MN HOUSE RESEARCH

Bill Summary

H.F. 3392

As amended by H3392DE2

Subject	**Omnibus Higher Education Policy Bill**
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Overview

H.F. 3392 is the omnibus higher education policy bill.

Among other changes, the bill:

- expands the range of conditions under which the Office of Higher Education (OHE) can revoke, suspend, or refuse to renew a school's registration or licensure, or its participation in state financial aid programs;
- requires postsecondary institutions to provide OHE with additional data about their financial stability, and requires OHE to conduct risk analysis to identify institutions at risk of "precipitous closure";
- permits OHE to place new restrictions on institutions that are at risk of precipitous closure. These restrictions include limiting access to state financial aid, purchase of additional surety bonds, prohibiting enrollment of new students, and disallowing schools from accepting cash tuition;
- increases registration renewal fees and allows OHE to seek reimbursement for costs associated with investigations and responding to student complaints; and
- makes several changes to the Minnesota college savings program statutes to account for changes in federal law.

Article 1: Office of Higher Education

Section	Description: Article 1 – Office of Higher Education
1	**Statewide concurrent enrollment survey.** Requires OHE and the Department of Education (MDE) to collaborate to annually provide statewide evaluative information on concurrent enrollment programs. Requires DOE and MDE to collaborate to determine which demographic and outcomes data are appropriate. The report is due December 1, 2021, and annually thereafter. Strikes existing language requiring concurrent enrollment programs to

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report National Alliance of Concurrent Enrollment Partnership (NACEP) survey results.

2 **Definitions.**

Adds to the state campus sexual assault law a definition of "incident." An incident is limited to a single report of sexual assault, regardless of the number of complainants, respondents, or whether the identity of a party is known by the institution.

3 **Office name.**

Clarifies that the Office of Higher Education is also known as the Minnesota Office of Higher Education.

4 **Student Advisory Council.**

Removes references to the Minnesota Career College Association in the Student Advisory Council statutes. Requires that the student on the council that is enrolled in a private for-profit institution be elected by students enrolled in private career schools.

5 **Postsecondary education of American Indians.**

Subd. 1. Definitions. Defines "Tribal Nations Education Committee" to mean a committee established through tribal directive that OHE seeks consultation with on matters relating to educating Minnesota's American Indian postsecondary students.

Subd. 2. American Indian community involvement. Requires OHE to provide for the maximum involvement of the Tribal Nations Education Committee in establishing programs and formulating policies related to the postsecondary involvement of Minnesota's American Indian students.

Subd. 3. Consultation with Tribal Nations Education Committee. Requires OHE to consult with the Tribal Nations Education Committee on matters related to the postsecondary involvement of Minnesota's American Indian students. Permits OHE to consult individual tribal nations.

6 **FAFSA completion goal.**

Requires OHE, the Department of Education, and the Minnesota Association of Secondary School Principals to set an annual goal for the percentage of Minnesota high school seniors completing the Free Application for Federal Student Aid (FAFSA).

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7 **Eligibility requirements for state financial aid.**

Modifies the requirements for postsecondary institutions to participate in state financial aid programs and permits OHE to disallow the institutions from participating under certain circumstances.

In order to receive state financial aid, postsecondary institutions must meet the state requirements to hold a surety bond. Section 18 of the bill amends the requirements.

OHE may terminate an institution's participation in state financial aid programs under the following conditions:

- An institution that changes ownership does not make substantive progress toward participation in the Pell Grant program within four years of the first ownership change.
- The institution loses eligibility for federal financial aid. OHE may terminate eligibility effective the date of the loss of federal aid.
- The institution violates a provision of state Statutes, Rules, or administrative policies governing financial aid programs and fails to correct the violation and reimburse the office for audit findings within the timeframe specified in the audit report.
- The institution has a consistent pattern of violating state Statutes, Rules, or administrative policies, or lacks administrative capacity to successfully administer state aid programs. A lack of administrative capacity may be demonstrated based on the adequacy of the institution's:
    - financial aid staffing;
    - checks and balances in the institution's system of internal controls;
    - maintenance of records; and
    - ability to participate in electronic processes.
- The institution refuses to allow inspection of financial aid records upon request of OHE.
- The institution was administratively or judicially determined to have committed fraud or other material violation of law.
- The institution falsifies information or engages in misleading or deceptive practices involving the administration of financial aid programs.
- The institution no longer meets the requirements to participate in state financial aid programs that are currently in rule.
- The institution is terminated from participation in federal financial aid programs based on a violation of laws, regulations, or participation agreements governing financial aid programs.

