

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 Higher Education Committee

BILL: SB 828

INTRODUCER: Senator Wise

SUBJECT: Faith-based Postsecondary Institutions

DATE: January 11, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	deMarsh-Mathues	HE	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Under the provisions of this bill, faith-based postsecondary institutions that are currently exempt from licensure by the Commission for Independent Education would no longer be exempt, but would not be required to be licensed. Rather, postsecondary, faith-based institutions whose students do not receive federal or state financial aid, except for veterans benefits, and institutions accredited by an agency that is not recognized by the United States Department of Education (U.S. DOE) could operate outside the scheme of licensure if they provided a sworn compliance statement to the Office of Independent Education and Parental Choice within the Florida Department of Education (DOE). Thus faith-based postsecondary institutions would report to a K-12 office instead of a postsecondary office. The bill requires the DOE to post the affidavit and a list of institutions on the Internet.

This bill amends ss. 1005.03, 1005.04, 1005.06, and 1005.21, of the Florida Statutes. The bill creates s. 1002.47, of the Florida Statutes.

II. Present Situation:

The Commission for Independent Education (CIE)

Chapter 1005, F.S., governs nonpublic postsecondary education, which include for-profit and non-profit institutions and degree-granting and non-degree-granting institutions. Under s. 1005.31, F.S., every college or postsecondary school operating in Florida must be licensed by the CIE unless the institution is exempt from licensure under s. 1005.06, F.S.¹ Many of these

¹ Postsecondary educational institutions that are not under the jurisdiction of the CIE and are not required to obtain licensure include: a state or federal institution; colleges, schools, or courses for professions requiring licensure such as nursing, dental

institutions are exempt from licensure because another oversight body is responsible for them or because they meet minimum requirements that, if followed, qualify them for exemption from licensure. Consumer protection is emphasized in Florida's governance structure for private postsecondary institutions. The CIE maintains on its website a list of licensed institutions showing the enrollment, graduation, and employment rates of students who attended the institution. The CIE investigates complaints against licensed institutions and produces findings of its investigation.

A religious college may operate without governmental oversight if it annually verifies to the CIE by sworn affidavit that:

- The name of the institution includes a religious modifier;
- The institution offers only educational programs that prepare students for religious vocations;
- The titles of the degrees issued include a religious modifier and cannot be confused with secular degree titles;
- The duration of the degree programs is consistent with the standards of the CIE; and
- The institution's consumer practices are consistent with those required of licensed institutions.

The Office of Independent Education and Parental Choice

Florida affords students in grades K-12 a variety of options for meeting the compulsory attendance requirements. Options outside of traditional public schools include:

- John M. McKay Scholarships for students with disabilities;
- Florida Tax Credit Scholarships for low-income students;
- Opportunity Scholarships for students in struggling public schools;
- Public charter schools;
- Virtual education;
- Magnet schools and career academies; and
- Home education.

All of the programs which fall under the purview of the DOE's Office of Independent Education and Parental Choice involve K-12 education. The office provides varying levels of oversight and information for three scholarship programs.² It administers the Charter School Program Grant and provides training and technical assistance to both charter schools and their sponsoring school districts. The office also provides general information to students, parents, school districts and other stakeholders regarding home education and magnet school options.

hygiene, or real estate brokers; private, non-profit colleges or universities located and chartered in Florida that are accredited by the Southern Association of Colleges and Schools to grant baccalaureate degrees and whose students are eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; any institution that offers only avocational programs or courses, continuing education, or examination preparation programs or courses; any institution that was exempt from licensure prior to July 1, 1982 and was extended exemption in 2001, provided it maintains the original qualifying criteria; a religious college that offers only educational programs that prepare students for religious vocations; and any institution that is regulated by the Federal Aviation Administration, another agency of the Federal Government, or an agency of the state whose regulatory laws are similar in nature and purpose to those of the CIE.

² See ss. 1002.38, 1002.39, 1002.395, and 1002.421, F.S.

Private K-12 schools must register with the DOE by completing an annual survey each year.³ The law explicitly provides that submitting annual survey data and being listed in the directory of private schools should not be used by any private school to imply approval or accreditation by the state.⁴ The Office of Independent Education and Parental Choice receives the annual statements of compliance with these requirements and posts the names of the private schools on its website.⁵ The office is not required to verify the statements of compliance for private schools that are not involved in a scholarship program and it does not do so.⁶

The law also requires owners of private K-12 schools to undergo a criminal background check and makes it unlawful for a person convicted of a crime of moral turpitude to own or operate a private school.⁷ Additionally, a private school that becomes defunct must make provision for the transfer of students' permanent records to the district school board or a private school system or association of which the school was a member.⁸

The Attorney General

The State Constitution establishes the Attorney General as the chief legal officer of the state,⁹ and, as such, the Attorney General pursues legal matters that are of statewide importance. The State Constitution creates the Office of the Statewide Prosecutor in the Office of the Attorney General to prosecute violations of criminal laws occurring in two or more judicial circuits.¹⁰ The Attorney General does not oversee individual, private entities such as educational institutions.

