

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 2398

INTRODUCER: Senator Ring

SUBJECT: Resident Status for Tuition Purposes

DATE: April 2, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	HE	Pre-meeting
2.	_____	_____	HI	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill makes various changes to the law governing postsecondary student eligibility for in-state tuition status. The definition of a dependent child is narrowed by excluding a student who provides more than 50 percent of the cost of attendance at a postsecondary institution or a student who meets independent status criteria for federal financial aid purposes. The definition of a parent is expanded to include stepparents.

The bill reduces the number of years from five to four that a dependent child must continuously reside with an adult relative other than the child’s parent for purposes of establishing residency for tuition purposes.

To satisfy proof of residency based on in-state employment, any part-time employment would now qualify, provided that it still meets the 12-month duration requirement.

Additionally, an individual would qualify for in-state residency for tuition purposes by purchasing a home in the state and residing in that home for 12 months, while simultaneously being enrolled in an institution of higher learning.

Reclassification as a resident for tuition purposes would allow a student to be enrolled in a postsecondary institution while meeting the 12 month residency requirement.

This bill grants in-state status to students who have attended a state public high school for two years immediately before graduation and enroll in a postsecondary institution within 12 months of graduation, if the student is a U.S. citizen or eligible alien.

This bill recognizes students as residents for tuition purposes when they are eligible for tuition waivers and exemptions through other provisions of law.

This bill clarifies that a student's in-state status transfers to other institutions if the student attended the classifying institution within the last 12 months and the transcript reflects the classification.

This bill substantially amends section 1009.21 of the Florida Statutes.

II. Present Situation:

Florida Law on Resident for Tuition Purposes Status

Florida law classifies postsecondary students as residents or nonresidents to determine the applicable tuition rate at community colleges and state universities. A "resident for tuition purposes" is a student who qualifies for in-state tuition.¹

To qualify for in-state tuition, the following must apply:

- Either the student or parents of a dependent child must have established and maintained in-state legal residence for a minimum of 12 consecutive months immediately prior to the student's initial enrollment; and
- The student must make a statement that residency was established to maintain a bona fide domicile rather than to set up a temporary residence just to qualify for in-state tuition; or
- The student is a dependent child who has lived with a non-parent adult relative continuously for the last five years immediately prior to initial enrollment if the relative has had in-state legal residence for a minimum of 12 consecutive months immediately prior to initial enrollment and has served in a parental role towards the child.²

A dependent child is defined as a child who qualifies to be claimed as a dependent for federal income tax purposes, regardless of whether the child lives with the parent(s).³ A parent is defined to include a natural or adoptive parent, or a legal guardian.⁴

To establish in-state status, applicants must produce at least two documents evidencing residency, including at least one of the following:

- A voter's registration card;
- A driver's license;
- An identification card;
- A vehicle registration;
- Proof of a permanent home occupied as a primary residence by the student or the student's parent if the student is a dependent;

¹ s. 1009.21(1)(g), F.S.

² s. 1009.21(2)(a) and (b), F.S.

³ s. 1009.21(1)(a), F.S.

⁴ s. 1009.21(1)(f), F.S.

- Proof of homestead exemption;
- High school transcripts if the diploma or GED is from the last 12 months; or
- Proof of permanent full-time employment for a duration of 12 months.⁵

To show in-state residency, the applicant may produce:

- A declaration of domicile;
- A state professional or occupational license;
- State incorporation;
- A document evidencing family ties in the state;
- Evidence of membership in a state-based charity or professional organization;
- Other documentation that evidences residency, such as energy bills or a lease agreement with demonstrated 12-month payments; or
- An official state, federal, or court document showing legal ties to the state.⁶

Certain students receive classification as residents for tuition purposes through some other status, such as military active duty members; public school and postsecondary personnel who work full-time, spouses and dependents; and Latin American and Caribbean students on federal or state government scholarships.⁷

Various sections in law provide for tuition waivers and exemptions. Section 961.06(1)(b), F.S., provides compensation, including tuition waivers and fees, to wrongfully incarcerated persons. Several fee exemptions, including tuition exemptions, are provided for in s. 1009.25, F.S., and apply to such students as those enrolled in dual enrollment, approved apprenticeship programs, welfare transition programs, children who have been in state services custody, and students without permanent shelter. Section 1009.26, F.S., offers additional tuition waivers, including for supervisors of state university interns, full-time university employees, persons at least 60 years old, and Purple Heart recipients.

Federal Financial Aid

Students qualify for independent status for federal financial aid purposes based on any of the following:

- Birthdate before January 1, 1987;
- Status as a married person;
- Enrollment in a master or doctoral degree program;
- Active military duty or military veteran status;
- Having provided more than 50 percent support for a child/children or live-in legal dependents other than offspring;
- Having certain state dependency status, status as an emancipated minor, or legal guardianship; or

⁵ s. 1009.21(2)(c)1., F.S.

⁶ s. 1009.21(2)(c)2., F.S.

⁷ s. 1009.21(10), F.S.

