

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Higher Education

BILL: CS/SB 668

INTRODUCER: Education Committee and Senator Bean

SUBJECT: Postsecondary Distance Education

DATE: April 13, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AHE</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 668 authorizes the State of Florida to participate in the State Authorization Reciprocity Agreement (SARA) for the delivery of postsecondary distance education. Specifically, the bill:

- Requires all parties to the SARA must be willing to accept each other’s authorization of accredited institutions to operate in their state to offer distance education services.
- Establishes the Postsecondary Reciprocal Distance Education Coordinating Council (Council) within the Florida Department of Education, for the purpose of entering into and administering the SARA.
- Establishes membership of the Council and requires the Commission for Independent Education to provide administrative support to the Council.
- Requires the Council to propose an annual fee schedule and collect fees from each Florida institution participating in the SARA.
- Requires the State Board of Education to adopt rules for the implementation of the SARA.

The bill has no impact on state expenditures. *See* Section V. Fiscal Impact Statement for details.

The bill takes effect upon becoming law.

II. Present Situation:

Students may access higher education through the traditional classroom setting or through distance education.

The Southern Association of Colleges and Schools Commission on Colleges defines distance learning as a formal educational process in which the majority of the instruction in a course occurs when students and instructors do not share the same location.¹ Florida law defines distance learning, for the purpose of assessing a distance learning course fee, as a course in which at least 80 percent of direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.²

The Southern Regional Education Board

The Southern Regional Education Board (SREB) maintains a regional system for sharing online college courses known as the Electronic Campus (EC).³ SREB's EC allows students residing in an SREB member state to access online courses in any SREB state through the SREB's Electronic Reciprocity Agreement (SECRRA).⁴ The SECRRA is a voluntary agreement, which allows institutions that offer courses and degree programs that have been reviewed and approved by the institution's home state to be recognized as approved to offer courses in other SREB states.⁵ In order to participate in SECRRA, an institution must be not-for-profit, regionally accredited, and chartered in one of the 16 SREB member states.⁶ Florida currently participates in this agreement.⁷

The SECRRA will expire on June 30, 2017.⁸

Federal Requirements

Federal law requires each state to regulate out-of-state educational institutions with a physical presence in their state or that provides an education via distance learning to students in that state.⁹ The state authorization of online programs can be achieved through a state authorization reciprocity agreement.¹⁰ A "state authorization reciprocity agreement" is¹¹

"an agreement between two or more states that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in agreement from

¹ Southern Association of Colleges and Schools Commission on Colleges, *Policy Statement, Distance and Correspondence Education* (2014), available at <http://www.sacscoc.org/pdf/DistanceCorrespondenceEducation.pdf>.

² Sections 1009.23(16) and 1009.24(7), F.S.

³ Southern Regional Education Board, *State Authorization, SREB and the State Authorization Reciprocity Agreement*, <http://www.sreb.org/state-authorization-sara-secrra> (last visited March 24, 2017).

⁴ Southern Regional Education Board, *State Authorization, SREB's Regional Agreement, SECRRA*, <http://www.sreb.org/state-authorization-sara-secrra> (last visited March 24, 2017).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Southern Regional Education Board, *State Authorization, SECRRA Dissolve Date*, <http://www.sreb.org/state-authorization-sara-secrra> (last visited March 24, 2017).

⁹ 34 C.F.R. s. 600.9.

¹⁰ *Id.* See also National Council for State Authorization Reciprocity Agreements, *About NC-SARA*, <http://nc-sara.org/about> (last visited March 24, 2017).

¹¹ Program Integrity and Improvement, 81 Fed. Reg. 92232 (Dec. 19, 2016).

enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.”

Currently, there is a national interstate reciprocity agreement for the state authorization of distance learning programs.¹²

State Authorization Reciprocity Agreement

The State Authorization Reciprocity Agreement, also known as SARA, is a voluntary agreement among participating states that establishes comparable national standards for interstate offerings of postsecondary distance education courses and programs.¹³ SARA is overseen by a national council¹⁴ and administered by the four regional education compacts.¹⁵ SARA membership requires the state to designate a portal entity as the coordinating entity responsible for contact with other state entities and students from other states.¹⁶ Each state must apply to the National Council for SARA (NC-SARA) through its portal entity to be a member of SARA.¹⁷ Once a state becomes a member of SARA, institutions within that state are authorized to apply to the portal entity to participate in SARA.¹⁸ An institution in an SARA member state is not required to participate in SARA.¹⁹

To participate in SARA, an institution must:²⁰

- Be a degree granting institution;
- Be physically located in the United States;
- Hold proper authorization from Congress, a U.S. state, or a federally recognized Indian Tribe; and
- Hold accreditation as a single entity from an accrediting association recognized by the U.S. Department of Education and whose scope of authority includes distance education.

Institutions participating in the reciprocity agreement pay a fee directly to NC- SARA based on the institution’s full-time equivalent enrollment.²¹ States have the option of charging a SARA-participating institution a fee to cover the state’s costs in administering SARA.²²

¹² National Council for State Authorization Reciprocity Agreements, *About NC-SARA*, <http://nc-sara.org/about> (last visited March 24, 2017).