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8	**Termination procedure.** Requires OHE to send written notice that an institution's eligibility for financial aid was terminated. Termination is effective 90 days after the date of written notification, except if an institution is terminated because it lost the eligibility to participate in federal financial aid programs. Requires OHE to provide terminated institutions with an opportunity for administrative hearing under chapter 14.
9	**Request for hearing.** Requires terminated postsecondary institutions that request an administrative hearing to request the hearing with 30 days of receiving a written notice of termination.
10	**Unpaid student account balances.** Forbids a postsecondary institution receiving state financial aid from withdrawing a student from class or suspending a student due to an unpaid student account balance.
11	**Child care grant for graduate and professional postsecondary institutions.** Allows postsecondary institutions offering only graduate or professional degrees to participate in OHE's Child Care Grant Program.
12, 14-15	**Teacher shortage area definition.** Assigns the Professional Educator Licensing and Standards Board the responsibility to define teacher shortage areas. Under current law the Department of Education defines the areas. The areas must be defined based on the teacher supply and demand report and other surveys conducted by the board that provide indicators for teacher supply and demand.
13	**SELF loan amounts.** Permits OHE to determine loan limits for the SELF loan program. Requires OHE to define borrowing maximums based on program enrollment.
16	**Loan forgiveness.** Removes the five recipient cap from the Large Animal Veterinarian Loan Forgiveness Program.
17	**Schools to provide information.** Requires degree-granting schools that register with OHE to provide compliance audits and audited financial statements that meet federally established

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	requirements. Additionally requires the schools to calculate the financial and nonfinancial risk analysis metrics described in section 13 of the bill.
18	**Additional security.**

Under current law, postsecondary institutions that fall below minimum federal standards for participation in financial aid programs must provide OHE with a surety bond between $10,000 and $250,000. The bill changes the bond requirement to be ten percent of net tuition and fees revenue in the previous fiscal year.

The bill grants OHE additional authority if OHE determines that the institution does not meet existing rules about financial resources, or is vulnerable to a precipitous closure. In those circumstances, OHE may:

- require an increased surety bond
- prohibit the institution from accepting tuition payments during the add/drop period made using cash, alternative loans, or the equivalent
- prohibit the institution from enrolling new students

Current law describes the prioritization for use of surety bonds funds in the case of school closure. Current law prioritizes: (1) the destruction of private data; (2) reimbursing students who are currently enrolled (or withdrew in the last 180 days); (3) reimbursing veteran's benefits; and (4) reimbursing OHE's administrative costs.

The bill establishes the following order of priorities for the surety bond.

1) Destroying private education data.
2) Reimbursing state financial aid.
3) Reimbursing cash payments made by or on behalf of a student enrolled at the time of closure (or who withdrew in the last 180 days).
4) Reimbursing private student loans used by or on behalf of a student enrolled at the time of closure (or who withdrew in the last 180 days).
5) Reimbursing veteran's benefits.
6) Reimbursing tuition and fee costs for coursework that did not transfer to a new institution.
7) Reimbursing administrative costs incurred by OHE.

Permits OHE to grant conditional approval to an institution that cannot meet the surety bond requirement. Schools granted conditional approval would be subject to restrictions on their access to state financial aid, and would be prohibited from enrolling new or prospective students.

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19 **Criteria for approval.**

Adds additional requirements for a postsecondary institution to receive approval for registration. The requirements are:

1) Not requiring students to sign mandatory predispute arbitration clauses.
2) Establishing a process to receive and act on student complaints.

Participating in the financial stability risk analysis required under section 13 of the bill.

20 **Conditional approval.**

OHE has the authority to grant a degree-granting school a one-year conditional approval while the school applies for accreditation. This language limits that authority to schools physically located in Minnesota.

21 **Revocation and suspension of degree-granting schools.**

Requires OHE to give written notice and reasons before revoking, suspending, or refusing to renew registration or approval of a school's degree.

