

November 7, 2002

**MEMORANDUM**

**To:** Mr. Dalton B. Floyd, Jr., Chairman, and Members, Commission on Higher Education

**From:** Ms. Dianne Chinnes, Chairman, Committee on Academic Affairs and Licensing

**Consideration of Proposed Changes to Licensing Statute:  
Section 59-58-80. Student Tuition Protection**

**Background**

The staff requests approval to seek an amendment to the Nonpublic Postsecondary Institution License Act. The staff of the Commission periodically reviews the licensing requirements as prescribed by statute and regulations and suggests changes to the requirements for licensing nonpublic postsecondary institution. Suggestions for changes typically come from situations that have arisen based on licensing activities and on application of the requirements for licensure.

One requirement for licensure is the posting of a surety bond. The purpose of the surety bond is to provide students with an avenue through which they may recover prepaid tuition at institutions that close before the students complete their programs. Established by regulation, the required bond amounts are ten percent of projected gross tuition income for initial licensure or ten percent of actual gross tuition income for the prior year for renewals.

The current language in statute and regulation provides that the bond may be used only for payment of a refund of tuition and fees due to the student. In the case of the closing of a school, it may be more beneficial for students if the Commission were able to use the bond to pay for a “teach-out” so that the students can complete their training instead of to make partial refunds to students. Another important issue for students is access to their academic records. By changing the language to allow the Commission to

access the bond funds for purposes other than a refund of prepaid tuition, the Commission could use the funds to transport, warehouse, or convert student records to electronic storage.

The staff is also suggesting a change to the statutory language so that if the Commission establishes a fund to which institutions would contribute to provide student protection, the Commission would be able to use the fund for other purposes to benefit the students. Those purposes could be the same as for the bond, that is, to pay for “teach-out” programs or record storage.

The proposed change is shown in context on the attached sheet.

If the Commission authorizes the staff to seek the change in the statute, once the legislature approves the change, the staff will then draft an amendment to the regulation to further define the parameters for use of the bond proceeds. Regulatory changes are made through a process defined by the Administrative Procedures Act.

### **Recommendation**

The staff suggests that the Committee on Academic Affairs and Licensing commend favorably to the Commission authority to the staff to pursue the change in the statute to allow the Commission to use bond proceeds and student recovery funds to benefit students who suffer losses as a result of an institution’s closing as displayed on **Attachment 1**. The Committee will consider this item at its meeting on November 6 and will make its recommendation to the Commission on November 7.

**SECTION 59-58-80. Student tuition protection.**

- (A) Before an institution is licensed under this Chapter, the Commission may require that a surety bond shall be provided by the institution in an amount in compliance with the regulations prescribed by the Commission. The obligation of the bond is that the institution, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the State of South Carolina. The bond shall be to the Commission, in that form as approved by the Commission, and is to be used to the benefit of students who suffer losses as a result of an institution's closing. ~~only for payment of a refund of tuition and instructional fees due to a student or potential student.~~
- (B) The bond company may not be relieved of liability on the bond unless it gives the institution and the Commission 90 day's written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the institution's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the Commissioner.
- (C) Instead of the surety bond required in Subsection (A), the institution may pledge other means of collateral acceptable to the State Treasurer, in an aggregate market value of the required bond. The Commission shall deliver a safekeeping receipt of collateral to the State Treasurer to be held until the Commission serves notice for its release to the Commission.
- (D) The Commission may promulgate regulations establishing a student recovery ~~tuition guaranty~~ fund for nonpublic educational institutions. The fund must be used to benefit ~~reimburse~~ students because an institution has failed to perform faithfully its contractual obligations for tuition and instructional fees in the event of an institution's closing.