¹³ National Council for State Authorization Reciprocity Agreements, *About NC-SARA*, <http://nc-sara.org/about> (last visited March 24, 2017).

¹⁴ National Council for State Authorization Reciprocity Agreements, *National Council Board*, <http://nc-sara.org/about/national-council> (last visited March 24, 2017).

¹⁵ The four regional education compacts are the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board, and the Western Interstate Commission for Higher Education. National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), available at http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf, at 5 of 88.

¹⁶ *Id.* at 11-12 of 88.

¹⁷ *Id.* at 14 of 88.

¹⁸ *Id.* at 20 of 88.

¹⁹ *Id.* at 3 of 88.

²⁰ National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), available at http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf, at 17 of 88.

²¹ National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), available at http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf, at pg. 21 of 88.

²² *Id.*

The Commission for Independent Education

The Commission for Independent Education (CIE) is responsible for matters relating to nonpublic postsecondary educational institutions.²³ The CIE's functions include consumer protection; program improvements; institutional policies and administration; data management; licensure of independent schools, colleges and universities; and establishing minimum standards for the approval of employees of independent postsecondary educational institutions.²⁴ The CIE may adopt rules to ensure that licensed employees of an independent postsecondary educational institution meets specified standards.²⁵ An employee of an independent postsecondary educational institution may not solicit prospective students in Florida for enrollment in any independent postsecondary educational institution under the CIE's purview or in any out-of-state independent postsecondary educational institution unless the employee has received a license as prescribed by the CIE.²⁶

III. Effect of Proposed Changes:

CS/SB 668 authorizes the state of Florida to participate in the State Authorization Reciprocity Agreement (SARA) for the delivery of postsecondary distance education. Specifically, the bill:

- Specifies that all parties to the SARA must be willing to accept each other's authorization of accredited institutions to operate in their state to offer distance education services.
- Establishes the Postsecondary Reciprocal Distance Education Coordinating Council (Council) within the Florida Department of Education, for the purpose of entering into and administering the SARA.
- Establishes membership of the Council and requires the Commission for Independent Education (CIE) to provide administrative support to the Council.
- Requires the Council to propose an annual fee schedule and collect fees from each Florida institution participating in the SARA.
- Requires the State Board of Education to adopt rules for the implementation of the SARA.

Under the section 1, each member state or institution that participates in the SARA must be willing to accept the participating states' authorization of accredited institutions to operate in their states to offer distance educational services beyond state boundaries.

Section 1 defines institution to mean a public or private postsecondary educational institution that is accredited by a federally recognized accrediting body that awards, at a minimum, associate level degrees requiring at least two years of full-time equivalent college coursework.

²³ Section 1005.22, F.S.

²⁴ Section 1005.04, F.S.

²⁵ Section 1005.22(e), F.S.

²⁶ Section 1005.31(11), F.S.

Postsecondary Reciprocal Distance Education Coordinating Council Responsibilities (Section 1)

Section 1 grants to the Council the authority to apply to National Council for SARA (NC-SARA) and recommend rules, necessary to administer the SARA, for adoption by the State Board of Education.²⁷ Additionally, the Council is required to:

- Review and approve applications from Florida institutions to participate in the SARA and establish an appeals process for institutions that are not approved to participate in the SARA;
- Ensure compliance by Florida's institutions with the terms of the SARA, including but not limited to, accreditation and institutional quality, and consumer information and protection;
- Comply with the terms and provisions of the SARA relating to any member state, Florida institution, or non-Florida institution;
- Comply with reporting requirements in the SARA and post all such reports on the Council's website;
- Develop and administer a complaint resolution process for complaints related to the SARA; and
- Delegate to the CIE's staff any responsibilities, obligations, or authorities necessary for the administration of Florida's participation in the SARA.
- Propose an annual fee schedule and collect fees from each Florida SARA institution. The fees must be commensurate with the costs incurred by the Council.

The Council must consist of the Chancellor of the State University System, the Chancellor of the Florida College System, the Chancellor of the Division of Career and Adult Education, the Executive Director of the CIE, and the President of the Independent Colleges and Universities of Florida.

Commission for Independent Education Responsibilities (Sections 2 and 3)

Section 2 provides that a non-Florida institution participating in the SARA that offers degree programs and conducts activities limited to distance education degree programs and activities in accordance with the SARA is not under the jurisdiction of the CIE. As a result, the CIE is not required to independently authorize every institution that provides distance education that serves Florida's students.

Additionally, section 3 specifies that an employee of an independent postsecondary educational institution may not solicit prospective students in Florida for enrollment in any independent postsecondary educational institution unless the employee solicits for a postsecondary educational institution that is a member of the SARA, and therefore not under the jurisdiction of the CIE.

The bill takes effect upon becoming law.

