

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1089 CS Independent Postsecondary Education
SPONSOR(S): Greenstein
TIED BILLS: HB 1091 **IDEN./SIM. BILLS:** SB 1250

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------------|-----------------|----------------|
| 1) <u>Colleges & Universities Committee</u> | <u>8 Y, 0 N, w/CS</u> | <u>Hatfield</u> | <u>Tilton</u> |
| 2) <u>Education Appropriations Committee</u> | <u>14 Y, 0 N</u> | <u>Hammock</u> | <u>Hamon</u> |
| 3) <u>Education Council</u> | <u>11 Y, 0 N</u> | <u>Hatfield</u> | <u>Cobb</u> |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

Current law requires certain private postsecondary institutions to be licensed by the Commission for Independent Education (commission) in order to operate in the State of Florida. Currently, there are approximately 850 licensed institutions in the state.

HB 1089 CS revises provisions relating to the licensure process; categorizes certain acts relating to the establishment and operation of independent postsecondary institutions as 3rd degree felonies or 2nd degree misdemeanors; revises procedures with regard to disciplinary proceedings and provides for imposition of fines for institutions that fail to comply with licensure standards or violate laws or rules of the commission; authorizes the commission to issue citations for certain violations; and revises provisions relating to the Institutional Assessment Trust Fund.

The fiscal impact of the bill is indeterminate. See FISCAL COMMENTS section for further details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill authorizes the Commission for Independent Education (commission) to impose certain penalties. The bill identifies new acts relating to the establishment and operation of certain independent postsecondary institutions that constitute felonies and misdemeanors.

Ensure lower taxes—The bill authorizes the commission to collect fees from institutions and applicants for certain violations.

Safeguard individual liberty—The bill provides additional options to the commission in conducting investigations of applicants and institutions.

Promote Personal Responsibility—The bill authorizes additional penalties for those institutions that violate chapter 1005 or rules provided by the commission.

B. EFFECT OF PROPOSED CHANGES:

Background

The Commission for Independent Education (commission) was created in s.1005.21, F.S. by the 2001 Legislature as a result of combining and transferring to a single board the powers and duties of the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education. The commission has jurisdiction for independent postsecondary education institutions with the exception of those independent nonprofit colleges or universities eligible to participate in the Florida Resident Access Grant (FRAG) program and certain religious colleges.

The commission is comprised of seven members who are residents of this state, who are appointed by the Governor and subject to confirmation by the Senate:

- Two representatives of independent colleges or universities licensed by the commission.
- Two representatives of independent, nondegree-granting schools licensed by the commission.
- One member from a public school district or community college who is an administrator of career education.
- One representative of a religious college that meets the criteria of s. 1005.06(1)(f), F.S., and thus can operate without governmental oversight.
- One lay member who is not affiliated with an independent postsecondary educational institution.

For the independent postsecondary institutions under its jurisdiction, the commission:

- sets licensure standards.
- reviews applications for and issues licenses.
- monitors the consumer practices of these institutions.
- serves as a central agency for collecting and distributing information regarding these institutions.

LICENSURE OF INSTITUTIONS

Background

Certain private postsecondary institutions are required to be licensed by the commission.¹ According to the Department of Education (DOE), the commission currently licenses approximately 850 institutions.

¹ See 1005.31, F.S.

The commission has developed standards to evaluate the institutions applying for licensure and recognizes an institution based on its highest educational offering, adopting rules for licensure that include reporting requirements for each level of licensure.

According to the DOE, the commission has 12 standards for licensure and requires a detailed investigation to determine compliance; however, the commission does not have the discretion to process an application beyond the 90-day requirement imposed by chapter 120, the Administrative Procedure's Act.

Approved-applicant status is extended to all institutions that submit a complete application for provisional licensure and pay all attendant fees; however, the law does not establish a time-frame within which an application must be completed after its initial filing and the determination that the application is incomplete.

According to the DOE, the applicant can choose to complete an application at any time which could be five years or more. The unlimited time prevents the commission from providing accurate data regarding licensure and causes the staff to review the applicant's information for an indefinite period of time.

Under the Administrative Procedures Act, the commission currently does not have the statutory authority to grant an extension of time to conclude its investigation of an applicant for licensure.

Effects of Proposed Changes

The bill requires each licensee to be solely responsible for notifying the commission in writing of the licensee's current mailing address and location of the institution. Failure to notify the commission of a change of address constitutes a violation and disciplinary action may be taken by the commission. The bill also provides that service by mail to a licensee's last known address of record with the commission constitutes adequate and sufficient notice to the licensee for any official communication by the commission.

