

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2022
 SPONSOR: Education Committee and Senator Villalobos
 SUBJECT: Education Reenactment/Ch. 246, F.S.
 DATE: February 22, 2002 REVISED: 02/26/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute makes technical and substantive changes to accommodate the creation of the Commission for Independent Education and to save ch. 246, F.S., from mandatory repeal effective January 7, 2003.

This bill reenacts and amends the following sections of the Florida Statutes: 246.011, 246.013, 246.021, 246.031, 246.041, 246.081, 246.084, 246.085, 246.091, 246.095, 246.101, 246.103, 246.051, 246.071, 246.087, 246.131, 246.151, 246.201, 246.203, 246.205, 246.207, 246.211, 246.213, 246.215, 246.216, 246.217, 246.219, 246.220, 246.222, 246.2235, 246.225, 246.226, 246.2265, 246.227, 246.228, 246.229, 246.231, 246.232, 246.111, and 246.121, F.S.

It repeals ss. 246.051, 246.071, 246.087, 246.131, 246.151, 246.201, 246.203, 246.205, 246.207, 246.211, 246.213, 246.215, 246.216, 246.217, 246.219, 246.220, 246.222, 246.2235, 246.225, 246.226, 246.2265, 246.227, 246.228, 246.229, 246.231, 246.232, and 246.50, F.S.

It creates s. 246.103, s. 246.143, and 246.147, F.S.

The bill takes effect January 7, 2003.

II. Present Situation:

Chapter 246, F.S., governs the operation of independent postsecondary institutions, including colleges and universities, vocational, technical, trade, and business schools, and religious institutions that wish to confer college degrees. In 1971, this regulation was requested by legitimate institutions concerned about diploma mills. In 30 years, the purpose of these laws has

evolved into a role of advocacy for students and assistance so that institutions can avoid problems that could harm students or the economy.

In 2000, the Legislature called for the repeal of every section in ch. 246, F.S., effective January 7, 2003.¹ The 2001 Legislature enacted a Type 2 transfer of the duties addressed in that chapter to a newly created commission.² Thus, in July of 2001, the Commission for Independent Education assumed the responsibilities previously assigned to the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education.

The Legislature also removed from either board's jurisdiction the 27 colleges that are most like state universities and placed oversight responsibilities for them with the newly created Division of Colleges and Universities. The Commission does not have jurisdiction over the state's 27 colleges that have the following five characteristics:

- Accredited by Commission on Colleges of the Southern Association of Colleges and Schools
- Confer 4-year baccalaureate degrees
- Located and chartered in Florida
- Not-for-profit
- Have a secular purpose.

A college must meet these requirements for its students to be eligible for the William L. Boyd, IV, Florida Resident Access Grant, s. 240.605, F.S.

Section 246.031, F.S., is silent about the length of terms of members of the Commission for Independent Education. There are six members on the commission, as follows:

- One representative of the 69 colleges that are eligible for student financial aid from the federal or state government.
- One representative of the 105 colleges that, because of their religious orientation or desire to avoid governmental involvement, do not enroll students who receive governmental financial assistance.³
- One representative of the 540 postsecondary education institutions that do not award degrees, only vocational certificates or diplomas.
- One from a vocational education division of a public school district or community college.
- Two lay members.

A 2001 interim project of the Senate Education Committee recommended removing the religious colleges from the board's jurisdiction because they do not wish to have governmental oversight of their educational content. The commission can ascertain that religious colleges meet its other requirements by requiring only their own sworn affidavit. Therefore, the project recommended eliminating the required representative from the religious colleges and including more representation from schools because they are so numerous. To prevent frequent ties, the membership should be at least seven.

¹ Chapter 2000-132, section 3, paragraph (7), Laws of Florida

² SB 1162 (ch. 2001-170, Laws of Florida)

³ As of this date, this position is vacant.

III. Effect of Proposed Changes:

The legislation under consideration amends or repeals every section of chapter 246, F.S. When it creates a statute, the purpose is to re-organize the chapter rather than to add additional sections.

