

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 859 Postsecondary Distance Education
SPONSOR(S): Post-Secondary Education Subcommittee; Mariano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 668

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Post-Secondary Education Subcommittee | 14 Y, 0 N, As CS | Dehmer | Bishop |
| 2) Higher Education Appropriations Subcommittee | 12 Y, 0 N, As CS | deNagy | Lloyd |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

The bill establishes the Postsecondary Reciprocal Distance Education Coordinating Council within the Florida Department of Education (DOE), consisting of members of Florida's postsecondary education system, which will:

- administer the State Authorization Reciprocity Agreements (SARA) with other states to authorize institutions to offer postsecondary distance education in such states;
- review and approve applications from institutions in Florida to participate in the SARA;
- establish an appeals process for institutions that are denied participation in the SARA;
- ensure Florida SARA institutions comply with the terms and provisions of the SARA;
- comply with the terms and provisions of the SARA relating to any state, territory or district approved to participate in the SARA;
- comply with the reporting requirements in the SARA;
- develop and administer a complaint resolution process for complaints related to the SARA;
- delegate any responsibilities to the Commission for Independent Education (CIE) necessary for Florida's participation in the SARA;
- recommend rules necessary to administer the SARA to the Florida State Board of Education (SBE);
- collect fees from each Florida SARA institution; and
- have the authority to revoke a Florida SARA institution's participation in the SARA if the institution is not in compliance with the terms of the SARA.

The bill provides that the decisions of the council are not subject to the administrative hearing procedures of chapter 120, F.S.

SARA states are required to have one portal entity for all of the participating institutions. The Postsecondary Reciprocal Distance Education Coordinating Council the bill creates will act as the portal entity for the state. This is not a requirement of the current Southern Regional Educational Board's Electronic Regional Reciprocity Agreement. The bill provides a fee schedule and collect fees from each Florida SARA institution. The fees are voluntary and will only be assessed if an institution wishes to be a SARA institution. The fees will fund the administrative cost of the council the bill creates. SEE FISCAL SECTION.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Authorization Reciprocity Agreements (SARA) are voluntary agreements between states that establish comparable national standards for interstate offerings of postsecondary distance-education courses and programs. SARA is intended to simplify and improve the process for students who take online courses offered by postsecondary institutions based in other states. States, not institutions or students, are members of SARA. As a result, states become members of SARA while colleges and universities participate in SARA. SARA is overseen by a National Council (NC-SARA) and administered by four regional education compacts.¹

In order to be eligible for membership, a state must either be a member of one of the four interstate Regional Compacts that administer SARA or have concluded an agreement with such a compact covering SARA activity. The state agency or entity responsible for joining SARA must have legal authority under state law to enter an interstate agreement that covers all of the elements of SARA.²

SARA centralizes the approval of distance education courses and programs offered across state lines by institutions that already have degree authorization in at least one state. Colleges and universities in a SARA state need only their home state authorization to offer distance education to any other SARA member state.³

Currently, Florida participates in the Southern Regional Educational Board's Electronic Regional Reciprocity Agreement (SECRRA). SECRRA allows Florida's approved colleges and universities to deliver online offerings in Southern Regional Education Board (SREB) member states.⁴ SREB member states include Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North and South Carolina, Oklahoma, Tennessee, Texas, and the Virginias.⁵

All SREB states, other than Florida, currently participate in SARA.⁶ On June 30, 2017, the current SECRRA agreement dissolves.⁷ Many SARA institutions are admitting only out-of-state students from SARA states. As a result, Florida students will be shut out of many SARA institutions if Florida fails to join SARA.⁸

The Commission for Independent Education (CIE) is responsible for matters relating to nonpublic, postsecondary, educational institutions. The CIE's functions include consumer protection, program improvements, institutional policies and administration, data management, the licensure of independent schools, colleges and universities and establishing minimum standards for the approval of employees

¹ See, NC-SARA National Council for State Authorization Reciprocity Agreements, *Basic questions about SARA*, <http://nc-sara.org/content/basic-questions-about-sara> (last visited February 6, 2017).

