

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1053 Independent Postsecondary Educational Institutions

SPONSOR(S): Higher Education & Workforce Subcommittee, Plakon

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	11 Y, 0 N, As CS	Banner	Bishop
2) Education Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The Commission for Independent Education (CIE or commission), within the Department of Education, is responsible for exercising independently all powers, duties and functions relating to independent postsecondary institutions under its jurisdiction. The bill:

- Revises the membership of the commission to more closely align the representatives with the institutions under the jurisdiction of the commission;
- Requires that no commission member serve more than three consecutive 3-year terms, or until a successor is appointed and qualified, whichever comes first;
- Requires the commission to approve its annual budget and appoint a committee to review all complaints not closed within 90 days;
- Authorizes the commission to limit the number of students or prohibit enrollment of new students at institutions with low performance;
- Requires institutions to disclose all fees and costs that will be incurred to complete a program of study as part of their fair consumer practices requirements;
- Requires a retention and management completion plan for all licensed institutions;
- Authorizes the commission to require a surety bond or alternative cash deposit escrow account or irrevocable letter of credit for all institutions that are unable to provide sufficient evidence of financial stability or are dependent primarily on financial resources outside the United States;
- Clarifies that the commission has 30 days after receipt of an application to examine the application and notify an applicant of any errors or omissions;
- Aligns Florida law with the ruling in University of Phoenix v. Bradley, et. al., by removing the requirement that institutions seeking licensure by means of accreditation be a Florida corporation;
- Creates, by October 1, 2016, the Closed Institution Panel which, in the event of an unlawful closure or upon the call of the chair, shall convene to implement measures that will minimize the academic, logistical and financial impact on students;
- Increases the penalty for an unlawful closure of a licensed institution from a second degree to a first degree misdemeanor;
- Requires all licensed institutions be charged fees associated with the Student Protection Fund until such time as the fund balance reaches \$5 million, at which time collection of fees will be suspended for one calendar year;
- Requires, by July 1, 2017, and annually thereafter, that the commission verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations specifically pertaining to the operation of nonpublic postsecondary institutions; and
- Requires the commission to prepare an annual accountability report for licensed institutions by March 15 of each year and establish, by rule, performance benchmarks to identify high-performing institutions.

The bill becomes effective on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commission for Independent Education

Present Situation

The Commission for Independent Education (CIE or commission), within the Department of Education, is responsible for exercising independently all powers, duties and functions relating to independent postsecondary educational institutions under its jurisdiction.¹ An independent postsecondary institution means “any postsecondary educational institution that operates in the state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government.”²

The commission is comprised of seven members:

- Two representatives of independent colleges or universities licensed by the commission;
- Two representatives of independent, nondegree-granting schools licensed by the commission;
- One member from a public school district or Florida College System institution who is an administrator of career education;
- One representative of a religious postsecondary institution not subject to oversight by the commission³; and
- One lay member who is not affiliated with an independent postsecondary educational institution⁴

Currently, commission members are appointed to 3-year terms and continue to serve until such time as their successor is appointed and qualified.

The commission approves applications for licensure to operate in the state and award diplomas and degrees, and on matters concerning consumer protection and program improvement.⁵ The powers and duties of the commission include, but are not limited to, the following administrative duties:

- Adopt rules for the operation and establishment of independent postsecondary educational institutions and submit rules to the State Board of Education (SBE) for approval;
- Submit an annual budget to the SBE;
- Transmit all fees, donations, and other monies to the Institutional Assessment Trust Fund; and
- Expend funds as necessary to assist in the application and enforcement of all powers and duties.⁶

Among its responsibilities, the commission is required to establish and publicize the procedures for receiving and responding to complaints from students, faculty, and others concerning institutions or programs under the purview of the commission and keep records of such complaints to determine the frequency and nature of the complaints.⁷

Additionally, the commission may:

- Sue or be sued;
- Enter into contracts with the Federal Government, other state departments or with individuals;
- Receive bequests or gifts;

¹ Section 1005.21(1), Florida Statutes

² Section 1005.02(11), Florida Statutes

³ Section 1005.06(1)(f), Florida Statutes

⁴ Section 1005.21(2), Florida Statutes

⁵ Section 1005.21(2), Florida Statutes

⁶ Section 1005.22(1)(e), Florida Statutes

⁷ Section 1005.22(1)(k), Florida Statutes

- Appoint standing or special committees, which may include members who are not members of the commission, to assist in carrying out its responsibilities;
- Advise the Governor, Legislature, SBE, and the Commissioner of Education on matters related to private postsecondary education;
- Delegate to the chairperson of the commission the responsibility of signing final orders;
- Assist independent postsecondary educational institutions in formulating articulation agreements with public or other independent institutions;
- Establish and operate additional offices in the central and southern parts of the state if the concentration of licensed institutions renders such an office economically feasible; and
- Establish and administer the Student Protection Fund.⁸

Proposed Changes

The bill revises the membership of the commission by removing the representative from a public school district or Florida College System institution who is an administrator of career education and instead adding a representative of an employer of graduates of institutions licensed by the commission. The employer may not have any relationship with an institution licensed by the commission except for the status of employer of graduates of the institution.