The most substantive changes are to simplify the terms used to describe the various licensing categories. Under the bill, all the schools and colleges under the commission's jurisdiction are to be licensed, and two categories of colleges are removed from the commission's jurisdiction if they legally verify that they meet the commission's requirements. These colleges currently hold credentials called "Certificate of Exemption" because of credit trading and "Certificate of Authorization" because of the religious nature of their education programs and degree titles. Yet another category, "Permission to Operate," is repealed.

Another substantive change is to remove from the statutes detailed requirements that duplicate provisions that are also in rules.

Most of the changes are technical and are needed only because the duties of two boards have been combined into one. For clarity, the following section-by-section analysis summarizes briefly the current law and the situation that calls for any substantive amendment. In cases where the changes are technical and will have no effect upon the present situation, the analyst uses the term "conforming provisions."

Section 1. Amends s. 246.011, Purpose.

Conforming provisions only. These include:

- Substituting references to the board's name.
- Changing the reference from "colleges and universities" to "independent postsecondary educational institutions" to include the career schools.
- Changing a reference from "regional accreditation" to "accreditation recognized by the United States Department of Education," because regional associations do not accredit career education schools.

Section 2. Amends s. 246.013, F.S., Participation in the statewide course numbering system.

In addition to conforming provisions, this section restricts permission to participate in the statewide course numbering system to institutions that conduct resident instruction. Therefore, it will be clear that institutions may not participate if they provide instruction only via the Internet or correspondence courses.

Section 3. Amends s. 246.021, F.S., Definitions

This section includes definitions for schools and colleges in the section that previously applied to only to colleges. It contains four new definitions for types of programs that may be conducted without a license: avocational, in-service or professional development, examination preparation courses, and contract training. The definitions are restrictive, to prevent owners from trying to avoid licensure by camouflaging their schools as programs.

Section 4. Amends s. 246.031, F.S., Commission for Independent Education

Under the bill, s. 246.031, F.S., is amended to increase the membership on the Commission for Independent Education from six to seven as follows:

- Two from colleges;
- Two from schools;
- Two lay members; and
- One from a vocational education division of a public school district or community college.

The bill is silent about whether one of the college representatives should be from a religious college. The terms will be 3 years, as with the previous two boards.

Section 5. Amends s. 246.041, F.S., Powers and duties of commission

The statutes contain five sections that assign powers and duties to the board. Section 246.041, F.S., also contains a lengthy list of items that must be included in the annual report. These requirements are more appropriately retained in rule. This section locates all the laws governing the duties and powers of the commission into one section instead of five. In addition to the provisions in the original two sections that assigned powers and duties to the two boards, this section includes provisions from:

- 246.061, F.S., “Administration by board.”
- 246.071, F.S., “Expenditures.”
- 246.081, F.S., “Rules of the State Board of Independent Colleges and Universities.”

In addition to collapsing all the old duties into this section, the bill authorizes the commission to establish an additional office in the southern part of the state, to state that the board’s schedule will not be responsible for any delay in the receipt of a license, and to require publication of the procedures for receiving and responding to complaints from students.

A requirement is deleted that the board must allow an individual or group of individuals to represent colleges before the board.

Sections 6. Repeals ss. 246.051, 246.061, 246.071, F.S.

In section 5 of the bill, these provisions are included in s. 246.041, F.S.

Section 7. Amends s. 246.081, Licensure of institutions.

Licensing categories are in rules of the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education. They include *temporary license*, *provisional license*, and *annual license*. The license lists the programs that may be provided and assures that minimum standards are included for education program content, facilities, finances, and staff understanding of state regulatory provisions. The categories are confusing, in that a *temporary license* does not permit an owner to open a school or college, but only to solicit the necessary funding, facilities, and personnel. Under the bill, the licensing standards remain the same, but the titles are changed to *approved applicant*, *provisional license*, and *annual license*. The bill

clarifies that a provisional license is for any institution undergoing a substantial modification, not just new institutions. Under the bill, the law will state the following criteria of licensure:

- The institution will be recognized for its highest educational offering.
- Licensure does not transfer if the owner sells the institution or transfers ownership or control.
- Agents must be licensed and regulated.

