

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

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BILL: PCS/SB 800 (380416)

INTRODUCER: Higher Education Committee and Senator Brandes

SUBJECT: Private Postsecondary Education

DATE: February 11, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	Fav/CS
2.	Sikes	Elwell	AED	Fav/CS
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 800 modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education (CIE or commission).
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

According to the Department of Education (DOE or department), the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of \$165,604, to handle the increased workload associated with revising criteria for licensure and accreditation. The

expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the Senate General Appropriations Bill.

The bill takes effect July 1, 2016.

## II. Present Situation:

Private postsecondary educational institutions must be licensed to operate in Florida and meet specified fair consumer practices requirements.

### Commission for Independent Education

The CIE, established in the DOE, is responsible for exercising all powers, duties, and functions concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure of institutions under its purview.<sup>1</sup> The commission is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction.<sup>2</sup> Independent postsecondary educational institution means “any postsecondary educational institution that operates in this 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.”<sup>3</sup>

The membership of the commission consists of:<sup>4</sup>

- 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 college that is not under the jurisdiction or purview of the commission, based on meeting specified criteria in law.<sup>5</sup>
- One lay member who is not affiliated with an independent postsecondary educational institution.

### Licensure of Institutions

The commission is responsible for developing minimum standards to evaluate institutions for licensure.<sup>6</sup> Current law requires that the standards must, at a minimum, include 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

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<sup>1</sup> Section 1005.21(1)-(2), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 1005.02(11), F.S.

<sup>4</sup> Section 1005.21(2), F.S.

<sup>5</sup> Section 1005.06(1)(f), F.S.

<sup>6</sup> Section 1005.31(2), F.S. “License” means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule and is permitted to operate in this state. Section 1005.02(13), F.S.

statements about the status of the institution related to professional certification and licensure.<sup>7</sup> A postsecondary educational institution must obtain licensure from the commission to operate in the state of Florida, unless such institution is not within the commission's jurisdiction or purview, as specified in law.<sup>8</sup>

### **Licensure by Means of Accreditation**

A private postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:<sup>9</sup>

- The institution has operated legally in this state for at least five consecutive years.
- The institution holds institutional accreditation by an accrediting agency evaluated and approved by the commission as having standards substantially equivalent to the commission's licensure standards.
- The institution has no unresolved complaints or actions in the past 12 months.
- The institution meets minimum requirements for financial responsibility as determined by the commission.
- The institution is a Florida corporation.

An institution that is granted a license by means of accreditation must comply with the standards and requirements in law.<sup>10</sup> For instance, the institution must follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.<sup>11</sup> With the exception of submitting an annual audit report to the commission, the commission may not require institutions that are licensed by means of accreditation to submit reports that differ from the reports that such institutions submit to their accrediting association.<sup>12</sup>

### **Student Protection Fund**

The CIE administers a statewide, fee-supported financial program, named the Student Protection Fund (Fund), to fund the completion of training a student who enrolls in a nonpublic school that terminates a program or ceases to operate before the student completes his or her program of study.<sup>13</sup> The commission is authorized to assess a fee from the schools within the CIE's jurisdiction for such purpose.<sup>14</sup> If a licensed school terminates a program before all students enrolled in that program complete their program of study, the commission must assess an additional fee from the school that is adequate to pay for the full cost of completing the training of such students.<sup>15</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Sections 1005.31(1)(a) and 1005.06(1), F.S.

<sup>9</sup> Section 1005.32, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 1005.32(3), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 1005.37(1), F.S.

<sup>14</sup> Section 1005.37(2), F.S.

<sup>15</sup> Section 1005.37(3), F.S.

The Fund must be actuarially sound, periodically audited by the Auditor General, and reviewed to determine if additional fees must be charged to the schools.<sup>16</sup>

### **Fair Consumer Practices**

A private postsecondary educational institution that is under the jurisdiction of the commission or that is exempt from the jurisdiction or purview of the commission, as authorized in law, must do the following:<sup>17</sup>

- Disclose to each prospective student specified information (e.g., a statement of the purpose of the institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, and its fee schedule and policies). The institution must make the required written disclosures at least 1 week prior to enrollment or collection of any tuition from the prospective student. The disclosures may be made in the institution's current catalog.
- Use a reliable method to assess, before accepting a student into a program, the student's ability to successfully complete the course of study for which he or she has applied.
- Inform each student accurately about financial assistance and obligations for repayment of loans, describe any employment placement services provided and the limitations thereof, and refrain from misinforming the public about guaranteed placement, market availability, or salary amounts.
- Provide to prospective and enrolled students accurate program licensure information for practicing related occupations and professions in Florida.
- Ensure that all advertisements are accurate and not misleading.
- Publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines established by commission rule.
- Follow state and federal requirements for annual reporting of crime statistics and physical plant safety, and make such reports available to the public.
- Publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

