

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/CS/HB 851	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Education Appropriations Subcommittee; Higher Education & Workforce Subcommittee; Nuñez and others	84 Y's	32 N's
<b>COMPANION BILLS:</b>	CS/SB 1400; SB 300; SB 428; SB 732	<b>GOVERNOR'S ACTION:</b>	Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 851 passed the House on March 20, 2014. The bill was amended by the Senate on May 1, 2014, and subsequently passed the House on May 2, 2014. The bill expands affordable access to higher education for Floridians by:

- Reestablishing a maximum amount the Florida Prepaid College Board must pay a state university on behalf of qualified beneficiaries for registration, tuition differential, and local fees, thereby reducing current contract prices, and providing financial relief to recent Prepaid contract purchasers;
- Codifying current tuition rates and eliminating automatic annual inflationary increases currently authorized for postsecondary institutions;
- Eliminating the out-of-state block tuition for nonresident students in adult general education (AGE) programs to establish a uniform block tuition for all AGE students.
- Specifying that the Board of Governors may approve a tuition differential increase only for a state university that is designated preeminent. Limits the increase to a total of 6 percent, provided the university meets certain performance metrics;
- Expanding fee waivers for Purple Heart recipients to include career centers; and
- Providing a waiver of out-of-state postsecondary fees for students, including but not limited to, students who are undocumented for federal immigration purposes, who:
  1. Attended a Florida secondary school for 3 consecutive years;
  2. Apply for enrollment in a postsecondary institution within 24 months after graduation; and
  3. Submit their high school transcript as documentary evidence of attendance and graduation.

Students who qualify for the out-of-state fee exemptions are eligible for the waiver for up to 110% of the credit hours required for a degree or certificate, but are not eligible for state financial aid. These students must be counted as out-of-state students for purposes of calculating the systemwide total enrollment of nonresident students in the State University System. Veterans must receive priority in enrollment over students who are eligible for the out-of-state fee waiver.

The bill amends provisions relating to the determination of residency status for tuition purposes, which includes:

- Revising the definition of parent to include any guardian of a student or any person in a parental relationship;
- Reducing the amount of time a student must live with an adult relative from 5 years to 3 years;
- Clarifying that the immigration status of the parent of a dependent child, who is a U.S. citizen, cannot be the sole basis for denial of classification as a resident for tuition purposes;
- Clarifying language relating to the impact of marriage on residency classification.

The fiscal impact of the bill is indeterminate.

The bill was approved by the Governor on June 9, 2014, ch. 2014-62, L.O.F., and will become effective July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0851z1.HEWS.docx

DATE: June 10, 2014

# I. SUBSTANTIVE INFORMATION

## Stanley G. Tate Florida Prepaid College Program (Prepaid Program)

### Present Situation

Section 1009.98, F.S. establishes the Stanley G. Tate Florida Prepaid College Program (Prepaid Plan) to assist families in planning and saving for a college education. An advanced payment contract locks in many of the costs associated with postsecondary attendance at the time the contracts are purchased.

The Florida Prepaid College Board (board) is authorized to offer advance payment contracts (APC) for a Florida College System tuition plan, a university tuition plan, a Florida College System plus university tuition plan, a university dormitory plan, a local fee plan, and a tuition differential fee plan.

Each year, the Prepaid College Board conducts an analysis of the actuarial adequacy of the Prepaid Trust Fund.<sup>1</sup> In order to conduct this analysis, a series of assumptions are made regarding investment yield, tuition increases, tuition differential fee increases, local fee increases, and dormitory fee increases.<sup>2</sup> The result of the analysis is a determination of the actuarial reserve, which means the amount by which the expected value of the assets in the Prepaid Trust Fund exceeds the value of the expected liabilities. The table below provides a four-year history of the actuarial reserve.