Several provisions currently in other statutes are included as requirements for licensure:

- A license is not the same as accreditation.
- A school or college must have an anti-hazing policy and must provide the commission with a copy of it. *This is a federal requirement.*
- The institution must disclose to students the status of the institution in relation to professional certification and licensure. *This provision responds to recent situations in which students enrolled in programs that had not earned required accreditation. The students, aspiring lawyers or physicians assistants, are unable to practice the profession they were preparing to enter.*

In addition, the bill prohibits a student of a foreign medical school from engaging in a clinical clerkship in Florida unless the foreign medical school obtains a license. *This provision is in current law, in s. 246.081(6), F.S.*

Section 8. Amends s. 246.084, F.S., Licensure by means of accreditation

All vocational schools are licensed, but postsecondary education institutions that grant degrees may be licensed, exempt in at least three categories, “authorized” to operate, or “permitted” to operate without educational programs. Current law requires colleges to receive a Certificate of Exemption instead of a license if they are accredited by one of five accrediting associations listed in law as having standards at least as high as the board’s. A 2001 Senate Education Committee Interim Project recommended that all schools and colleges under the jurisdiction of the commission should be licensed. Under the bill, all accredited institutions under the commission’s jurisdiction will receive a license based upon their accreditation. The list of five accrediting associations is removed from the law, and the commission is authorized to identify associations whose standards meet or exceed its minimum standards for licensure.

The bill also requires an accredited institution to:

- Have operated in Florida for at least 5 years.
- Have no unresolved complaints in the past 12 months.
- Meet minimum financial responsibility requirements of the commission.
- Comply with requirements for fair consumer practices.
- Apply for a license if it offers a program not covered by its accreditation.

The bill contains two reassurances that this change in status will not adversely affect colleges that have a Certificate of Exemption:

- The exemption will continue until the college receives its license.
- The board may not require the college to submit reports that differ from what it supplies to the accrediting association.

Section 9. Institutions not under the jurisdiction or purview of commission.

The 2001 Legislature removed from the commission's jurisdiction the 27 independent colleges that are nonprofit, baccalaureate-degree-granting, Florida corporations that are accredited by the Southern Association of Colleges and Schools (Commission on Colleges) and have a secular purpose.

Religious colleges without a secular purpose may either:

- Be exempt because of their accreditation.
- Obtain a license, or
- Hold an "authorization" that qualifies them to operate without governmental oversight.

Current law deters diploma mills from operating "under the cloak of religion" by restricting the titles of degrees that a religious college may award. If a college wishes to offer a degree with the same title as a secular degree, such as "Master of Arts" or "Doctor of Philosophy," the college must meet the minimum standards established by the board. To operate without oversight, religious colleges must offer degrees that are clearly religious, such as "Doctor of Biblical Studies" or "Master of Christian Education." The religious modifier must be part of the title, that is, immediately precede it or be included within it. A modifier that follows the title is not authorized because "Master of Arts in Religion" is a secular degree title.

Religious colleges must also have a certain number of credit hours per degree *or the equivalent*, but the board is not qualified to figure out what is equivalent to credit hours of religious study.

The commission charges each religious college a "workload fee" of \$400 to verify that it meets these standards, or it authorizes an education association to receive the fee and to conduct the review. In practice, all religious colleges are currently reviewed by an education association, which collects the fees.

One category of exemption applies to only two colleges – the category is known by its cross reference (paragraph (1)(b) of s. 246.085, F.S.) or by the term "credit-trading," meaning that at least three accredited colleges accept transfer credits from its students. Overuse of the credit-trading exemption may attract diploma mills, so Florida has restricted its use through a "grandfather" clause. Only colleges that have held that type of exemption since 1982 are eligible. The two colleges in this category have a long history of respect in their communities.

The bill includes the following in the category of colleges, schools, and programs that are not under the jurisdiction of the commission:

- Public institutions and institutions "provided, operated, or supported by this state . . . or the Federal Government.": **NOTE** *The bill does NOT specifically exempt flight schools*

that are regulated by the Federal Aviation Administration, as does current law.⁴ Under the bill, flight schools will need to be licensed.

- The independent colleges under the jurisdiction of the Division of Colleges and Universities.
- Institutions licensed under another chapter of the Florida Statutes. *These are mainly schools licensed by the Division of Professional Regulation.*
- Institutions that offer only avocational programs or courses, contract training programs or courses, continuing education, or professional development programs or courses. *In s. 246.021, F.S., the bill gives these programs restrictive definitions so they will not attract abuse by owners who wish to avoid licensure.*
- Religious colleges that do not wish to operate under licensure or by accreditation.
- The two historic “credit-trading” colleges that have operated in that category since 1982.

