

# 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.)

Prepared By: Education Committee

BILL: SB 1250

SPONSOR: Senator Wise

SUBJECT: Independent Postsecondary Education

DATE: March 10, 2005      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	<b>Fav/2 Amendments</b>
2.	Dugger	Cannon	CJ	<b>Favorable</b>
3.	_____	_____	EA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

Private postsecondary institutions are required to be licensed by the Commission for Independent Education. Currently, there are approximately 850 licensed institutions. The proposed language clarifies the “address of record” for institutions and the discipline and licensure application process. Additionally, it defines costs for investigative expenses and provides authority for the collection of fines for private postsecondary institutions within the state of Florida.

This bill substantially amends the following sections of the Florida Statutes: 1005.22, 1005.31, 1005.38, and 1005.1010.83. This bill also creates the following sections of the Florida Statutes: 1005.375 and 1005.385.

**II. Present Situation:**

**Rule Adoption:** The Commission for Independent Education presently must submit rules, or changes to existing rules, for the operation and establishment of independent postsecondary institutions to the State Board of Education for approval or disapproval. The State Board has 60 days to act on such rules. Should the State Board fail to act, rules are filed with the Department of State.

**Licensure of Institutions:** The law does not presently require a licensed institution to provide a current mailing address or a location of operations to the Commission.

Section 1005.31 (4), F.S., establishes a category of “approved-applicant status” for institutions that have submitted a complete application; 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.

Under the Administrative Procedures Act (s. 120.60, F.S.), the Commission for Independent Education does not currently have the statutory authority to grant an extension of time to conclude its investigation of an applicant for licensure.

**Current Penalty for Violations of Law:** It is a second degree misdemeanor under ch. 1005, F.S., for an owner, director, or administrator of a licensed private postsecondary institution to fail to provide proper notification about the institution’s closing or to fail to provide an organized and orderly closure of the institution. (A second degree misdemeanor is punishable by imprisonment not exceeding 60 days and/or a fine not exceeding \$500.) A civil penalty not exceeding \$10,000 may be imposed upon an owner, director, or administrator of an institution that has ceased operating who knowingly destroys, abandons, or fails to provide for school and student records. s. 1005.36, F.S. An administrative fine not exceeding \$5,000 may be assessed by the Commission if an institution is on probation and requires oversight. s. 1005.38, F.S.

### III. **Effect of Proposed Changes:**

**Section 1.** The Commission for Independent Education would have independent rule making authority and no longer have to submit rules to the State Board of Education for approval or disapproval.

**Section 2.** Language is added which makes each licensee responsible for notifying the Commission in writing of the licensee’s current mailing address and the location of the institution.

If a license application is deemed incomplete by the Commission, the applicant has 1 year from the initial filing date to complete the application or must begin the application process anew.

Each applicant shall be investigated to ensure compliance with the standards for licensure. Language is added to allow the Commission to grant a 90 day delay to complete the investigation if the Commission believes the applicant does not meet such standards. Language is also included to authorize agents and employees of the Commission to conduct inspections of the applicant or licensed independent postsecondary educational institution.

**Section 3.** A newly created section under the bill provides a third degree felony penalty for the following: operating an independent postsecondary institution without a valid, active license; obtaining a license by fraudulent misrepresentation; or using a suspended or revoked license. (A third degree felony is punishable by imprisonment not exceeding 5 years and/or a fine not exceeding \$5,000.) It also provides a second degree misdemeanor penalty when a person knowingly conceals information relating to violations under this chapter, or willfully makes any

false oath when required to make an oath under this chapter. (A second degree misdemeanor is punishable by imprisonment not exceeding 60 days and/or a fine not exceeding \$500.)

**Section 4.** Language is added to the statutes to allow the Commission for Independent Education to investigate suspected violations either of law or of the rules of the Commission. Protectionary and disciplinary actions which the Commission may take are identified. The imposition of an administrative fine of between \$100 and \$5,000 is authorized for Commission disciplinary actions. Assessments to recover the costs of cases before the Commission are authorized. The Commission is also authorized to issue an emergency order suspending or limiting the license of an institution if there is a finding that an immediate danger to the public health, safety, or welfare exists.

**Section 5.** A new section is created which establishes the authority of the Commission to issue citations, the required content of such citations, and the actions which may be taken by the Commission in regard to a citation. The Commission is to adopt rules designating violations for which a citation may be issued.

The Commission is authorized to recover the costs of its investigations in addition to the amount of any penalty levied.

**Section 6.** Terminology changes are made to existing descriptions of participants in the Institutional Assessment Trust Fund to reflect the current name of the Commission for Independent Education. Specific authorization is provided to expend moneys from the trust fund to pay for the completion of student training if an institution terminates a program or ceases to operate while a student is enrolled. Funds may also be spent to secure and protect student records if an institution closes.

**Section 7.** The effective date of the bill is July 1, 2005.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The Department of Education has not been able to identify the fiscal impact of changes proposed by this bill. It is not possible to determine how many of the approximately 850 institutions currently licensed by the Commission will not comply with the required licensure standards. The department reports that in 2004, 100 institutions went before the Commission's probable cause panel for a determination of a violation of a statute 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 to probable cause and no institutions were found to be in violation.

**C. Government Sector Impact:**

The Division of Economic and Demographic Research has examined the criminal penalties specified in Section 3 of the bill and determined they will have an insignificant impact on the need for additional prison beds. The Criminal Justice Estimating Conference is currently evaluating the bill. The standard procedure of the impact conference for bills with new third degree felony penalties absent minimum mandatory sentences is to consider them to have an insignificant impact on the need for additional prison beds. This is because under the Criminal Code the minimum presumptive sentence for an unranked third degree felony is a non-state prison sanction. As to the misdemeanor offenses, misdemeanor sanctions are a county responsibility.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## VIII. Summary of Amendments:

**Barcode 133962 by Education:**

Removes the authorization for the Commission for Independent Education to adopt rules without final approval from the State Board of Education. The amendment reinstates the requirement that rules must be submitted to the State Board of Education for approval or disapproval.

**Barcode 841684 by Education:**

Deletes language which would have allowed the Commission to deny an institution licensure on broader grounds than in current law without such action being considered disciplinary or requiring a probable cause hearing.

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

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