### Actuarial Information

	2010	2011	2012	2013
Actuarial Reserve	\$482,626,581	\$589,408,656	\$569,458,560	\$834,449,416
As % of Expected Liabilities	5.1%	6.0%	4.9%	7.6%

To provide greater predictability to both the Prepaid College Board and state universities, Chapter 2009-60, Laws of Florida, included provisions that established a payment methodology to state universities on behalf of beneficiaries of advance payment contracts that were purchased prior to July 1, 2009. The payment methodology specifies the level of tuition increases and tuition differential increases that the Prepaid College Board will pay each year, based on the actuarial reserve for that year.

Actuarial Reserve, % of Expected Liabilities	<5%	5% - 6%	6% - 7%	≥7.5%
Board Payment to Universities Above Fee Assessed Previous Year	5.5%	6.0%	6.5%	7.0%

In addition, for APC's purchased prior to 2009, the amount paid to universities for local fees was set at five percent above the amount assessed for local fees in the preceding fiscal year, and six percent above the amount assessed for dormitory fees in the preceding fiscal year.

Current law provides that the board shall pay state universities the actual amount assessed for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2009.

<sup>1</sup> Section 1009.971(4)(f), F.S.

<sup>2</sup> Florida Prepaid College Board, *Analysis of Actuarial Adequacy as of June 30, 2008*.

## Effect of Proposed Changes

The bill amends s. 1009.98(10), F.S., to extend payment provisions relating to the amount the Prepaid board must pay to any state university on behalf of qualified beneficiaries of advance payment contracts. The prior date of July 1, 2009 is extended to July 1, 2024. The bill establishes the maximum payment cap based on the aggregate actual tuition and fees charged by Florida's state universities. The Board will pay each university the lesser of either the statutorily required assessment for that fiscal year, or the actual of the aggregated amount charged for registration fees, tuition differential, local and dormitory fees.

According to the Prepaid College Board, these changes will reduce the current purchase price for prepaid plans. The newborn price of the four-year university plan would be reduced by at least \$10,000 for future participants. In addition, over 26,000 Florida families who purchased plans at higher prices in recent years would receive refunds totaling over \$50 million. Future monthly payments would also be reduced for those purchasers paying monthly instalments.

Because this legislation caps future payments to state universities at the lesser of actual tuition and fees or the statutory percentages based on the board's actuarial reserve, in years that tuition and fees exceed the payment provisions, universities would not be able to collect the full rate of tuition and fees.

## **Automatic Rate of Inflation Increase and Higher Education Tuition Rate Codification**

### Present Situation

#### *Automatic Rate of Inflation Increase*

Current law specifies that the resident undergraduate tuition for state universities per credit hour must increase at the beginning of each fall semester at a rate equal to inflation unless otherwise provided in the General Appropriations Act. Automatic tuition increases are also applicable for Florida College System institutions, and career centers operated by school districts, except that the inflationary increase is authorized for both tuition and out-of-state fees.<sup>3</sup> The rate of inflation is defined as "the rate of the 12-month percentage change in the Consumer Price Index (CPI) for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year." Prior to March 1 of each year, the Office of Economic and Demographic Research must report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, the State Board of Education, and the Board of Governors (BOG) of the State University System (SUS) of Florida. If the percentage change is negative or the Legislature does not provide the tuition rates in the GAA, tuition remains the same as the prior fiscal year.<sup>4</sup>

#### *Tuition Rate Codification*

The sections of statute which establish base tuition rates have not been updated since 2011.<sup>5</sup> Since then, tuition increases of five percent were provided in the 2012-2013 General Appropriations Act (GAA) for Workforce Education and the Florida College System.<sup>6</sup> Also, in 2013-2014, tuition increases of three percent were provided in the GAA for Workforce Education, the Florida College System and the State University System.<sup>7</sup> The Governor vetoed the proviso language in the 2013-2014 GAA,

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<sup>3</sup> Sections 1009.22(3)(d), 1009.23(3)(c), and 1009.24(4)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Sections 1009.22, 1009.23, and 1009.24, F.S.

<sup>6</sup> 2012 General Appropriations Act, Chapter 2012-118, Laws of Florida (Specific Appropriations 106, 108, and 129) *available at*: <http://laws.flrules.org/2012/118>

<sup>7</sup> 2013 General Appropriations Act, Chapter 2013-40, Laws of Florida (Specific Appropriations 117, 120, and 142) *available at*: <http://laws.flrules.org/2013/40>

which specified the tuition rates; however, an automatic rate of inflation increase was implemented only for state universities, resulting in a 1.7 percent increase on the base tuition. Inflationary tuition increases authorized in statute were not applied for Workforce Education programs or the Division of Colleges.