Under the bill, religious colleges that wish to operate without oversight will not be under the jurisdiction of the Commission. They will be required only to verify in a sworn affidavit that they:

- Use degree titles that may not be confused with secular degrees. *The bill specifies that a religious modifier must precede or be in between words commonly used in secular degree titles.*
- Require at least a minimum number of credit hours or equivalent per degree.
- Have consumer disclosure practices that meet the commission’s standards as of this date. *The bill specifies the requirements so that, if the commission adds to the disclosures required of secular institutions, the additions will not apply to religious colleges.*

Any religious college may apply for licensure, and a religious college that does not comply with fair consumer practices is required to seek licensure.

Section 10. Repeals s. 246.087, F.S., relating to licensing requirements.

The provisions of this statute are included in ss. 246.084 and 246.085, F.S., and described in this analysis for sections 8 and 9 of the bill.

Section 11. Amends s. 246.091, F.S., License period and renewal

This section adds flexibility to the current requirements for annual licensure and clarifies conditions under which an institution must seek changes in its license. Prior approval is required to open new programs or a new campus. The commission will review each license periodically and may renew it without intervention or may require the institution to correct deficiencies. If deficiencies appear, the board may still renew the license for *good faith effort*. A legalistic phrase used formerly (*the burden of proof shall rest with the board*) implied an unnecessarily confrontational process and is replaced with a simpler expression, *the commission shall determine* the good faith effort.

Section 12. Repeals s. 246.093, Permission to operate

This section is for institutions that do not offer educational programs in Florida but only maintain an office, so they do not need a license. However, some foreign schools misused the category by

⁴ Section 246.216(1)(b), F.S.

recruiting in Florida and implying that Florida's permission to operate meant something about the quality of the educational program in a foreign country. The bill specifically defines and lists offices, programs, and courses that may operate without obtaining a license (section 3 of the bill defines them, and section 9 of the bill lists them as not being under the jurisdiction of the commission).

Section 11 of the bill provides that institutions that currently operate under this category will be given 90 days from the effective date either to obtain licensure or cease operating in Florida.

Section 13. Amends s. 246.095, F.S., Fair consumer practices

This section contains many provisions that are also in rules of the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education. They require that each institution must disclose certain facts to its students and in advertising, and the list is long and unnecessarily detailed for a statute. For instance, a professional school must disclose to students if it has not yet obtained the accreditation needed to qualify its graduates to practice the profession. The statute details various types of misleading statements about job placement or earnings, describes how students are to file complaints, requires procedures to determine if the student has a reasonable expectation of benefiting from the program, and many other very specific measures. Under the bill, the commission may adopt rules relating to disclosures institutions must make to students and the public. The list in statute does not repeat what is in rule but states more simply that the commission may examine any complaint of a violation of fair consumer practices.

The bill reassures institutions by stating that the commission may disregard frivolous complaints (*if the institution is found to be routinely handling these matters correctly, the commission shall consider the complaint closed*). Complaints against accredited institutions will not be forwarded to the accrediting association until the institution has a chance to resolve them. However, the commission may revoke or deny a license for failure to comply with its rules for fair consumer practices.

Section 14. Amends s. 246.101, F.S., Fees

Since 1992, the two boards have been entirely "fee supported" – that is they have operated without public funding, through the fees charged to institutions under their jurisdiction. The annual General Appropriations Act allocates the fee revenue the board may collect. The fees are divided up into two categories, a base fee and workload fees, mainly to clarify for religious colleges that they were not subject to a tax, but only a fee for services. Some religious colleges prefer to avoid any visitation by governmental officials and are willing to pay a higher fee for the privilege. Therefore, in current law (but not the bill) religious colleges have a lengthy statute that authorizes the board to contract with an education association to conduct any required reviews and to collect the workload fee.