### **Institutional Closings**

Current law prescribes the requirements for lawful closure of a licensed postsecondary institution and the authority of the CIE in this process. Specifically,

- The CIE is authorized to prevent the operation of a licensed independent postsecondary educational institution by an owner who has unlawfully closed another institution.
- The CIE may assume control over student records upon closure of a licensed institution if the institution does not provide an orderly closure.
- The owners, directors, or administrators must notify the commission in writing at least 30 days prior to the closure of the institution and must organize an orderly closure of the institution. An owner, director, or administrator who fails to notify the commission at least 30 days prior to the institution's closure, or who fails to organize the orderly closure of the

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<sup>16</sup> Section 1005.37(7), F.S.

<sup>17</sup> Section 1005.04(1), F.S.

institution and the train out of the students, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.

- The CIE may seek civil penalties up to \$10,000 from any owner, director, or administrator of an institution who knowingly destroys, abandons, or fails to convey or provide for the safekeeping of institutional and student records.
- The CIE may refer matters to the Department of Legal Affairs or the state attorney for investigation and prosecution.

### **Continuing Education for Administrators and Faculty**

The commission is authorized to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The commission may exercise this authority over the chief administrator, director of education or training, placement director, admissions director, financial aid director, and faculty members.

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

PCS/CS/SB 800 modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education.
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

### **Commission for Independent Education**

The bill revises the membership of the CIE by removing from the commission's membership, the representative of a religious college and the representative from a public school district or Florida College System institution. The bill adds one member who is an employer of graduates of institutions licensed by the CIE and one member who is a graduate of an institution subject to licensure by the CIE. The bill also limits commission members to serving no more than three consecutive terms.

The bill expands the powers and duties of the commission. Specifically, the bill:

- Requires the CIE to approve its annual budget.

- Requires the CIE to appoint a committee to review any complaints from students, faculty, and others concerning institutions under its purview, not closed within 90 days.
- Authorizes the CIE to prohibit, or limit, enrollment at a licensed institution, based on the institution's performance.

### **Licensure of Institutions**

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. A retention and management plan may assist the institutions in developing strategies to improve student retention and completion outcomes, which may benefit the students<sup>18</sup> attending such institutions in completing their respective programs of study and securing employment.

### ***Provisional License***

The bill authorizes the commission to require institutions that do not provide sufficient evidence of financial stability at the time of applying for a provisional license to post and maintain a surety bond with the commission. The surety bond may not exceed 50 percent of the amount of the first year's projected revenue.

The surety bond will increase the financial stability of certain new private postsecondary education institutions and assist with off-setting the burden on the Student Protection Fund if such institutions close improperly.<sup>19</sup> Until a new institution achieves financial stability, the surety bond will also assist with providing protection to students.<sup>20</sup>

As an alternative to the surety bond, the commission may allow a cash deposit escrow account or an irrevocable letter of credit payable to the commission. The amount of the cash deposit escrow account or the irrevocable letter of credit must be the same as the surety bond amount for the institution would have been.

The bill authorizes the CIE to adopt rules to implement the specified requirements for the granting of provisional license.

### ***Licensure by Means of Accreditation***

The bill changes the current requirements for licensure by means of accreditation to:

- Remove the criteria that an independent postsecondary educational institution be a Florida corporation. As a result, institutions that are non-Florida corporations will be able to use the licensure by means of accreditation process to operate in Florida.<sup>21</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

<sup>20</sup> *Id.*

<sup>21</sup> This modification supports the federal court ruling, which declared that “s. 1005.32(1)(e), Florida Statutes (2007), unconstitutionally makes licensure by means of accreditation available only to a Florida corporation.” *University of Phoenix v. Nancy Bradley*, No. 08-0217 (N.D. Fla. (Dec. 23, 2008); see also Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

- Add a requirement for a retention and completion management plan to the reporting requirements that an independent postsecondary educational institution must submit to the commission. A plan may assist the CIE in assessing the institutions' strategies to improve student retention and completion outcomes, which may benefit the students<sup>22</sup> attending such institutions complete their respective programs of study and secure employment.

### ***Application Review***

The bill requires the CIE to, within 60 days after receiving an application for licensure, review the application, notify the applicant of any error or omission, and request additional information, if necessary. The specified notification deadline may help the institutions receive and address the commission's concerns in a timely manner.