The bill also removes the representative of a religious postsecondary institution not under the jurisdiction or purview of the commission and instead adds a graduate of an institution that is subject to licensure by the commission. The graduate may not have any relationship with an institution licensed by the commission except for the status of alumnus.

Public schools, Florida College System institutions and religious colleges are not under the jurisdiction or purview of the commission and do not participate in the licensing process, therefore having a representative of these institutions on the commission is not “beneficial” to the commission.⁹

The bill also requires that no member serve more than three consecutive 3-year terms, or until a successor is appointed and qualified, whichever comes first.

The bill modifies the powers and duties of the commission to require that the commission approve an annual budget before submission to the State Board of Education and appoint a committee to review all student, faculty or other complaints not closed within 90 days. The bill also authorizes the commission to limit the number of students in a program or prohibit the enrollment of new students at a licensed institution based on the performance of the institution.

Fair Consumer Practices

Present Situation

Each private postsecondary institution under the jurisdiction of the commission as well as those expressly exempt from the jurisdiction of the commission that directly or indirectly solicits enrollment must do the following:

- Disclose to each prospective student a statement of purpose that includes educational programs and curricula, a description of the physical facilities, licensure status, and fee schedule and related policies at least one week prior to enrollment or collection of tuition;
- Assess, prior to accepting a student, the student’s ability to complete a course of study successfully;
- Accurately inform each student about financial assistance and obligations for repayment of loans, describe any employment placement services available, and refrain from promising or implying guaranteed placement, market availability or salary amounts;

⁸ Section 1005.22(2), Florida Statutes

⁹ Florida Department of Education, 2016 Agency Bill Analysis for SB 800 (December 23, 2015).

- Provide prospective and enrolled students accurate information regarding the relationship of its programs to state licensure requirements for practicing related occupations and professions in Florida;
- Ensure all advertisements are accurate and not misleading;
- Publish and follow an equitable prorated refund policy for all students and follow both the federal guidelines regarding the receipt of federal financial assistance and commission rule regarding minimum refund guidelines;
- Follow the requirements of state and federal laws requiring annual reporting of crime statistics and physical plant safety; and
- Publish and follow procedures for handling student complaints, disciplinary actions and appeals.¹⁰

Proposed Changes

The bill expands fair consumer practices provisions by requiring each institution to disclose to all prospective students all fees and costs that will be incurred to complete a program of study. This disclosure will further assist students with planning for the program of study at the institution.

Licensure of Institutions

Present Situation

The commission is responsible for developing minimum standards by which to evaluate institutions for licensure. These standards must include, at least, the institution's name, financial stability, purpose, administrative organization, admissions and recruitment, educational programs and curricula, retention, completion, career placement, faculty, learning resources, student personnel services, physical plant and facilities, publications and disclosure statements about the status of the institution with respect to professional certification and licensure.¹¹ All postsecondary institutions under the jurisdiction or purview of the commission must obtain licensure from the commission in order to operate in the state of Florida.¹²

Approved-applicant status may be extended to all institutions that have submitted a complete application for provisional licensure and paid all attendant fees. Institutions granted approved-applicant status may not advertise, offer programs of study, collect tuition or fees, or engage in any other activities not specifically approved by the commission.¹³

The commission shall ensure, through an investigative process that applicants for licensure meet the specified standards and may issue a licensure delay if this investigative process is not completed within the statutory limits of the Administrative Procedures Act.¹⁴ Agencies must provide notice of any apparent errors or omissions in an application for licensure within 30 days.¹⁵ The law also prohibits the denial of an application for failure to correct an error or omission if the appropriate 30 day notification is not provided.¹⁶ The commission may extend 90 days.

Independent postsecondary educational institutions may apply for a license by means of accreditation from the commission if the institution:

- Has operated legally in the state for at least 5 consecutive years;
- Holds institution accreditation by an accrediting agency evaluated and approved by the commission as having standards substantially equivalent to the commission's licensure standards;

¹⁰ Section 1005.04, Florida Statutes

¹¹ Section 1005.31(2), Florida Statutes

¹² Sections 1005.31(1)(a) and 1005.06(1), Florida Statutes

¹³ Section 1005.31(4), Florida Statutes

¹⁴ Section 1005.31(6), Florida Statutes

¹⁵ Section 120.60, Florida Statutes

¹⁶ Id.