A provision has not been implemented that requires a board to reduce the base fee if it collects more than 120 percent of its appropriation. The boards have not collected that much in fees. However, the provision has made it impossible for the boards to create a contingency fund that could assist in emergencies, such as when a school or college closes without proper measures to protect its students. Recently, such an occurrence has taxed the board's resources, as the board

must collect and transmit student records and find other colleges willing to help the students complete their education. The bill does not authorize fees for religious colleges. The unused provision is repealed that requires the board to reduce the base fee and retain no more than 120 percent of its appropriation.

The board must compensate an institution that pays fees in error, but it may do so by deducting the overpayment from future fee collections.

Section 15. Creates s. 246.105, F.S., Institutional closings

The provisions in this section are currently in s. 246.2235, F.S., but they are simplified in this section to conform with current bill drafting convention. No substantive amendments are made.

Section 16. Amends s. 246.111, F.S., Actions against a licensee; other penalties

In addition to denying, revoking, and placing on probation an institution's license, the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education have authority to obtain injunctive relief, to conduct investigations and convene probable-cause panels, to require institutions to "cease and desist" certain practices or communications, or to report institutions or their owners for violations of various levels of sanctionable behavior. These provisions are included in ss. 246.111, 246.131, 246.226, 246.2265, 246.227, 246.228, 246.229, 246.231, F.S.⁵ The essential provisions of the statutes listed above are combined into s. 245.111, F.S. No additional penalties are authorized, but some of the detail is omitted because it is in rule. Conforming provisions in terminology are included.

The bill deletes an exemption from public records and public meetings for complaints that are resolved in a probable-cause panel. The exemption will be included in Proposed Committee Substitute for SB 1562.

Section 17. Amends s. 246.121, F.S., Designation "college" or "university"

This section conforms provisions and terminology.

Section 18. Amends s. 246.147, F.S., School administrator and faculty training.

The commission does not conduct this training, but may require continuing education to assure that personnel understand their legal obligations. Conforming changes only.

Section 19. Repeals the following sections:

- Section. 246.131, relating to injunctive relief for the State Board of Independent Colleges and Universities. The provisions are included in s. 246.111, F.S., in section 16 of the bill.
- Section 246.141, F.S., which asserts that a license is not accreditation. The provisions are included in s. 246.081, F.S., section 9 of the bill.

⁵ Section 246.213, F.S., gives rulemaking power to the State Board of Education for the State Board of Nonpublic Career Education. It is not necessary because the Commission for Independent Education has rulemaking authority established in s. 46.041, F.S., section 5 of the bill. Section 246.50, F.S., relates to an obsolete program of welfare transition.

- Section 246.151, F.S., relating to penalties authorized for the State Board of Independent Colleges and Universities. The provisions are included in s. 246.111, F.S., section 18 of the bill.
- Repeals the following sections that apply to the State Board of Nonpublic Career Education and whose provisions are consolidated in the bill to relate to the Commission for Independent Education: ss. 246.201, 246.203, 246.205, 246.207, 246.211, 246.213, 246.215, 246.216, 246.217, 246.219, 246.220, 246.222, 246.2235, 246.225, 246.226, 246.2265, 246.227, 246.228, 246.229, 246.231, 246.232, F.S., and 246.50, F.S.

Section 20.

Provides an effective date of January 7, 2003, the date upon which the sections addressed in the bill would otherwise be repealed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In current law s. 246.226, F.S., contains an exemption from public meetings and public records laws⁶ for the State Board of Nonpublic Career Education if it convenes a probable cause panel. The proceedings are exempt until the panel declares probable cause. The bill deletes the exemption because, under the Florida Constitution, this exemption must be reenacted in a separate bill and amended so that it applies to probable cause panels that may be created by the Commission for Independent Education.

The exemption will be included in Proposed Committee Substitute for SB 1562.

C. Trust Funds Restrictions:

In current law, s. 246.31, F.S., governs the Institutional Assessment Trust Fund, which supports the operation of the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education. A Student Protection Fund is authorized in paragraph (2)(g) of s. 246.207, F.S., for the State Board of Nonpublic Career Education. Under the Florida Constitution a separate bill will need to reenact and amend the trust fund because the Student Protection Fund will be extended under the Commission for Independent Education to students at both schools and colleges.

The trust fund is in SB 1984.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁶ Sections 120.525 and 286.011, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Technical amendment adding “degrees” to prohibition against an unlicensed institution advertising for students for enrollment or offering degrees.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