According to the DOE, the Department of Health and the Department of Business and Professional Record have similar address of record requirements.

The bill provides that an applicant for licensure must complete the application within one year of the initial filing; otherwise the incomplete application will expire. The bill removes the requirement that in granting approved applicant status, the commission provide to commission staff and the institution a list of specific omissions or deficiencies.

The bill also requires that the commission investigate each applicant to ensure compliance with the standards for licensure. Authorization is given to the commission to issue a 90-day licensure delay when the commission has reason to believe that the applicant does not meet the criteria for licensure.

The bill also provides that authorized agents and employees of the commission may conduct inspections of any applicant for licensure or a licensed independent postsecondary educational institution.

PENALTIES FOR VIOLATION OF LAW

Background

Currently, s. 1005.38, F.S. provides the commission with the authority to take action against a licensee and administer certain penalties. The commission adopts rules for taking actions against a licensee and may also impose administrative fines of not more than \$5,000 if an institution is on probation for a

period under conditions that require oversight by the commission or its staff. The fine is deposited into the Institutional Assessment Trust Fund.

The commission may conduct investigations to determine if an applicant should be issued a license and certain factors may be considered by the commission in determining whether to deny an application for such reasons. Such factors may include an applicant who: failed to arrange for completion of student training or issue appropriate refunds, had its license to operate an institution revoked or denied in Florida or in another state or jurisdiction, or was previously operating an institution in Florida or in another state in a manner contrary to the health, education, or welfare of the public.

The commission may also:

- require certain information under oath regarding prior operation of an institution;
- obtain an injunction or take any other action it deems necessary against an institution or agent in violation of chapter 1005;
- conduct disciplinary proceedings through an investigation of any suspected violation of this chapter, including a finding of probable cause and making reports to any law enforcement agency or regulatory agency; and
- issue a cease and desist order in conjunction with an administrative complaint or notice of denial of licensure, if necessary to protect the health, safety, or welfare of students, prospective students, or the public.

The commission must also adopt rules to identify grounds for imposing disciplinary actions.

Effects of Proposed Changes

The bill creates s. 1005.375, F.S., relating to violations and penalties, providing that the following acts constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

- Operating an independent postsecondary educational institution without a valid, active license issued pursuant to this chapter.
- Obtaining or attempting to obtain a license to operate an institution by fraudulent misrepresentation.
- Using or attempting to use a license that has been suspended or revoked.

The bill also provides that certain acts constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

- Knowingly concealing information relating to violations of this chapter.
- Willfully making any false oath or affirmation when required to make an oath or affirmation pursuant to this chapter.

According to the DOE, providing specific criminal violations within statute gives the prosecutorial agencies the grounds needed to actually prosecute the institutions committing crimes.

The bill amends s. 1005.38, F.S., providing that commission investigations for disciplinary proceedings can stem from suspected violations of either law or rule of the commission and that an investigation may be continued until it is completed and an investigative report is presented to a probable cause panel of the commission. The bill also corrects references to the commission's name.

The bill provides that upon written request by an informant the commission must notify the informant of the status of an investigation, civil action, or administrative proceeding.

The bill requires the commission to do the following:

- Adopt rules to identify grounds for imposing disciplinary actions for violations of law or rules or for denial of a license.

- Enter a final order either dismissing a complaint or imposing one or more penalties for any violation of law or rule; this includes imposition of an administrative fine of no less than \$100 and no more than \$5,000 for each count or separate violation. Fines must be deposited in the Institutional Assessment Trust Fund.
- Assess costs to the licensed institution for the time of investigative work and prosecution of the case.

The bill further provides authority for the collection of unpaid fines or assessments, defines the parameters for reinstatement of a licensed institution, and provides a temporary suspension for any institution that is operating with an immediate danger to the public health, safety, or welfare.

The bill creates s. 1005.385, F.S., which provides authority to the commission to issue citations. The bill also requires certain content be included with a citation and specifies the actions that may be taken by the commission in regard to a citation. The commission must adopt rules designating violations for which a citation may be issued.

According to the DOE, citations provide an institution an initial opportunity to resolve their violation of rule or law in an expedited manner by paying a minimum fine for the citation instead of incurring excessive costs by the institution and the commission going through Chapter 120 proceedings. Similar provisions are provided for the Department of Business and Professional Regulation and the Department of Health.