Permits OHE to renew, revoke, or suspend registration for a degree-granting postsecondary institution if the institution:

- used fraudulent, coercive or dishonest practices
- demonstrated incompetence, untrustworthiness, or financial irresponsibility
- was administratively or judicially determined to have committed fraud or a material violation of law involving state, local, or federal funds
- fails to have enrollment in the last two years
- fails to have enrollment within two years of registration approval
- fails to provide a surety bond in accordance with section 5 of the bill
- is determined to be vulnerable to closure under OHE's risk analysis, which is required in section 13 of the bill

If OHE takes action against a school's registration to a failure to meet the risk analysis required in section 13 of the bill, the bill permits the office to:

- withhold student aid payments
- oversee the transfer of state aid to students to ensure that payments in excess of tuition and fees reach students
- require the return of advance state aid payments
- require documentation of the proper use of aid

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- issue financial aid payments directly to a student

22 **Application.**

Under current law, there is a religious exemption to the requirement that degree-granting schools register with OHE. The bill provides that the exemption does not apply to schools that engage in advertisement that is not truthful and gives false, fraudulent, deceptive, inaccurate, or misleading impressions about the school.

23 **Exemption.**

Exempts degree-granting programs from OHE regulation if all of the programs are offered by a religious organization or church, primarily designed for persons who seek to learn the faith and beliefs of the organization, and intended to prepare the students to enter a vocation closely related to the faith.

24 **Limitation.**

Clarifies that the religious exemption for degree-granting schools does not extend to programs that are marketed or represented to students as nonreligious or to prepare students for a vocation not related to the faith.

25 **Scope.**

Clarifying the scope of the religious exemption for degree-granting schools.

26 **State reciprocity agreement school fees.**

Requires OHE to collect reasonable fees to cover the cost to administer a reciprocity agreement for postsecondary distance education.

The fee is set from $750 to $7,500, depending on the enrollment at the institution.

27 **Risk analysis.**

The bill requires OHE to apply financial and nonfinancial measures to determine if a school is at risk of precipitous closure. A schools is at risk of precipitous closure if:

- it is unable to meet the requirements for registration in state law; and
- OHE determines that the failure to meet requirements for registration represents a risk of precipitous closure.

OHE is required to use industry standards to develop financial and nonfinancial indicators.

Requires a school to notify OHE within five business days if:

- the school has defaulted on a debt payment and not received a waiver of violation

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- the school's owners withdraw equity and the school has a federal composite score of less than 1.5, unless the withdrawal is a transfer between affiliated entities with a common composite score
- the federal Department of Education requires a 25 percent or greater letter of credit or heightened cash monitoring
- the school receives a notification of probation, warning, show-case, or loss of accreditation
- the school's accreditor loses federal recognition
- the school violates the federal Department of Education's 90/10 requirement

If OHE is notified for one of the reasons in the list above, it must collect data to determine if the school is at risk of closure. If OHE determines the school is at risk of precipitous closure, OHE may:

- inform the school and request additional context and information from the school
- if the school does not respond to the request for additional context and information, OHE may:
  - revoke, suspend, or refuse to renew registration, name approval, or degree approval
  - require additional surety or information from the institution
  - initiate alternative processes and communications with students
- use the reevaluated determination to revoke, suspend, or renew registration, name approval, or degree approval

Permits OHE to require a school at risk of precipitous closure to conduct monitoring and submit periodic financial reports, submit contingency plans, provide additional surety, and submit school closure information.

Requires OHE to provide schools with the metrics used to determine their risk of precipitous closure, and post a list of reviewed indicators and measures on its website.

28 **Registration fees.**

Increases the annual renewal registration fee from $1,200 to $2,000.

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29, 31 **Visit or consulting fees.**

Permits OHE to require institutions to pay for the costs of outside consultants used to investigate schools or programs. Current law includes the same authority, but it is limited to reviews or evaluations.

Section 29 is for degree-granting schools; section 31 is for private career schools.

30, 32 **Student complaint fee.**

Requires institutions to reimburse OHE for the costs necessary to investigate student complaints, if OHE receives more than five student complaints per annual registration period. Reimbursement is $500 for each complaint beyond the fifth, plus $300 for each day that requires a site visit, plus the customary cost of meals, lodging, and travel expenses.

Section 16 is for degree-granting schools; section 18 is for private career schools.

33 **Proration.**

Removes the requirement that a student give written notice when informing a private career school that the student intends to cancel the program. Students would receive prorated tuition under this provision even if they give nonwritten notice of cancellation.

34 **Revocation and suspension of private career schools.**

Permits OHE to revoke or suspend approval of a private career school if the school:

- used fraudulent, coercive, or dishonest practices
- demonstrated incompetence, untrustworthiness, or financial irresponsibility
- was administratively or judicially determined by the commissioner to have committed fraud or a material violation of law involving state, local, or federal funds

35 **Application for exemptions.**

Allows a private career school to apply for a religious exemption for only some of its programs.