- Has no unresolved complaints or actions in the past 12 months;
- Meets minimum requirements for financial responsibility as determined by the commission; and
- Is a Florida corporation.¹⁷

An institution that is granted a license by means of accreditation must comply with the standards and requirements in law including provisions related to fair consumer practices, orderly closing, trainout or refunds, and disposition of student and institutional records. With the exception of submitting an annual audit report, the commission may not require institutions that are licensed by means of accreditation to submit reports that differ from those reports required by the institution's accrediting agency.¹⁸

In 2008, the United States District Court for the Northern District of Florida found that the commission's requirement that a postsecondary institution be a Florida corporation in order to qualify for licensure by means of accreditation violated the Commerce Clause of the United States Constitution.¹⁹ Accordingly, the court has enjoined the commission from applying this requirement for purposes of licensure.

Proposed Changes

The bill modifies the minimum standards for evaluating institutions for licensure by specifying that the standards for retention and completion include a retention and completion management plan, prescribed by the commission. Institutions that are licensed by means of accreditation are also required to submit this plan.

The bill authorizes the commission to require that institutions that do not provide sufficient evidence of financial stability at the time of application for a provisional license or that are dependent upon financial resources outside the United States to post and maintain a surety bond. The purpose of the surety bond is to assist enrolled students in completing their program in the event the institution closes prior to receiving its first annual licensure renewal from the commission. As an alternative to the surety bond, the commission may require an institution to establish and maintain a cash deposit escrow account or an irrevocable letter of credit payable to the commission in an amount not to exceed 50 percent of the institution's projected revenue for the first year. The SBE is authorized to adopt rules to implement the specific requirements of this provision.

The bill clarifies that the commission shall, within 30 days of the receipt of an application, examine the application and notify the applicant of any apparent errors or omissions and request any additional information from the applicant that may be necessary.

The bill aligns Florida law with the federal court ruling by removing the requirement that institutions seeking licensure by means of accreditation be a Florida corporation.

Institutional Closings

Present Situation

Current law requires that the owners, directors or administrators of an institution notify the commission in writing, at least 30 days prior to the closing of an institution. The owners, directors or administrators must organize a plan for the orderly closure of the institution, which at a minimum includes providing for the completion of training of its students, for approval by the commission.²⁰

An owner, director or administrator who fails to notify the commission at least 30 days prior to the institution's closure or fails to organize the orderly closure of the institution and the trainout of the

¹⁷ Section 1005.32(1), Florida Statutes

¹⁸ Section 1005.32, Florida Statutes

¹⁹ See *University of Phoenix v. Bradley, et al.*, Case No. 4:08cv217 (N.D. Fla.).

²⁰ Section 1005.36(2), Florida Statutes

students, commits a second degree misdemeanor.²¹ A second degree misdemeanor is punishable by up to 60 days in jail.²²

In the event an institution ceases operations without providing the proper access to student records, the commission may require the institution to convey all records to the commission office or other designated location. The commission shall make copies of records available to bankruptcy trustees and students upon request and maintain the confidentiality of the records to the extent required by law. Additionally, the commission may seek civil penalties not to exceed \$10,000 in the event institutional and student records are knowingly destroyed, abandoned or not provided. The commission may use funds from the Student Protection Fund to facilitate the retrieval or safekeeping of records from an institution that has closed.²³

Proposed Changes

The bill requires the commission to create, by October 1, 2016, the Closed Institution Panel, comprised of at least the following:

- One commission member,
- One commission staff member,
- One accrediting body staff member, and
- One administrator with experience managing licensed institutions.

The commission shall notify the panel upon the closure of a licensed institution. If an institution unlawfully closes, or upon the call of the chair, the panel shall convene to implement measures that will minimize the academic, logistical and financial impact on the students of the institution. The panel is authorized to secure student records and, to the extent possible, maintain the educational programs at the institution for at least 30 days after the notification of closure. The activities of the panel shall be conducted at the expense of the closing institution.