The standard rates of tuition for the State University System, Florida College System, and Workforce Education programs for Fiscal Year 2013-2014 reflect rates authorized by the Legislature and are as follows:

#### Postsecondary Tuition Rates - Fiscal Year 2013-2014

Institution	Rate Per	Resident/ Non-Resident Tuition	Out-of State Fee (Is Paid in Addition to Tuition)
<b>School District Career Centers</b>			
Workforce Programs (non-college credit) Applied Technology Diploma Career Certificate	Contact Hour	\$2.33	\$6.99
<b>Florida College System</b>			
Workforce Programs (non-college credit) Applied Technology Diploma Career Certificate	Contact Hour	\$2.33	\$6.99
Undergraduate Advanced and Professional Postsecondary Vocational Developmental Education Educator Preparation Institute Programs	Credit Hour	\$71.98	\$215.94
Baccalaureate	Credit Hour	\$91.79	Determined by Institution
<b>State University System</b>			
Undergraduate	Credit Hour	\$105.07	Determined by Institution
Graduate Programs	Determined by Institution		

For 2014-2015, no tuition increases are included in the Conference Report on House Bill 5001, the 2014-2015 General Appropriations Act; therefore, the Legislature maintained the above rates.

#### Effect of Proposed Changes

The bill codifies tuition rates for the Florida College System, Workforce Education programs and the State University System. Tuition rates remain unchanged from the 2012-2013 fiscal year for Workforce Education programs and the Florida College System. State University System tuition rates reflect the 1.7 percent CPI adjustment applied in Fiscal Year 2013-2014.

Also, the bill eliminates the automatic annual rate of inflation increases currently authorized for state universities, Florida colleges, and workforce education programs. In doing so the bill also repeals the requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, the Board of Governors, and the State Board of Education. The bill also deletes the statutory authorization to provide tuition rates in the General Appropriations Act.

#### **State University System Limitation on Tuition Differential Increase**

##### Present Situation

Each university board of trustees is authorized by the Board of Governors (BOG) to charge a tuition differential which may be assessed on all undergraduate courses at a state university. Revenue

generated by the tuition differential must be spent solely for improving the quality of direct undergraduate instruction and support services. Seventy percent of the revenues from the tuition differential shall be expended for purposes of undergraduate education, the remaining 30 percent of the revenues from the tuition differential, or the equivalent amount of revenue from private sources, shall be expended to provide financial aid to undergraduate students who exhibit financial need.<sup>8</sup> If the entire tuition and fee costs of resident students who have applied for and received Pell Grant funds have been met and the university has excess funds remaining from the 30 percent of the revenues from the tuition differential required to be used to assist students who exhibit financial need, the university may expend the excess portion in the same manner as required for the other 70 percent of the tuition differential revenues.

Increases to the tuition differential fee may be proposed by the state university board of trustees once each year; such increases must be approved by the BOG. Each state university may not increase the aggregate sum of tuition and the tuition differential by more than 15 percent of the total charged for the aggregate sum of these fees in the preceding fiscal year. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.<sup>9</sup>

The Board of Governors convenes in June of each year to discuss the tuition differential proposals submitted by each university board of trustees. In FY 2012-2013, all eleven state universities were approved by the BOG for a tuition differential increase. The tuition differential by university ranges from \$35.14 to \$52.29 per student credit hour – the System average is \$41.30. The System estimates \$240 million in tuition differential revenue for 2013-2014 – with \$168 million dedicated towards undergraduate educational services and \$72 million for institutional need-based financial aid.

