

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 Committee on Higher Education

BILL: CS/SB 800

INTRODUCER: Committee on Higher Education and Senator Brandes

SUBJECT: Private Postsecondary Education

DATE: January 27, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 a written disclosure of all fees and costs to current and prospective students.

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 Commission for Independent Education (CIE or commission), established in the Department of Education (DOE or department), is responsible for exercising independently all powers, duties, and functions concerning independent postsecondary educational institutions in consumer

protection, program improvement, and licensure of institutions under its purview.¹ The commission is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction.² 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.”³

The membership of the commission consists of:⁴

- 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.⁵
- 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.⁶ 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 statements about the status of the institution related to professional certification and licensure.⁷ A postsecondary educational institution must obtain licensure from the commission to operate in the state of Florida, unless such institution is not under the commission’s jurisdiction or purview, as specified in law.⁸

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:⁹

- 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.

¹ Section 1005.21(1)-(2), F.S.

² *Id.*

³ Section 1005.02(11), F.S.

⁴ Section 1005.21(2), F.S.

⁵ Section 1005.06(1)(f), F.S.

⁶ 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.

⁷ *Id.*

⁸ Sections 1005.31(1)(a) and 1005.06(1), F.S.

⁹ Section 1005.32, F.S.

- 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.¹⁰ 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.¹¹ With the exception of submitting to the commission, an annual audit report, institutions that are licensed by means of accreditation are not required to submit reports that differ from the reports that such institutions submit to their accrediting association.¹²

Student Protection Fund

The CIE must establish and administer 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.¹³ The commission is authorized to assess a fee from the schools within the CIE's jurisdiction for such purpose.¹⁴ 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.¹⁵

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.¹⁶

Fair Consumer Practices

A private postsecondary educational institution that is under the jurisdiction of the commissioner is exempt from the jurisdiction or purview of the commission must do the following:¹⁷

- 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. Such 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.

¹⁰ *Id.*

¹¹ Section 1005.32(3), F.S.

¹² *Id.*

¹³ Section 1005.37(1), F.S.

¹⁴ Section 1005.37(2), F.S.

¹⁵ Section 1005.37(3), F.S.

¹⁶ Section 1005.37(7), F.S.

¹⁷ Section 1005.04(1), F.S.

- 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.

III. Effect of Proposed Changes:

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 a written disclosure of all fees and costs to current and prospective students.

Commission for Independent Education

The bill revises the membership of the CIE by removing from the commission's membership, the representative of religious colleges that are not under the jurisdiction or purview of the commission, and instead adding one additional member representing public school districts or FCS institutions who is an administrator of career education. As a result, the membership of the commission, as modified, will include two members representing public educational institutions (i.e., school districts or FCS institutions) who are administrators of career education. This change in the CIE membership "could provide additional career education expertise" to the commission.¹⁸ Religious colleges are exempt from licensure by the commission and do not participate in the licensing process.¹⁹ As a result, having a representative of the religious colleges on the CIE is not "beneficial" to the commission.²⁰

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

¹⁸ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 3.

¹⁹ *Id* at 3-4.

²⁰ *Id* at 4.

plan, prescribed by the commission. The plan may assist the institutions in developing strategies to improve student retention and completion outcomes, which may benefit the students²¹ attending such institutions complete their respective programs of study and secure employment.

Provisional License

The bill establishes requirements for the granting of provisional license to independent postsecondary educational institutions by specifying that the institutions must post and maintain a surety bond with commission. The surety bond must:

- Be executed by a surety company authorized to do business in Florida, with the applicant as the principal. The surety bond must be payable to the commission so that the commission is able to assist students with completing their program of study if the institution where such students are enrolled ceases to operate.
- Be for at least \$100,000, and may not exceed 50 percent of the amount of the first year's projected revenue.
- Remain in effect until the institution applies for and receives a first annual licensure renewal and demonstrates financial stability as determined by the commission.

The surety bond will increase the financial stability of new private postsecondary education institutions and assist with off-setting the burden on the Student Protection Fund if such institutions close improperly.²² Until such time that a new institution achieves financial stability, the surety bond will also assist with providing protection to students.²³

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 of the same value as the surety bond amount.

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 licensure by means of accreditation requirements by:

- Removing the criteria that requires an independent postsecondary educational institution to 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.²⁴
- Adding to the reporting requirements, a retention and completion management plan, prescribed by the commission, that an independent postsecondary educational institution, licensed by means of accreditation, must submit to the commission. The plan may assist the CIE assess the institutions' strategies to improve student retention and completion outcomes,

²¹ *Id.*

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

²³ *Id.*

²⁴ 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.

which may benefit the students²⁵ 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 to receive and address the commission's concerns in a timely manner.

Student Protection Fund

The bill expands the authority of the CIE to assess fees, toward the Student Protection Fund (Fund), from schools that fall within the CIE's jurisdiction to all licensed institutions. Currently, the definition of a school²⁶ does not include degree-granting independent postsecondary educational institutions.²⁷ In comparison, licensed institutions include both degree and non-degree granting institutions.²⁸ Licensed institutions also include all institutions that are licensed by the commission²⁹ as well as the institutions that are licensed by means of accreditation.³⁰ As a result of this expansion, more students will be protected by the Fund.³¹

Fair Consumer Practices

The bill modifies the fair consumer practices provisions 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 plan ahead for pursuing a program of study and registering for courses per term at an institution where the students are currently enrolled or are considering enrolling.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁵ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²⁶ Section 1005.02(16), F.S.

²⁷ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

²⁸ Telephone interview with Commission for Independent Education staff, Florida Department of Education (Jan. 12, 2016).

²⁹ Section 1005.31, F.S.

³⁰ Section 1005.32, F.S.

³¹ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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, 1005.31, 1005.32, and 1005.37.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

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.

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