The penalty for an owner, director or administrator who fails to notify the commission at least 30 days prior to the institution's closure or fails to organize the orderly closure of the institution and the trainout of the students is increased to a first degree misdemeanor. A first degree misdemeanor is punishable by no more than 1 year in jail.²⁴

Student Protection Fund

Present Situation

The commission shall establish and administer a statewide, fee-supported financial program through which funds are available to complete the training of students who enroll in a nonpublic school that terminates a program or ceases operations before the student has completed the program of study.²⁵

The commission is authorized to assess a fee from all schools within its jurisdiction for such a purpose and assess a licensed school an additional fee for its eligibility for the Student Protection Fund.²⁶ In the event an institution terminates a program before all students complete, the commission shall also assess a fee adequate to pay the full cost to the Student Protection Fund for the training of students.²⁷

The Student Protection Fund must remain actuarially sound, be periodically audited by the Auditor General in connection with the audit of the Department of Education, and reviewed to determine if additional fees must be charged to schools eligible to participate in the fund.²⁸

²¹ Id.

²² Section 775.082(4)(b), Florida Statutes

²³ Section 1005.36(3), Florida Statutes

²⁴ Section 775.082(4)(a), Florida Statutes

²⁵ Section 1005.37(1), Florida Statutes

²⁶ Section 1005.37(2), Florida Statutes

²⁷ Section 1005.37(3), Florida Statutes

²⁸ Section 1005.37(7), Florida Statutes

All schools obtaining licensure by the commission are assessed a base fee and a workload fee based upon the Florida student enrollment for the last reported fiscal year ending June 30th. Florida student enrollment consists of all students enrolled in a Florida campus of a licensed school and all distance education students whose mailing address, for purposes of receiving materials from the school, is a Florida address.²⁹ Licensed non-degree granting schools pay annually to the Student Protection Fund in a specified amount equal to .05 percent of the annual tuition revenue generated in Florida.³⁰

There are currently 588 non-degree granting institutions paying into the Student Protection Fund. As of January 19, 2016, the balance in the Student Protection Fund is approximately \$2.0 million.³¹

Proposed Changes

The bill expands the Student Protection Fund to include all licensed institutions, not just those that are non-degree granting. There are currently 443 degree granting institutions under the jurisdiction of the commission.

The bill also requires the commission to annually determine the fees to support the fund and if the fund total is in excess of \$5 million on November 1, suspend the collection of fees for the next calendar year.

Continuing Education and Training

Present Situation

The commission is authorized to ensure that the administrators of licensed institutions are qualified to conduct the operations of their respective positions and to require such administrators and faculty to receive continuing education and training. The positions for which the commission may require continuing education and training may include the chief administrator or officer, director of education or training, placement director, admissions director, financial aid director and faculty members.³²

The training shall focus on assuring compliance with statutes and rules of the commission, the State Board of Education, and with those of other state or federal agencies. The commission shall adopt general qualifications for each position and establish guidelines for the minimum amount and type of continuing education and training to be required. The continuing education and training may be provided by the commission, appropriate state or federal agency, or professional organization familiar with the requirements.³³

Proposed Changes

The bill requires the commission to determine if the administrators of licensed institutions are qualified to conduct the operations of their respective positions and adds the chief campus officer to those positions requiring training.

The bill requires by July 1, 2017, and annually thereafter, that the commission verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations specifically pertaining to the operation of nonpublic postsecondary institutions.

²⁹ Rule 6E-4.001, F.A.C.

³⁰ Rule 6E-4.005, F.A.C.

³¹ Email correspondence with Florida Department of Education staff. January 28, 2016. On file with Higher Education and Workforce Subcommittee.

³² Section 1005.39(1), Florida Statutes

³³ Section 1005.39, Florida Statutes

The bill authorizes licensed institutions to provide continuing education upon the approval of the commission.

Accountability

Present Situation

Current law provides for the systematic, ongoing evaluation of quality and effectiveness of state universities and Florida College System institutions through annual performance and accountability reporting. While the institutions under the jurisdiction or purview of the commission report on performance and other accountability metrics to the federal government through the Integrated Postsecondary Education Data System (IPEDS), these institutions are not currently required to report to the commission.

Proposed Changes

The bill requires the commission to prepare an annual accountability report for licensed institutions by March 15 of each year. The report must contain, at a minimum, graduation, retention and placement rates for all licensed institutions. Data shall be collected using the FETPIP methodology and the commission must establish a common set of data definitions that are consistent with those used by the U.S. Department of Education for institutional reporting purposes.

The bill requires each licensed institution to provide data to the commission by November 30 of each year in a format prescribed by the commission and directs the commission to impose an administrative fine of not more than \$1,000 in the event a licensed institution fails to timely submit the required data timely. These administrative fines will be deposited in the Student Protection Fund.

The bill directs the commission to establish, by rule, performance benchmarks to identify high-performing institutions. Licensed institutions with graduation, retention and placement rates equal to or greater than the average rates of all Florida universities, colleges or career centers, as appropriate, may receive and use the designation of high performing.