### Effect of Proposed Changes

The bill repeals the rate at which an institution may request to increase their tuition differential to the Board of Governors for all state universities, with the exception of those designated as preeminent state research universities. Lowering the annual percentage increase for the aggregate sum of tuition and the tuition differential reduces the ability to increase fees which are indexed to tuition. A preeminent state research university may increase the tuition differential by no more than six percent if it meets or exceeds performance standard targets set by the Board of Governors. The bill stipulates that a preeminent university may increase its tuition differential by two percent for meeting each of three specified performance targets. These include:

- An increase in the 6-year graduation rate for full-time, first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System;
- An increase in the total annual research expenditures; and
- An increase in the total patents awarded by the United States Patent and Trademark Office for the most recent years.

## **Workforce Education Postsecondary Student Fees**

### Present Situation

In 2011, the Legislature established a single block tuition for adult general education that resulted in a block tuition of \$45 per half year or \$30 per term for residents and nonresidents, and an additional out-of-state fee of \$135 per half year or \$90 per term for nonresidents. The fee exemptions previously outlined in s. 1009.25(1), F.S., for students enrolled in adult basic, adult secondary, and career-preparatory instruction from payment of tuition and fees, were also repealed, creating an additional

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<sup>8</sup> Section 1009.24(16), F.S.

<sup>9</sup> Section 1009.24(16)(b)4., F.S.

requirement to verify the residency status of all students enrolling in adult general education. The legislation required adult general education students to meet the residency documentation requirements outlined in 1009.21, F.S.<sup>10</sup>

### Effect of Proposed Changes

The bill repeals the out-of-state fee for nonresidents, thereby establishing uniform block tuition for all students enrolling in adult general education programs. This change will reduce the administrative burden on institutions to verify student residency, increase affordability, and promote access for students by eliminating cumbersome documentation requirements.

### **Determination of Resident Status for Tuition Purposes**

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers, career centers operated by school districts, Florida College System institutions, and state universities. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.<sup>11</sup>

Applicants to a postsecondary institution must meet certain qualifying standards in order to be classified as a resident of Florida for tuition purposes. The applicant, or in the case of a dependent child, his or her parents,<sup>12</sup> must establish legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to the applicant's enrollment in a postsecondary institution.<sup>13</sup>

Each postsecondary institution determines the residency status of the students who apply for admission to the institution.<sup>14</sup> Each applicant must provide to the institution a statement of length of residence and establish that his or her presence in the state is for the purpose of maintaining a bona fide domicile and not as a temporary residence or residence incident to enrollment.<sup>15</sup>

### **Implementation of Residency Requirements**

The State Board of Education (SBE) and Florida Board of Governors (BOG) must adopt rules to implement the provisions of Section 1009.21, F.S.<sup>16</sup> Accordingly, the SBE has adopted Rule 6A-10.044, F.A.C., "Residency for Tuition Purposes." The BOG has adopted a similar set of provisions under Rule 72.1001, F.A.C., also entitled "Residency for Tuition Purposes."<sup>17</sup> Each rule establishes requirements for determining residency for tuition purposes.

### **Florida High School Graduates**

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<sup>10</sup> Section 11, ch. 2011-63, L.O.F.

<sup>11</sup> See Sections 1009.22, 1009.23, and 1009.24, F.S. Out-of-state tuition is established by each university board of trustees, subject to the approval of the BOG. Section 1009.24(4)(c), F.S.

<sup>12</sup> The legal residence of a dependent child's parents is prima facie evidence of the dependent child's residence. Section 1009.21(4), F.S.

<sup>13</sup> Section 1009.21(2)(a)1., F.S. A legal resident, for purposes of tuition, is a person who has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in Florida pursuant to s. 222.17, F.S. Section 1009.21(1)(d), F.S.

<sup>14</sup> Section 1009.21(2)(a)1., F.S. A legal resident, for purposes of tuition, is a person who has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in Florida pursuant to s. 222.17, F.S. Section 1009.21(1)(d), F.S.

<sup>15</sup> Section 1009.21(3)(c), F.S.

<sup>16</sup> Section 1009.21(13), F.S.

<sup>17</sup> The Florida Board of Governors also adopted Regulation 7.005 in 2011 with language that is identical to Rule 72.1001, F.A.C.