² See, State Authorization Reciprocity Agreements: Policy and Operations Manual, *Section 2. States and Membership*, http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf (last visited February 6, 2017).

³ See, NC-SARA National Council for State Authorization Reciprocity Agreements, *Basic questions about SARA*, <http://nc-sara.org/content/basic-questions-about-sara> (last visited February 6, 2017).

⁴ See, Southern Regional Education Board, *SREB's regional agreement, SECRRA*, <http://www.sreb.org/state-authorization-sara-secrra> (last visited March 6, 2017).

⁵ See, Southern Regional Education Board, *SREB and Member States*, <http://www.sreb.org/sreb-and-member-states> (last visited March 6, 2017).

⁶ See, NC-SARA National Council for State Authorization Reciprocity Agreements, *SARA States & Institutions*, <http://nc-sara.org/sara-states-institutions> (last visited March 7, 2017).

⁷ Email, Southern Regional Education Board, Director of Student Access Programs and Services (March 7, 2017).

⁸ Email, Southern Regional Education Board, Director of Student Access Programs and Services (December 12, 2016).

of independent postsecondary educational institutions.⁹ The CIE may adopt rules to ensure that licensed employees of an independent postsecondary educational institution meet specific standards. An agent or employee of the commission 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 agent has received a license as prescribed by the CIE.¹⁰

Effect of Proposed Changes

The bill establishes the Postsecondary Reciprocal Distance Education Coordinating Council within the Florida Department of Education (DOE) to administer the SARA. The council shall 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.

The council shall:

- apply for Florida to participate as a member of the SARA pursuant to the procedure established by SREB;
- serve as the single portal entity for the administration of the SARA;
- review and approve applications from institutions in Florida to participate in the SARA;
- establish an appeals process for institutions that are not approved to participate in the SARA;
- ensure compliance by Florida SARA institutions with the terms and provisions of the SARA, including but not limited to, accreditation and institutional quality, consumer information and protection, disclosure and reporting requirements, complaint mechanism and financial responsibility;
- comply with the terms and provisions of the SARA relating to any member state, Florida SARA institution or non-Florida SARA institution;
- comply with the reporting requirements in the SARA and post all such reports on the council's website;
- develop and administer a complaint resolution process, consistent with SARA, to resolve SARA-related complaints after all complaint processes in place at a Florida institution have been exhausted by the complainant;
- delegate any responsibilities, obligations or authorities necessary for the administration of Florida's participation in the SARA to the CIE's staff; and
- recommend rules necessary to administer reciprocity agreements to the Florida State Board of Education (SBE).

The bill provides a fee schedule and collect fees from each Florida SARA institution. The fees are based on a graduated scale of institutional enrollment. All fees collected shall be submitted through the DOE to the Chief Financial Officer for deposit into a separate account within the Institutional Assessment Trust Fund. The bill provides the fees will be assessed as follows:

- \$1,500/year for institutions with fewer than 2,500 FTE students;
- \$3,000/year for institutions between 2,500-9,999 FTE students;
- \$4,500/year for institutions with 10,000 or more FTE students.

All fees collected shall be submitted through the DOE to the Chief Financial Officer for deposit into a separate account within the Institutional Assessment Trust Fund.

⁹ Florida Department of Education, *Commission for Independent Education*, <http://www.fldoe.org/policy/cie> (last visited March 7, 2017); s. 1005.31(11), F.S.

¹⁰ Section 1005.31(11), F.S.

The bill requires the council to submit a yearly report to the Governor and Legislature shows that revenues generated are not higher than the revenues necessary for the council's operation, must include a justification of staff needed for the council, and must report on the number of Florida SARA institutions.