- Having the status of a homeless, unaccompanied youth.⁸

To be eligible for federal financial aid, a student must be a U.S. citizen or national, or an eligible noncitizen, defined as a person on a permanent resident card or someone who possesses specific immigration status, such as “Refugee”, “Asylum Granted”, “Cuban-Haitian Entrant, Status Pending”, “Conditional Entrant”, “Victims of human trafficking”, or “Parolee.” Students on other kinds of visas, such as certain student visas, exchange visitor visas, or visas based on an international organization affiliation, are ineligible for federal financial aid.⁹

Office of Program Policy Analysis and Government Accountability (OPPAGA)

OPPAGA has examined issues relating to student residency in three different reports since 2003. OPPAGA report 03-29 found that 28% of the nonresident students in community colleges and 25% in state universities were reclassified as in-state residents by the end of a 3-year period. Because out-of-state students must pay more than Florida residents, this reclassification resulted in an annual loss in fee revenue. The 2003 report estimated this loss at \$28.2 million annually. OPPAGA’s 2005 report found that the estimated annual loss in revenue had nearly doubled to \$56.5 million due in part to growth in nonresident students and tuition increases. OPPAGA’s most recent review, a research memorandum issued March 12, 2009, finds that the percentage of out-of-state students reclassifying as Florida residents has continued to increase since the earlier reports and that reclassification of out-of-state students admitted in 2005-06 to Florida resident status resulted in a loss of \$92.2 million over three years (2005-06 through 2007-08)¹⁰.

OPPAGA Report 03-09

A 2003 OPPAGA Special Review found that although Florida law and rules are intended to enable universities and community colleges to accurately and consistently classify students for in-state and out-of-state residency, the process was substantially flawed.¹¹ OPPAGA found that institutions were using inconsistent screening criteria and procedures creating the potential for misclassifications and variations in the threshold a student must meet to qualify for residency. OPPAGA identified three costly weaknesses in the criteria and procedures used at the time in classifying students as residents for tuition purposes:

- The laws and rules did not provide adequate criteria governing under what specific circumstances students should be reclassified as Florida residents.
- The criteria did not adequately specify the determination of students’ dependency status.
- Institutions were applying varying standards for documenting residency.

The 2003 report recommended that to improve the residency classification process, the Legislature should amend the law to require that students (or their parents if the students are

⁸ *Funding Education Beyond High School, 2010-11, The Guide to Federal Student Aid*, U.S. Department of Education, Federal Student Aid (pg. 31). Website: http://studentaid.ed.gov/students/attachments/siteresources/Funding_Education_Beyond_HS_2010-11.pdf; Last checked April 1, 2010.

⁹ *Id.* at 51.

¹⁰ This estimate assumes that nonresident students still would have attended a Florida institution even if they were not reclassified as Florida residents.

¹¹ *Id.*

dependents) must maintain legal residence in the state for at least 12 months immediately prior to the student's initial enrollment or registration at a Florida public postsecondary institution to be eligible for classification for in-state residency. OPPAGA also recommended that the Legislature more clearly define when a nonresident student could be eligible for reclassification as a resident.

OPPAGA Report 05-41

In 2005, OPPAGA published a progress report to inform the Legislature of actions taken in response to the 2003 report.¹² The progress report found that the Department of Education (DOE), the State Board of Education (SBE), and the Board of Governors (BOG) had taken most of the actions recommended by the 2003 report.

The SBE and BOG adopted rule changes to provide additional guidance in reclassifying students from nonresident to resident status.¹³ The rule states that a student wishing to be reclassified must provide documentation which substantiates that he or she, or if a dependent, the student's parent or guardian, is establishing Florida as a permanent domicile and not as a mere temporary residence incident to enrollment in higher education. The rule specifies a 12-month period of legal residence in the state prior to the first day of classes for the term for which residency is sought.

The 2005 report found that the recommendation to implement periodic internal reviews of residency decisions was not implemented. DOE noted that s. 1009.21, F.S., does not assign authority to the department to specifically address this problem. State audits do not focus on residency decisions. Accreditation standards for internal audits do not explicitly address residency decisions. OPPAGA's review found that, while some institutions validate residency determinations through internal audits and random sampling techniques, most of the institutions OPPAGA interviewed did not engage in this practice. The report noted that, given the high error rates found in the review, more thorough review of residency decisions was warranted.

OPPAGA Research Memorandum (March 12, 2009)

OPPAGA updated its work on the residency classification of students in 2009. The report indicated that reclassification of out-of-state students to resident student status has continued to increase in both the State University System and the Florida College System. Almost 30 percent of the nonresidents entering the State University System in 2005-06 were reclassified as in-state students by the end of the 2007-08 academic year; 41 percent of nonresident students in the Florida College System were reclassified. OPPAGA speculated that the increase in the reclassification rate may be due to a more stringent enforcement of residency requirements for the initial residency determination.

¹² Report 05-41, OPPAGA, *Department of Education Improves Rules Guiding Resident Tuition Determinations*.