Clarifies that the religious exemption for degree-granting schools does not extend to programs that are marketed or represented to students as nonreligious or to prepare students for a vocation not related to the faith.

36 **Exemption.**

Exempts private career schools from OHE regulation if all of their programs are offered by a religious organization or church, primarily designed for persons who

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	seek to learn the faith and beliefs of the organization, and intended to prepare the students to enter a vocation closely related to the faith.
37	**Limitations.** Under current law, there is a religious exemption to the requirement that private career schools be licensed by OHE. The bill provides that the exemption does not apply to schools that engage in advertisement that is not truthful and gives false, fraudulent, deceptive, inaccurate, or misleading impressions about the school.

Article 2: Minnesota College Savings Plan

Article 2 makes changes to the law governing the Minnesota college savings plan, Minnesota's section 529 plan. Most of these changes are to account for recent changes to federal law.

The main federal provisions the article responds to are:

- Permitting qualified distributions for:
  - Up to $10,000 of K-12 tuition expenses.
  - Apprenticeship program expenses.
  - Student loan payments for the beneficiary or the beneficiary's sibling.
- Permitting rollovers to Achieving a Better Life Experience (ABLE) Accounts

Section	Description: Article 2 – Minnesota College Savings Plan
1	**Name clarification.** Clarifies that the Minnesota college savings plan is also known as the Minnesota 529 college savings plan.
2	**Contribution definition.** Includes recontributions, as defined under federal law, as a contribution for the purposes of the plan.
3	**Distribution definition.** Modifies distribution definition to allow qualified distributions to be sent to third parties.
4	**Dormant account definition.** Eliminates requirement that account statements be mailed and returned as undeliverable when determining if an account is dormant.

Section	Description: Article 2 – Minnesota College Savings Plan
5	**Technical change.** Fixes a broken cross-reference.
6	**Qualified rollover distribution definition.** Permits rollover contributions to ABLE accounts.
7	**Taxable distribution definition.** Defines “taxable distribution” as a nonqualified distribution and “taxable distributions not subject to the additional federal tax.”
8	**Accounts-type plan.** Includes K-12 tuition, apprenticeship expenses, and qualified education loans as an expense that may be saved for under the plan.
9	**Forfeited matching grants.** Requires refunded matching grants that were forfeited be returned to OHE.
10	**Technical change.** Changes reference from “program” to “plan.”
11	**Change of beneficiary.** Updates beneficiary change statutes to reference “taxable distributions.” That term is newly defined in the bill and replaces the older definition of “nonqualified distributions.”
12	**Maximum account balance.** Deletes obsolete language related to the repealed matching grant program.
13	**Ownership of matching grant funds.** Requires that matching grant funds be used for qualified distributions other than K-12 expenses.
14	**Forfeiture of matching grants.** Requires beneficiaries to forfeit matching grants if the beneficiary receives a nonqualified distribution that is not taxed due to one of four circumstances specified in federal law. The circumstances are that the beneficiary dies, becomes disabled, receives a scholarship that covers 100 percent of qualifying higher education expenses, or is made on account of attendance at a military academy. Requires account owners to forfeit matching grants if they close an account by making a distribution for qualified higher education expenses that were not qualified higher education expenses when the matching grant program ended.

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	Requires account owners who make a partially taxable distribution to proportionally forfeit matching grants. Requires account owners to proportionally forfeit grants if they make a partial distribution for qualified higher education expenses that were not qualified higher education expenses when the matching grant program ended.
15	**Qualified distribution methods.** Strikes language allowing qualified distributions in the form of a check. Permits payments to the owner or beneficiary if the distribution is for K-12 expenses. Permits payments directly to third parties. Permits matching grant distributions to be used only for qualified expenses that were qualified expenses when the matching grant program ended (December 31, 2010). Requires account owners to forfeit matching grants if they make a qualified distribution for expenses that were not qualified expenses when the matching grant program ended. Requires OHE to inform account owners that they are responsible for obtaining records to substantiate distributions.
16	**Minor trust accounts.** Requires distributions be used for a beneficiary if they qualify for a federal exemption for tax because the beneficiary becomes disabled, receives a scholarship that covers 100 percent of qualified expenses, or attends a military academy. Permits rollovers to ABLE accounts.
17	**Repealer.** Repeals the definitions of “adjusted gross income” and “nonqualified distribution.” Repeals outdated language related to the matching grant program.