B. SECTION DIRECTORY:

Section 1. Amends s. 1005.04, F.S., to require that each institution disclose all fees and costs that will be incurred to complete a program of study.

Section 2. Amends s. 1005.11, F.S., to create an annual accountability reporting requirement for all institutions licensed by the commission; authorize the assessment of an administrative fine for institutions that fail to report data in a timely fashion; and authorize the designation of high performing for all licensed institutions with graduation, retention and placement rates equal to or higher than the average rate of the appropriate public institution system.

Section 3. Amends s. 1005.21, F.S., to modify the composition of the Commission of Independent Education to replace the representatives of a public school district or Florida College System institution who is an administrator of career education and a religious college exempt from licensure by the commission with an employer of graduates and a graduate of an institution subject to licensure by the commission.

Section 4. Amends s. 1005.22, F.S., to require the commission to approve the annual budget before submission to the State Board of Education; appoint a committee to review all student, faculty or other complaints not closed within 90 days; and limit the number of students or prohibit enrollment of new students in a program based on institution performance.

Section 5. Amends s. 1005.31, F.S., to require the inclusion of a retention and completion management plan as part of the minimum standards to evaluate institutions for licensure; authorize the commission to require a surety bond or as an alternative a cash deposit escrow account for institutions

unable to provide sufficient evidence of financial stability; provide the commission 30 days after the receipt of an application to examine the application and notify the applicant of any error or omission and request necessary additional information.

Section 6. Amends s. 1005.32, F.S., to remove the requirement that institutions obtaining licensure by means of accreditation be a Florida corporation and require these institutions to submit a retention and completion management plan.

Section 7. Amends s. 1005.36, F.S., to direct the Commission for Independent Education to establish, by October 1, 2016, a Closed Institution Panel, to implement measures to minimize the academic, logistical, and financial impact on students following the unlawful closing of a licensed institution and increases the penalty from a first degree misdemeanor to a second degree misdemeanor.

Section 8. Amends s. 1005.37, F.S., to require all licensed institutions to pay fees to support the Student Protection Fund and suspend the collection of fees for one year if the fund total is in excess of \$5 million.

Section 9. Amends s. 1005.39, F.S., to require the commission to ensure that all administrators subject to continuing education and training complete training on state and federal laws and regulations specifically related to operating a nonpublic postsecondary institution; add chief campus officer to those positions required to receive training; and authorize the commission to approve licensed institutions under its jurisdiction to provide continuing education and training.

Section 10. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, only non-degree granting institutions under the jurisdiction of the commission are subject to the annual Student Protection Fund fees. The bill expands this requirement to all licensed institutions under the jurisdiction of the commission. The fee is assessed at an amount equal to .05 percent of the annual tuition revenue generated in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The State Board of Education and the Commission for Independent Education may be required to amend any rules inconsistent with the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Higher Education and Workforce Subcommittee adopted a proposed committee substitute and one amendment to the proposed committee substitute and reported the bill favorably as a committee substitute. The amended proposed committee substitute:

- Revises the membership and terms of appointment of the commission;
- Requires the commission to approve its annual budget and appoint a committee to review all complaints not closed within 90 days;
- Revises requirements for licensed institutions by requiring a retention and management plan, a surety bond or letter of credit for institutions unable to provide sufficient evidence of financial stability, removing the requirement that institutions seeking licensure by means of accreditation be a Florida corporation, and authorizing the commission to limit the number of students or prohibit enrollment of new students at institutions with low performance;
- Requires institutions to disclose all fees and costs that will be incurred to complete a program of study as part of their fair consumer practices requirements;
- Creates, by October 1, 2016, the Closed Institution Panel which will implement measures that will minimize the academic, logistical and financial impact on students due to a school closure;
- Increases the penalty for owners, directors, or administrators who fail to notify the commission of an institution's closure at least 30 days prior to closing or who fail to organize the orderly closure and trainout of students from a second degree to a first degree misdemeanor;
- Requires all licensed institutions be charged fees associated with the Student Protection Fund until such time as the fund balance reaches \$5 million, at which time collection of fees will be suspended for one calendar year;
- Requires, by July 1, 2017, and annually thereafter, that the commission verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations specifically pertaining to the operation of nonpublic postsecondary institutions; and
- Requires the commission to prepare an annual accountability report for licensed institutions by March 15 of each year and establish, by rule, performance benchmarks to identify high-performing institutions.

This analysis reflects the committee substitute as adopted by the Higher Education and Workforce Subcommittee.