## Present Situation

Currently, transcripts from a Florida high school for multiple years may be used as one piece of documentation for students trying to establish residency for tuition purposes.<sup>18</sup> However, in addition to the high school transcripts, students who are dependents must provide a second piece of documentation that attests to the residency of their parents or legal guardians. This may be difficult for students whose parents are estranged, unwilling to provide documentation, or are undocumented immigrants. Since no one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes,<sup>19</sup> many Florida high school graduates who have lived in Florida for multiple years cannot provide the required documentation and are classified as out-of-state students. This has been a particularly difficult problem for students who are undocumented immigrants that were brought to the United States by their parents as a child.

Several states currently have laws, referred to as tuition equity, that permit certain undocumented students who have attended and graduated from their primary and secondary schools to pay the same tuition as their classmates at public institutions of higher education. A majority of America's undocumented immigrants live in these states, and several other states are considering similar policies.<sup>20</sup>

Tuition equity laws generally allow students who attend and graduate from a high school in a state, and who meet other specified criteria, to pay in-state tuition rates, regardless of their immigration status. Currently, **17 states** have provisions allowing for in-state tuition rates for undocumented students. Fifteen states—California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington— extend in-state tuition rates to undocumented students through state legislation. Two states—Oklahoma and Rhode Island— allow in-state tuition rates to undocumented students through Board of Regents decisions.<sup>21</sup>

The states that have passed laws to allow undocumented students to receive in-state tuition delineate requirements for eligibility. In general, students must live in state and attend high school for a specified period (1-4 years), and graduate or receive their GED. Students must be accepted to a public college or university, and must sign an affidavit stating their intention to file for legal immigration status. Only three states—California, New Mexico and Texas—currently allow undocumented students to receive state financial aid. Students without legal immigrant status are ineligible for federal financial aid.<sup>22</sup>

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) states, "...an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."<sup>23</sup>

The states that have enacted laws granting in-state tuition rates to undocumented students have worded the legislation so that it is contingent on high school attendance and graduation, and not based on residency within the state. Since legal United States residents are also entitled to in-state tuition rates based on the same criteria, the states claim that their laws do not violate the IIRIRA. The

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<sup>18</sup> Section 1009.21(3)(c), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> National Immigration Law Center, *Facts About In-state Tuition*, available at <http://www.nilc.org/fsinstate.html> (Last visited Feb. 7, 2014)

<sup>21</sup> National Council of State Legislatures, *Undocumented Student Tuition: Overview*, available at <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (Last visited Feb. 7, 2014)

<sup>22</sup> National Council of State Legislatures, *Undocumented Student Tuition: State Action*, available at <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx> (Last visited Feb. 7, 2014)

<sup>23</sup> Pub. L. No. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996).

California Supreme Court upheld California's law that grants in-state tuition rates to eligible undocumented students.<sup>24</sup>

### Effect of Proposed Changes

The bill provides that state universities, Florida College System institutions, career centers, and charter technical career centers shall waive out-of-state fees for students, including, but not limited to, students who are undocumented for federal immigration purposes, who meet the following conditions:

- Attended a Florida secondary school for three consecutive years immediately prior to graduating from high school;
- Enroll in an institution of higher education within 24 months after graduation; and
- Submit their high school transcript as documentary evidence of attendance and graduation.

State university students granted an out-of-state fee waiver under the bill must be counted as nonresident students for purposes of calculating the systemwide total enrollment of nonresident students as limited by regulation of the Board of Governors<sup>25</sup>. In addition, the bill stipulates that state universities, Florida College System institutions, career centers, and charter technical career centers shall prioritize the enrollment of veterans granted an out-of-state fee waiver under the Congressman C.W. Bill Young Tuition Waiver Act over students granted a fee waiver under the bill.

Students may receive the out-of-state fee waiver for up to 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled, but they are not eligible for state financial aid.

The bill requires the State Board of Education and the Board of Governors to annually report the number and value of all fee waivers granted and the percentage of resident and nonresident students systemwide.