### **Accountability for Licensed Institutions**

The bill establishes accountability provisions for CIE licensed institutions. Annually, by November 30, each licensed institution must provide data to the CIE which includes, at a minimum, graduation rates, retention rates, and placement rates. The CIE must prepare an annual accountability report with this data for all licensed institutions by March 15. The commission must assess a \$1,000 fine on any institution that is delinquent in reporting the required data. The commission must also establish benchmarks to recognize high-performing licensed institutions.

### **Student Protection Fund**

The bill expands the authority of the CIE to annually determine and assess fees, to support the Student Protection Fund (Fund), from only "schools" that fall within the CIE's jurisdiction to all licensed "institutions". Currently, the definition of a school<sup>23</sup> does not include degree-granting independent postsecondary educational institutions.<sup>24</sup> By comparison, licensed institutions include both degree and non-degree granting institutions.<sup>25</sup> Licensed institutions also include all institutions that are licensed by the commission<sup>26</sup> as well as the institutions that are licensed by means of accreditation.<sup>27</sup> As a result of this expansion, more students will be protected by the Fund.<sup>28</sup> However, the bill requires that if the Fund balance exceeds \$5 million on November 1 of any year, the fees may not be collected in the next calendar year.

### **Fair Consumer Practices**

The bill modifies the fair consumer practices provisions in law by requiring each independent postsecondary educational institution to disclose to current and prospective students, in writing, all fees and costs that the students will incur to complete a program of study at the institution. This disclosure will assist students in planning ahead for completing a program of study and registering for courses each term at the institution.

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<sup>22</sup> Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

<sup>23</sup> Section 1005.02(16), F.S.

<sup>24</sup> Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

<sup>25</sup> Telephone interview with Commission for Independent Education staff, Florida Department of Education (Jan. 12, 2016).

<sup>26</sup> Section 1005.31, F.S.

<sup>27</sup> Section 1005.32, F.S.

<sup>28</sup> Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

### **Institutional Closings**

The bill requires the CIE to establish a Closed Institution Panel (panel) by October 1, 2016. The panel will consist of one commission member, one commission staff member, one accrediting body staff member, and one administrator with experience managing licensed institutions. Upon notification by the CIE, the panel must convene to implement measures to minimize the impact of the institutional closing on its students. The panel's activities will be conducted at the expense of the closing institution.

The bill also changes the charge for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.

### **Continuing Education for Administrators and Faculty**

The bill requires the commission to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The bill adds the chief campus officer to the list of specified positions for which the CIE is responsible for assessing qualifications and requiring continuing education and training. Beginning July 1, 2017, and annually thereafter, the CIE must verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

The bill takes effect July 1, 2016.

## **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:**

PCS/CS/SB 800 authorizes the CIE to require new nonpublic postsecondary institutions that do not provide sufficient evidence of financial stability to post and maintain a surety bond, or authorized alternative, not to exceed 50 percent of the first year's projected revenues.

The bill expands the authority of the CIE to access fees to support the Student Protection Fund, which is used to assist students when a school improperly closes before completion of training of its students, to include all licensed institutions, not just non-degree granting schools. This will increase the number of students protected by the Fund. However, if the balance of this fund exceeds \$5 million by November 1 of any year, the fees may not be collected the next calendar year.

**C. Government Sector Impact:**

According to the Department of Education, the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of \$165,604, to handle the increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the proposed Senate General Appropriations Bill for Fiscal Year 2016-2017.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1005.04, 1005.21, 1005.22, 1005.31, 1005.32, 1005.36, 1005.37, and 1005.39.

The bill creates section 1005.11 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on Education on February 11, 2016:**

The committee substitute:

- Requires the Commission for Independent Education (CIE or commission) to prepare an annual accountability report by March 15 each year.

- Requires licensed institutions to provide specified data to the CIE by November 30 each year or be subject to a \$1,000 fine.
- Revises the commission membership to:
  - Remove one member from a public school district or Florida College System institution and one member from an institution not under the purview of the commission:
  - Add one member who is an employer of graduates of institutions licensed by the commission and add one member who is a graduate of an institution licensed by the commission: and
  - Prohibit CIE members from serving more than 3 consecutive terms.
- Requires a committee, appointed by the CIE, to review complaints not resolved within 90 days.
- Provides for the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Changes the criminal penalty for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.
- Authorizes the commission to annually determine fees for the Student Protection Fund; however if the fund balance exceeds \$5 million by November 1 of any year, the fees may not be collected the next calendar year.

**CS by Higher Education on January 25, 2016:**

The committee substitute modifies the written disclosure requirement in SB 800 concerning fees and costs by clarifying that such information must be provided to current and prospective students in a format prescribed by the:

- Commission for Independent Education (commission) or
- Independent Colleges and Universities of Florida for the private colleges and universities that are exempt from the jurisdiction or purview of the commission based on criteria specified in law.

**B. Amendments:**

None.