INSTITUTIONAL ASSESSMENT TRUST FUND

Background

The Institutional Assessment Trust Fund, established in s. 1010.83, F.S., is administered by the DOE and the rules of the SBE. The trust fund consists of all fees and fines imposed upon nonpublic colleges and schools pursuant to chapter 1005, including all fees collected from nonpublic colleges for participation in the common course designation and numbering system. The DOE must maintain separate revenue accounts for independent colleges and universities; nonpublic career education; and the DOE. Funds from the trust fund must be used for certain purposes including, but not limited to, the following:

- Authorized expenses of the respective boards (prior to the commission) in carrying out their required duties.
- Financial assistance programs for students who attend nonpublic institutions licensed by the board.
- Educational programs for the benefit of current and prospective owners, administrators, agents, authorized groups of individuals, and faculty of institutions receiving a license, a certificate of exemption, or an authorization by the board.
- Authorized expenses of the DOE incurred as a result of the inclusion of nonpublic colleges in the statewide course numbering system.

Currently, the trust fund references the previous name of the commission.

Effects of Proposed Changes

The bill amends s. 1010.83, F.S., Institutional Assessment Trust Fund, to include fees and fines imposed by chapter 1005, from not only nonpublic colleges, but also schools, including fees collected for participation in the Student Protection Fund.

The bill requires the DOE to maintain separate accounts for operation of the commission, the Student Protection Fund, and the DOE. The bill updates terminology to reflect the current name of the commission.

The bill removes the requirements that the trust fund be used to provide funding for:

- financial assistance programs for students who attend nonpublic institutions; and
- educational programs for the benefit of current and prospective owners, administrators, agents, authorized groups of individuals, and faculty of institutions receiving a license, a certificate of exemption, or an authorization.

The bill expands the use of the trust fund monies to provide funding for expenses authorized by the commission from the Student Protection Fund account to complete the training of students enrolled in an institution that terminates a program or ceases operation while the student is enrolled or to facilitate the retrieval or safekeeping of records from a closed institution.

C. SECTION DIRECTORY:

Section 1: Amends s. 1005.31, F.S., providing requirements of independent postsecondary educational institutions licensed by the commission; providing requirements for an investigative process for licensure of applicants; revising provisions relating to applicant status; and providing for inspections.

Section 2: Creates s. 1005.375, F.S., specifying acts that constitute violations and providing penalties for such violations.

Section 3: Amends s. 1005.38, F.S., providing requirements for investigation of a suspected violation of the chapter or rules; providing additional grounds for disciplinary actions; providing for a final order to dismiss a complaint or impose specified penalties; providing for imposition of an assessment relating to investigation and prosecution of a case; and providing for an emergency suspension or restriction order.

Section 4: Creates s. 1005.385, F.S., requiring the commission to adopt rules relating to issuance of a citation to an institution and violations for which a citation may be issued; and specifying requirements for issuance.

Section 5: Amends s. 1010.83, F.S., providing for the inclusion in the Institutional Assessment Trust Fund of fees and fines imposed on institutions; specifying separate accounts; and revising uses of funds in the trust fund.

Section 6: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS

2. Expenditures:

See FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate.

According to the DOE, the commission receives no general revenue funds and is fully supported by fees collected from licensed institutions. The commission will now have the authority to assess fines for institutions that violate law or commission rules.

The DOE reports that it is difficult to quantify the revenue impact because of the inability to foresee how many institutions will fail to comply with chapter 1005 or commission rules and the degree of noncompliance. The commission currently licenses approximately 850 institutions and in 2004, 100 institutions went before the probable cause panel for a determination of a violation of a law or rule. Only eight of the 100 institutions were found to be in violation and are facing disciplinary penalties. Thus far, in 2005, 15 institutions have gone before a probable cause panel and none have been found to be in violation of law or rule.

The Criminal Justice Impact Conference has not reviewed this bill to determine the prison bed impact of the criminal penalties. However, any fiscal impact is expected to be insignificant because the sentencing guidelines allow for a non-prison sanction for unranked third degree felonies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2005, the Colleges & Universities Committee adopted an amendment to HB 1089. The bill was reported favorable with a Committee Substitute (CS).

The CS reinstates the requirement that rules adopted by the commission be submitted to the State Board of Education for approval and removes the provision that the commission may deny licensure on broader grounds than in current law, without such action being considered disciplinary or requiring a probable cause hearing.