### ***Ruiz v. Robinson***

#### Present Situation

In 2011, a group of five dependent, U.S. citizen residents of Florida filed a lawsuit against the SBE and the BOG challenging the above-referenced rule and regulation promulgated by both boards. The plaintiffs had applied to attend various postsecondary institutions in Florida,<sup>26</sup> but were denied residency status by the institutions application of the rules because the plaintiffs' parents could not establish legal immigration status.<sup>27</sup> The plaintiffs claimed in their lawsuit that the rules are unconstitutional because they violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The court held that the State cannot deny in-state residency status to a U.S. citizen resident of Florida based upon his or her parent's inability to prove their own legal presence in the country. While the court stated the definition of "legal resident" under Section 1009.21, F.S. is facially neutral; it found that the additional criteria set forth in the challenged rules, as implemented by the institutions, denied the

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<sup>24</sup> National Council of State Legislatures, *Undocumented Student Tuition: Federal Action*, available at <http://www.ncsl.org/research/education/undocumented-student-tuition-federal-action.aspx> (Last visited Feb. 7, 2014)

<sup>25</sup> Board of Governors Regulation 7.006 - Limitation on Non-Resident Student Enrollment. The State University System of Florida will accept nonresident students as defined in Regulation 7.005 in numbers not to exceed 10 percent of the total systemwide enrollment. This does not imply that the enrollment of nonresident students at any single university in the system will be limited to 10 percent of that university's total enrollment as long as the total number in the University System does not exceed 10 percent of the total systemwide enrollment.

<sup>26</sup> The institutions included Florida International University, Miami-Dade College, and Palm Beach State College.

<sup>27</sup> 892 F. Supp. 2d 1321 (S.D. Fla. 2012).



Plaintiffs the same benefits and opportunities as similarly situated individuals.<sup>28</sup> Therefore, the rules, insofar as they require dependent United States citizen students who are residents of Florida to establish the immigration status of their Florida resident parents, were found to violate the Equal Protection Clause of the Fourteenth Amendment. The court also enjoined the BOG and the SBE from interpreting the rules in a way that would require such students to establish the immigration status of their Florida-resident parents.<sup>29</sup>

The court clarified that the order would not preclude the State from requiring proof of Florida residency from a student and the student's parents in order to classify the student as a resident for tuition purposes.<sup>30</sup>

The court also noted that the SBE or BOG could not use the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PROWRA) as justification for requiring proof of a parent's legal presence in the country because that law merely precludes unlawful *aliens*, not U.S. citizens, from receiving tuition benefits. Since the children in this case were U.S. citizens and the tuition benefit accrues to the child and not the parent, PROWRA was inapplicable.<sup>31</sup>

### Effect of Proposed Changes

The bill provides that a United States citizen, who is a dependent child, may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. This, in effect, codifies the holding in *Ruiz v. Robinson*.<sup>32</sup>

## **Definitions**

### Present Situation

In current statute, a "parent," in the context of establishing residency for tuition purposes, is defined as the natural or adoptive parents or legal guardian of a dependent child.<sup>33</sup> However, the definition in the federal income tax code allows a stepparent to claim a stepson or stepdaughter as a dependent.<sup>34</sup>

### Effect of Proposed Changes

The bill amends the definition of "parent" to include any guardian of a student or any person in a parental relationship.

## **Children who reside with an adult (non-parent) relative**

### Present Situation

Current law provides that a dependent child living with an adult relative, who is not the child's parent, may be classified as a resident for tuition purposes if the child has lived with the adult relative for five

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<sup>28</sup> *Ruiz v. Robinson* at 1333.

<sup>29</sup> Final Judgment in *Ruiz v. Robinson*. Docket Document 109, 1:11-cv-23776-KMM, Federal District Court, Southern District of Florida.

<sup>30</sup> *Id.* at 8-9.

<sup>31</sup> *Id.* at 9.

<sup>32</sup> 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

<sup>33</sup> Section 1009.21(1)(f), F.S.