The bill provides that the council may revoke a Florida SARA institution's approval to participate in the SARA if the council determines the institution is not in compliance with the terms and provisions of the SARA. A Florida SARA institution may withdraw from participation as a Florida SARA institution by submitting notice of intent to withdraw to the council. The intent to withdraw becomes effective at the beginning of the academic term after receipt of the notice.

The bill provides that the decisions by the council are not subject to the administrative hearing procedures of chapter 120, F.S.

The bill provides that any non-Florida SARA institution that offers degree programs and conducts activities limited to distance education degree programs and activities in accordance with the SARA are not under the jurisdiction of the CIE.

The bill provides that an employee of an independent postsecondary educational institution may not solicit prospective students in Florida for enrollment in any out-of-state independent postsecondary educational institution unless the employee solicits for a postsecondary educational institution that is not under the jurisdiction of the CIE.

SARA states are required to have one portal entity for all of the participating institutions. The Postsecondary Reciprocal Distance Education Coordinating Council the bill creates will act as the portal entity for the state. This is not a requirement of the current Southern Regional Educational Board's Electronic Regional Reciprocity Agreement.

Institutions participating in SARA will be required to comply with annual reporting and disclosure requirements. Specifically, SARA institutions are required to report to NC-SARA: (i) the number of students enrolled in the institution via distance education by state, territory, or district; (ii) the number of complaints from out-of-state students, by institution, appealed to the portal entity; and (iii) the resolution of complaints to the portal entity by SARA institution resolved in favor of the institution, resolved in favor of the complainant, or resolved by agreement as well as the number of pending complaints.¹¹

There are four categories of institutions that can participate in the SARA: institutions in the State University System (SUS), institutions in the Florida College System (FCS), institutions under the CIE's purview, and institutions in the Independent Colleges and Universities of Florida (ICUF). ICUF is a diverse association of 30 private, not-for-profit, higher education institutions that are based in Florida and accredited by the Southern Association of Colleges & Schools.¹²

B. SECTION DIRECTORY:

Section 1. Creates s. 1000.35, F.S., authorizing the Postsecondary Reciprocal Distance Education Coordinating Council to administer reciprocity agreements.

Section 2. Amends s. 1005.06, F.S., relating to institutions not under the jurisdiction of the CIE.

Section 3. Amends s. 1005.31, F.S., relating to licensure of colleges and schools operating in Florida.

Section 4. Amends s. 1010.83, F.S., relating to the Institutional Assessment Trust Fund.

¹¹ "2017 Legislative Bill Analysis," Board of Governors, March 17, 2017. On file with House Higher Education Appropriations Subcommittee staff.

¹² Independent Colleges and Universities of Florida, www.icuf.org, (last visited March 21, 2017)

Section 5. Appropriates trust fund authority and 2 FTE to the Department of Education for the purpose of implementing the requirements of this act.

Section 6. Directs the Division of Law Revision and Information to replace the phrase “the effective date of this act” wherever it occurs with the date the act becomes a law.

Section . The bill provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides a fee schedule and collect fees from each Florida SARA institution. The fees are based on a graduated scale of institutional enrollment. All fees collected shall be submitted through the DOE to the Chief Financial Officer for deposit into a separate account within the Institutional Assessment Trust Fund. The bill provides the fees will be assessed as follows:

- \$1,500/year for institutions with fewer than 2,500 FTE students;
- \$3,000/year for institutions between 2,500-9,999 FTE students;
- \$4,500/year for institutions with 10,000 or more FTE students.

The projected number of institutions that are expected to participate in SARA by FTE enrollment are as follows:

| Type of Institution | > 2,500 | 2,500-9,999 | < 10,000 | Total |
|---------------------|---------|-------------|----------|-------|
| ICUF ¹³ | 6 | 10 | 5 | 21 |
| SUS ¹⁴ | 0 | 1 | 9 | 10 |
| FCS ¹⁵ | 2 | 5 | 13 | 20 |
| CIE ¹⁶ | 13 | 5 | 2 | 20 |
| Total | 21 | 21 | 29 | 71 |

The yearly revenues for the council will be \$225,000. There is a possibility that more institutions could join SARA, creating a potential for an increase in yearly revenues. The bill requires the council to submit a yearly report to the Governor and Legislature which shows that revenues generated are not higher than the revenues necessary for the council's operation, must include a justification of staff needed for the council, and must report on the number of Florida SARA institutions.

