "college" without authorization to  
6 do so from the ~~department--in--consultation--with--the~~  
7 ~~commissioner of--higher--education~~, provided that any  
8 institution subject to this chapter located within this  
9 state which used either term on January 1, 1974, may  
10 continue to do so by filing an affidavit to that effect with  
11 the ~~department commissioner~~ prior to January 1, 1975.

12 (2) Accreditation by national or regional accrediting  
13 agencies recognized by the United States office of education  
14 may be accepted by the ~~department commissioner~~ as evidence  
15 of compliance with the minimum standards established  
16 hereunder and the criteria established under 20-30-201,  
17 provided the ~~department--after--conferring--with--the~~  
18 ~~commissioner of--higher--education~~ may require such further  
19 evidence and make such further investigation as in its  
20 judgment may be necessary. Accreditation by a recognized,  
21 specialized accrediting agency may be accepted as evidence  
22 of such compliance only as to the portion or program of an  
23 institution accredited by such agency if the institution as  
24 a whole is not accredited."

25 ~~NEW SECTION.~~ Section 6. Repealer. Section 2-15-1804,

1 MCA, is repealed.  
2 NEW\_SECTION Section 7. Effective date. This act is  
3 effective July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 367-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 686 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 686 transfers from the Department of Commerce to the Commissioner of Higher Education the administration of proprietary postsecondary educational institutions and creates an advisory council to advise the commissioner.

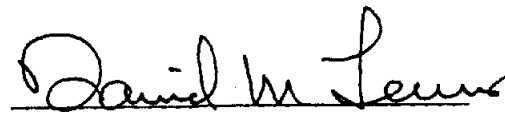
ASSUMPTIONS:

- 1) The five member advisory council would consist of two Helena-based members and three out-of-town members.
- 2) The advisory council would meet four times a year.

FISCAL IMPACT:

Additional cost to the Office of the Commissioner of Higher Education would be \$5,622 for each year of the 1985 Biennium.

FISCAL NOTE 12/EE/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-14-83