¹³ *Id.*

Legislative Changes in 2009

As a result of the OPPAGA recommendations, the Legislature enacted legislation that substantially tightened the requirements to establish residency for tuition purposes.¹⁴ The act revised residency criteria to require that a person reside in-state for 12 consecutive months immediately prior to initial enrollment in an institution of higher education in Florida to qualify as a resident for tuition purposes.

The act defined the term “initial enrollment” as the first day of class at an institution of higher education.

The act required that legal residence must be established by written or electronic verification that includes two or more of the following Florida documents:

- A voter information card;
- A driver’s license;
- An identification card issued by the state;
- A vehicle registration;
- A declaration of domicile;
- Proof of purchase of a permanent home;
- Proof of a homestead exemption in the state;
- A transcript from a Florida high school;
- A Florida high school equivalency diploma and transcript;
- Proof of permanent full-time employment;
- Proof of 12 consecutive months of payment of utility bills;
- A domicile lease and proof of 12 consecutive months of payments; or
- Other official state or court documents evidencing legal ties to Florida.

All of these documents must demonstrate clear and convincing evidence of continuous residence in the state for at least 12 consecutive months prior to the student’s initial enrollment in an institution of higher education.

The act clarified that a dependent child can claim residency by documentation of his or her parent’s legal residence and its duration, as well as documentation confirming his or her status as a dependent child. The documentation must provide clear and convincing evidence that residency in Florida was for a minimum of 12 consecutive months prior to the student’s initial enrollment in an institution of higher education.

The act provided for reclassification from nonresident to resident if a person provides documentation that supports the person’s permanent residency in the state such as documentation of permanent full-time employment for the prior 12 months or purchase of a home in this state and residence therein for the prior 12 months while not enrolled at an institution of higher education. If a dependent child’s parents or parent moves to Florida while the child is in high school and the child graduates from a high school in this state, the child may become eligible for

¹⁴ s.7, ch. 2009-60, L.O.F.

reclassification as a resident for tuition purposes when the parent qualifies for permanent residency.

The act required each community college and state university to determine the dependency status of students who have been admitted and affirmatively determine that applicants who have been admitted as Florida residents meet the residency requirements at time of initial enrollment.

III. Effect of Proposed Changes:

Students who pay more than 50 percent of the cost of attendance or meet the criteria for independent status under federal guidelines would no longer be considered dependents, and therefore, cannot claim resident status through a parent's or adult relative's qualifying residency.

The following provisions, however, would expand eligibility for in-state tuition status:

- The definition of parent would broaden to include a stepparent, thereby providing new resident status to a dependent student who can establish residency through a stepparent who is not a legal guardian;
- The five-year requirement for living with an adult relative would be reduced to four years;
- The threshold level of employment is reduced from full-time to part-time, and includes any number of hours worked;
- Regarding reclassification from nonresident to resident status for dependents, part-time temporary employment of any duration would now qualify for proof of employment, and time enrolled at a postsecondary institution while residing in a purchased home would count towards the 12 month residency requirement; and
- U.S. citizens or eligible aliens would qualify if they attended an in-state public high school for the two years just before graduation, have enrolled at a postsecondary institution within 12 months of graduation, and have produced a high school transcript before initial enrollment.

This bill clarifies that students with resident for tuition purposes status who transfer to another institution could maintain that status, if it is recently received (within 12 months), without having to reestablish eligibility. It appears, however, that students entering an institution on this status and transferring to another institution outside of the 12-month window would have to reestablish the classification.

It is unclear what is meant by the term "eligible alien." If the intent of the language is to track the federal guidelines for financial aid purposes, it is recommended that this be replaced with the term "eligible noncitizen", pursuant to federal financial aid guidelines.

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:

This bill generally increases the postsecondary student population eligible for in-state tuition status, thereby lowering tuition costs for these students.

C. Government Sector Impact:

The Board of Governors indicates a corresponding decline in revenue for institutions with students reclassified from out-of-state to in-state status for tuition purposes as follows:

Using 2009-10 tuition rates, if a one FTE student were enrolled as an undergraduate out-of-state resident...the total annual amount of tuition generated would be \$23,166 (\$579.15 x 40 hours). However, if this same one FTE student were reclassified as an undergraduate in-state resident the total tuition revenue generated would be \$4,076 (\$101.90 x 40 hours). The net effect...would be a loss of \$19,090...annually. As an added consequence, the credit hours the in-state resident student takes will be considered state fundable hours, requiring additional state support.¹⁵

The revised criteria would allow more individuals to qualify for residency for tuition purposes than is currently authorized under current law. Accordingly, there would be an indeterminate negative fiscal effect on the state.

¹⁵ The annual hour rate of 40 is based on estimated semester hours of 15 each in Fall and Spring, and 10 hours for the summer semester. The \$101.90 is based on the system average for in-state cost of tuition per hour, and the \$579.15, for the system average out-of-state cost of tuition per hour. In-state tuition includes tuition, tuition differential, and the financial aid fee. Out-of-state tuition includes tuition, the out-of-state fee, tuition differential, and the financial aid fee.

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.