2. Expenditures:

The bill appropriates a \$225,534 of trust authority in the Institutional Assessment Trust Fund and 2 full time employees the Department of Education of in order to support the operations of the council. See breakout of funds below:

¹³ Projected number of participating ICUF institutions, e-mail from ICUF, on file with House Higher Education Appropriations Subcommittee staff.

¹⁴ “2017 Legislative Bill Analysis,” Board of Governors, March 17, 2017. On file with House Higher Education Appropriations Subcommittee staff.

¹⁵ “Fiscal Impact for Commission for Independent Education Administrative Costs,” Department of Education; March 16, 2017. On file with House Higher Education Appropriations Subcommittee Staff.

¹⁶ *Id.*

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|---------------------------------------|------------------|
| Salary Expenses | \$188,534 |
| Travel for Staff to national meetings | \$5,000 |
| Travel for staff to regional meetings | \$4,500 |
| On-site Visits | \$4,500 |
| Equipment & supplies | \$3,000 |
| IT Support/programming | \$10,000 |
| Legal | \$10,000 |
| Total Projected Expenses | \$225,534 |

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:

E. SARA states are required to have one portal entity for all of the participating institutions. The Postsecondary Reciprocal Distance Education Coordinating Council the bill creates will act as the portal entity for the state. This is not a requirement of the current Southern Regional Educational Board's Electronic Regional Reciprocity Agreement. The bill provides a fee schedule and collect fees from each Florida SARA institution. The fees are voluntary and will only be assessed if an institution wishes to be a SARA institution. The fees will fund the administrative cost of the council the bill creates.

The SARA institutions will be both public and private colleges and universities. SARA institutions will avoid paying fees to all other SARA states nationwide. Fees vary by state; some are based on a percentage of tuition revenue; some are based on the number of programs offered; some charge a flat fee; and some require surety bonds. There will be cost avoidances for SARA institutions. The institutions will no longer be required to: (1) annually stay abreast of state authorization requirements in all other states as such requirements are created and changed; and (2) submit applications and pay initial and renewal fees to each state that has such requirements and in which the institutions will seek authorization.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

¹⁷ "2017 Legislative Bill Analysis," Board of Governors, March 17, 2017. On file with House Higher Education Appropriations Subcommittee staff.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Post-Secondary Education subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment differs from the bill in the following ways:

- authorizes Florida to participate specifically in the State Authorization Reciprocity Agreement (SARA);
- requires the counsel 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; and
- requires the annual fee schedule, proposed by the counsel, be predicated on a graduated scale based on enrollment.

The bill analysis is drafted to the committee substitute as passed by the Post-Secondary Education subcommittee.

On March 27, 2017, the Higher Education Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The three amendments did the following:

- Allows for the Institutional Assessment Trust Fund to collect all fees from all institutions related to participating in the SARA.
- Provides a fee schedule and collect fees from each Florida SARA institution. The fees are based on a graduated scale of institutional enrollment. All fees collected shall be submitted through the DOE to the Chief Financial Officer for deposit into a separate account within the Institutional Assessment Trust Fund. The bill provides the fees will be assessed as follows:
 - \$1,500/year for institutions with fewer than 2,500 FTE students;
 - \$3,000/year for institutions between 2,500-9,999 FTE students;
 - \$4,500/year for institutions with 10,000 or more FTE students.
- Provides a reporting requirement for the council.
- Appropriates recurring funds of \$225,534 from the Institutional Assessment Trust Fund and 2 FTE to the Department of Education to implement the requirements of the bill.

The bill analysis is drafted to the committee substitute as passed by the Higher Education Appropriations Subcommittee.