III. Effect of Proposed Changes:

The faith-based postsecondary institutions that are currently exempt from licensure by the CIE would no longer be exempt, but would not be required to be licensed. Rather, postsecondary, faith-based institutions whose students do not receive federal or state financial aid, other than veteran's benefits, and institutions accredited by an agency that is not recognized by the U.S. DOE could operate outside the scheme of licensure if they provided a sworn compliance statement to the DOE's Office of Independent Education and Parental Choice by April 1 of each year. An institution may contract with an education association or certification agency to certify compliance with the requirements of the bill or submit the affidavit on its own. The bill requires the office, which currently administers K-12 choice programs only, to post the affidavit and a list of institutions on the Internet. The office must issue a letter of acknowledgement to an institution that has submitted an affidavit. The wording of the letter is established in the bill.

³ s. 1002.42, F.S. Private schools participating in scholarship programs are subject to the provisions of s. 1002.42, F.S., as well as s. 1002.421, F.S. *See also* ss. 1002.38, 1002.39, and 1002.395, F.S.

⁴ s. 1002.42(2)(h), F.S.

⁵ *See* <http://www.floridaschoolchoice.org/Information/PrivateSchoolDirectory/>. Additionally, the DOE is required to maintain and annually update a database of private K-12 schools which includes each school's name, address, and telephone number; the type of school; the names of administrative officers; enrollment by grade or special group (e.g., career education and exceptional child education); number of graduates; number of instructional and administrative personnel; number of days the school is in session; and such data as may be needed to meet the provisions of ss. 1002.42 and 1003.23(2), F.S., related to attendance and enrollment.

⁶ s. 1002.42(2)(h), F.S. E-mail, DOE, January 10, 2012, on file with the Senate Committee on Education Pre-K – 12.

⁷ s. 1002.42(2)(c), F.S.

⁸ s. 1002.42(3)(b), F.S.

⁹ Fla. Const., art. IV, s. 4(b).

¹⁰ *Id.*

The bill requires faith-based postsecondary institutions whose students receive state or federal financial aid, except for veteran's benefits, and institutions accredited by an accrediting agency recognized by the U.S. DOE to seek licensure. The bill does not, however, indicate whether licensure would be sought from the CIE or another licensing body.

The bill prescribes prerequisites for entering degree programs and establishes minimum numbers of credit hours for academic degrees. The bill does not restrict degree titles to those containing a religious modifier but makes provision for associate, bachelor's, master's, and doctoral degree programs. The bill establishes 14 titles that may be used for traditional seminary degrees. While most of the seminary degrees have religious modifiers, such as Master of Divinity and Doctor of Theology, some of the titles, such as Doctor of Education and Doctor of Philosophy are the same as secular degree titles.

The bill requires institutions that offer distance learning programs to approve all instructional materials provided to the students and to make the program available to students who require a nontraditional classroom-based education. The bill authorizes the academic year for distance learning to extend throughout the calendar year.

The bill requires an institution that is accredited by an agency that is not recognized by the United States Department of Education to include a disclaimer to that effect on its publications and website. An institution that issues a license must include on the license a disclaimer stating that the license is not issued by the state or a governmental entity.

Institutions must have policies for nondiscrimination, transfer of credit, and refund of tuition. The bill limits the refund period to 5 business days after the date of first payment and requires all other fees and charges to be listed as non-refundable.

The bill requires the Attorney General to investigate any complaint filed against a faith-based institution and to require the institution to comply with the affidavit required in s. 1002.47(1), F.S., which is created in the bill. The Attorney General is required to prohibit the institution from operating in Florida if it fails to comply with the affidavit.

The bill repeals s. 1005.06(1)(f), F.S., which exempts faith-based institutions from licensure by the CIE and deletes cross-references to such faith-based institutions in chapter 1005, F.S. The effect of the statutory changes to chapter 1005, F.S., is to:

- Remove faith-based postsecondary institutions from the CIE's jurisdiction;
- Remove faith-based postsecondary institutions from the restrictions on the use of the terms "college" and "university" to those that offer degrees;
- Delete the requirement that the faith-based postsecondary educational institutions must follow the CIE's Fair Consumer Practices; and
- Remove from the CIE membership a representative of an exempt, faith-based postsecondary institution and require instead a representative of a faith-based independent college or university licensed by the CIE.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private, faith-based postsecondary education institutions which currently submit an affidavit to the CIE would submit an affidavit to a different office within the DOE. Any cost for revisions to the affidavit likely would be minimal.

C. Government Sector Impact:

The DOE's Office of Independent Education and Parental Choice would incur the cost of overseeing postsecondary institutions, for which the office currently does not have responsibility. The costs would be associated with monitoring the affidavits submitted by institutions and developing and maintaining a website as required by the bill.

The Attorney General would incur the cost of responding to individual complaints about faith-based postsecondary education institutions, which currently is not one of the Attorney General's responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