²⁷ State University System of Florida Board of Governors, *2017 Agency Legislative Bill Analysis for SB 668* (Feb. 14, 2017), at 3.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:***Public Records***

Article I, s. 24(a) of the Florida Constitution sets forth the state's policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.²⁸ Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Florida law provides that access to public records is a duty of each agency.²⁹ Florida law defines "agency" in part as "any separate unit of government created or established by law."³⁰ The bill creates the Council in the Florida Statutes and therefore, the Council would be subject to the requirements of chapter 119.³¹ Likewise, the Commission on Independent Education, providing administrative support of the council, may be an "agency" for purposes of ch. 119, F.S., for records relating to the council.

Public Meetings

Article I, s. 24(b) of the Florida Constitution sets forth the state's policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.³²

The Council would be statutorily responsible for taking governmental actions such as serving as the single portal entity designated by the state to administer SARA and the point of contact for SARA-related questions, complaints, and other matters related to SARA. Accordingly, the Council would be subject to the public meetings law.³³ Individual members of the council must ensure that all discussions regarding matters before the council are in compliance with the public meetings law.

C. Trust Funds Restrictions:

None.

²⁸ Art I, s. 24, Fla. Const.

²⁹ Section 119.01(1), F.S.

³⁰ *Id.* at (2).

³¹ Email, Board of Governors of the State University System of Florida (April 7, 2017).

³² Section 286.011, F.S.

³³ Email, Board of Governors of the State University System of Florida (April 7, 2017).

D. Other Constitutional Issues:

Dual Office-holdings

Article II, s. 5 of the Florida Constitution prohibits any person holding any office of emolument under any foreign government, or civic office of emolument under the United States or any other state from holding any office of honor or emolument under the government of Florida. No person may hold at the same time more than one office under the government of Florida and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers. This provision prohibits a person from simultaneously serving in more than one “office” under the governments of the state, counties, or municipalities. Article II, s. 5 does not define the term “office” or “officer” for the purposes of the dual office-holding prohibition. The Supreme Court of Florida has stated:

The term “office” implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an “employment” does not comprehend a delegation of any part of the sovereign authority. The term “office” embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. An employment does not authorize the exercise in one’s own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes the most decisive difference between an employment and an office...”

Accordingly, it is the nature of the power and duties of a particular position, which determines whether it is an “office” or an “employment.”

The bill requires the membership of the Postsecondary Reciprocal Distance Education Coordinating Council must include the Chancellor of the State University System (SUS), the Chancellor of the Florida College System (FCS), the Chancellor of the Division of Career and Adult Education (CAE), the Executive Director of the Commission for Independent Education (CIE) and the president of the Independent Colleges and Universities of Florida (ICUF).

According to the Board of Governors, the positions enumerated in the bill do not constitute an “office.” In 1974, the Attorney General concluded the position of Chancellor, at that time, did not have the indicia of state “offices”. The same conclusion may apply to the chancellors of the FCS and Division of CAE, and the executive director for the CIE because of similarities in such positions.

Should the above positions be considered offices, the attorney general has found that the prohibition on dual office holding does not apply where the legislature is “directing that official to serve as a member and carry out the powers and duties of another office

because of an office already held by him, where the duties of the two offices are not incompatible and not inconsistent.”

If the nature of the powers and duties of the chancellor position is similar to those powers and duties in 1974, the chancellor may be able to rely on the 1974 Attorney General Opinion. On the other hand, if the powers and duties have been expanded to the extent that the chancellor today is an officer, the consequences of serving on this new council are significant.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Education, an estimated 45 private postsecondary institutions will participate in the State Authorization Reciprocity Agreement (SARA).³⁴ The annual fee required for participation is based on full-time equivalent (FTE) student enrollment as specified in the table below.³⁵

Enrolled FTE	SARA Annual Fee
Under 2,500	\$2,000
2500-9,999	\$4,000
10,000 or more	\$6,000

C. Government Sector Impact:

The Department of Education estimates 75 public and private postsecondary institutions will participate in SARA, resulting in approximately \$318,000 in annual fee revenue deposited into the Institutional Assessment Trust Fund. These funds will be used to pay the council’s annual operational costs, which are estimated to be \$225,000.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁴ Florida Department of Education, *2017 Agency Bill Analysis for SB 668* (April 4, 2017).

³⁵ National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), available at http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf

³⁶ Florida Department of Education, *2017 Agency Bill Analysis for SB 668* (April 4, 2017).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1005.06 and 1005.31.

This bill creates section 1000.35 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education March 27, 2017:

The committee substitute:

- Authorizes Florida to participate specifically in the State Authorization Reciprocity Agreement (SARA).
- Specifies that all parties to the SARA must be willing to accept each other's authorization of accredited institutions to offer distance educational services.
- Requires the Postsecondary Reciprocal Distance Education Coordinating Council (Council) to apply to participate in the SARA within 60 days after the effective date of this act.
- Specifies the terms and conditions with which Florida SARA institutions must comply, including, but not limited to, accreditation and institutional quality, consumer information and protections, disclosure and reporting requirements, complaint mechanisms and financial responsibility.
- Requires the annual fee schedule, proposed by the Council, be based on a graduated scale based on enrollment.

- B. **Amendments:**

None.