<sup>34</sup> 26 U.S.C. s. 152.

consecutive years immediately prior to initial enrollment at an institution of higher education and the adult relative must have maintained legal residence in Florida for at least 12 months prior to the child's enrollment.<sup>35</sup>

### Effect of Proposed Changes

For a dependent child living with an adult relative who is not the child's parent, the bill reduces from five years to three years the amount of time the child must live with the relative in order to use the adult relative's documentation to qualify as a resident for tuition purposes. The three year requirement aligns with other time periods established in the bill.

### **Effect of marital status on residency for tuition purposes**

#### Present Situation

Current law stipulates that a student may not be denied legal resident status solely by reason of marriage to a person domiciled in another state, so long as the student remains a legal resident of Florida.<sup>36</sup> Conversely, a student cannot establish legal residence in this state solely by reason of marriage to a person domiciled in this state.<sup>37</sup>

#### Effect of Proposed Changes

The bill clarifies when a person may be classified as a resident for tuition purposes as a result of marriage. A person residing in Florida may be classified as a resident for tuition purposes if he or she marries a person who meets the 12-month residency requirement and otherwise qualifies as a resident for tuition purposes.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

None.

#### 2. Expenditures:

The fiscal impact is indeterminate as it is difficult to identify the number of students who meet the criteria outlined in the bill, but are not currently enrolled in or who would be reclassified at an institution of higher education.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### 1. Revenues:

None.

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<sup>35</sup> Section 1009.21(2)(b), F.S.

<sup>36</sup> Section 1009.21(5)(a), and (6)(d), F.S.

<sup>37</sup> Section 1009.21(5)(b), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**Florida Residency for Tuition Purposes**

The bill would allow specified Florida high school graduates, who would otherwise be unable to establish Florida residency for tuition purposes, to pay lower, in-state tuition rates at state universities Florida College System institutions, career centers, and charter technical career centers. This would potentially save students an annual average of \$15,278 at state universities, \$6,438 at Florida colleges, and \$4,194 at career centers.

Students enrolled in adult general education programs that could not provide residency documentation would save up to \$270 per year by not having to pay the nonresident block tuition fee for adult general education coursework.

**Stanley G. Tate Florida Prepaid College Program**

Changes made to the methodology for which the Prepaid College Board pays state universities on behalf of beneficiaries of Prepaid tuition contracts lowers future contract prices, and provides savings to parents who recently purchased contracts. The board estimates prices for future Prepaid tuition contracts will be reduced from \$53,729 to less than \$43,000. Current contract holders will see a reduction in monthly payments, and more than 26,000 Florida families who purchased plans at higher prices in recent years will receive refunds of approximately \$50 million.

**Higher Education Automatic Rate of Inflation Increase**

Eliminating the automatic annual rate of inflation increases maintains tuition rates at the same amount, which reduces the potential impact of a tuition increase for students.

**State University System Limitation Tuition Differential Increase**

The bill eliminates the rate at which an institution is able to increase its tuition differential which reduces the impact of a tuition increase for students. The only institutions permitted to increase their tuition differential are Florida State University and the University of Florida. Based on 2013-2014 tuition and tuition differential fees, this bill may save a state university student up to \$22.66 per credit hour in the 2014-2015 fiscal year, or a total of \$680 based on enrollment in 30 credit hours. At Florida State University, a student's potential savings would be \$13.92 per credit hour and \$418 annually and \$13.43 per credit hour or a total of \$403 at the University of Florida.

D. FISCAL COMMENTS:

**State University potential revenue impact related to the Prepaid Program**

State universities could be impacted by changes made to payment provisions for the Prepaid College Program related to payments on behalf of qualified beneficiaries who purchased advance payment contracts. By capping future payments to state universities at the lesser of actual tuition and fees, or the statutory percentages based on the board's actuarial reserve, in years that university tuition and fees exceed the payment provisions established, universities would not be able to collect the full rate of tuition and fees.

## **State University System Limitation on Tuition Differential Increase**

Eliminating the authority for an institution to be able to increase its tuition differential has the potential annual revenue impact on the State University System of \$107 million, with the exception of FSU and UF. Reducing FSU and UF's authority to increase their tuition differential from 15 percent to 6 percent decreases their potential revenue increase by \$10 million for FY 2014-2015 and will compound over time.