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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON COLLEGES & UNIVERSITIES
ANALYSIS**

BILL #: CS/HB 665
RELATING TO: State support for certain postsecondary students
SPONSOR(S): Committee on Colleges & Universities and Representative Kravitz
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON COLLEGES & UNIVERSITIES YEAS 9 NAYS 4
 - (2) EDUCATION APPROPRIATIONS
 - (3) COUNCIL FOR LIFELONG LEARNING
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

CS/HB 665 prohibits any funds from general revenue, the lottery, or financial aid fee revenues to be used to provide scholarships, fellowships, grants, loans, tuition or fee waivers, or other financial assistance to any nonresident alien student who is enrolled in a Florida public postsecondary institution and who is a citizen of any country that has been identified by the United States Department of State as terrorist or supporting terrorism. A student's country of citizenship is to be determined at the time of the student's enrollment.

CS/HB 665 further provides that once a nonresident student has been determined ineligible under this provision, he or she must remain ineligible for such financial assistance while enrolled at a public postsecondary institution.

The U.S. Secretary of State has designated seven governments as state sponsors of international terrorism. The seven governments include Iran, Iraq, Syria, Libya, Cuba, North Korea, and the Sudan.

The Florida Community College System (FCCS) and the State University System (SUS) report a total of 453 students classified as nonresident aliens from countries that the U.S. Secretary of State has deemed state sponsors of international terrorism. The SUS reported awarding \$183,910 in state-funded financial assistance to students from these countries for Fall 2001, while the FCCS awarded \$20,961.

The bill has an effective date of January 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The provisions of the bill will increase administrative duties such as regulation and monitoring, with respect to the disbursement of state financial assistance funds at Florida public postsecondary institutions.

The bill may limit opportunities for individuals or families by revoking monies for financial assistance that might otherwise be received.

B. PRESENT SITUATION:

STATE FUNDED FINANCIAL ASSISTANCE

State funded financial assistance is provided to students through several different mechanisms. Many programs are funded through direct appropriation from general revenue, trust funds, or lottery dollars. Of these programs, several require that the student be a Florida resident to receive awards. The categories of funds described below do not have a Florida residency requirement in order to be awarded.

Financial Aid Fee Revenues

Section 239.115(8), F.S., authorizes each school board and community college board of trustees to establish a financial aid fee in an amount up to 10 percent of the student fees collected for workforce development programs funded through the Workforce Development Fund. Awards must be based on student financial need and must be distributed in accordance with a nationally recognized system of need analysis. All expended funds under this provision must be used for need-based aid.

Section 240.209(2)(e), F.S., authorizes the Board of Regents (BOR)¹ to collect for financial aid purposes an amount not to exceed five percent of the student tuition and matriculation fees per credit hour. The revenues from these fees are to remain at each campus. The funds are to be disbursed to students as quickly as possible. A minimum of 75 percent of funds from the student financial aid fee for new financial aid awards must be used to provide financial aid based on absolute need. Guidelines for the use of student financial aid fee revenues are set forth in *CHANCELLOR'S MEMORANDUM CM-D-16.01-10/98*, which provides that up to 15 percent of the revenues from the student financial aid fee may be used for student financial aid administration,

¹ Chapter 2001-170, L.O.F., abolished the Board of Regents and the State Board of Community Colleges effective July 1, 2001. All powers and duties of those boards were transferred, by Type II transfer, to the Florida Board of Education.

provided that such revenues supplement and not supplant existing university resources dedicated to student financial aid. Each university may maintain a cash balance of annual revenues from the financial aid fee of no more than 40 percent of the financial aid fees collected in a fiscal year.

Section 240.35(11), F.S., authorizes each community college to establish a separate fee for financial aid purposes in an amount not to exceed five percent of the total tuition and matriculation fees collected. The funds must be disbursed to students as quickly as possible. Twenty-five percent or \$300,000, whichever is greater, of the collected financial aid fee revenues may be used to assist students who demonstrate academic merit; who participate in athletics or other extracurricular activities; or who are identified as members of a targeted gender or minority population. Of the remaining funds, 75 percent of these funds for new awards must be used to provide financial aid based on absolute need. In addition, a community college may carry forward, unexpended, an amount not greater than 40 percent of the financial aid fees collected in a fiscal year. Current law also prohibits community colleges from using financial aid fee funds for administrative purposes.

Current law requires both state universities and community colleges to comply with the following provisions regarding awards made from financial aid fee revenues:

- Awards based on need must be distributed in accordance with a nationally recognized system of need analysis.
- An award for academic merit must require a minimum overall grade point average of 3.0 on a 4.0 scale or the equivalent for both the initial reward and renewal of the award.
- Each state university and community college must report annually to the Department of Education (DOE) on the financial aid fee revenues collected, the amount carried forward, the criteria used to make awards, the amount and number of awards for each criterion, and a delineation of the distribution of such awards. The report must also include an assessment, by category, of the financial need of every student who receives an award, regardless of the purpose for which the award is received.

The State University System reports that it collected approximately \$21.5 million in financial aid fee revenues in 1999-2000. The Florida Community College System reports that it collected approximately \$14 million in financial aid fee revenues in 1999-2000.

Specific Appropriation for the State University System for Financial Aid

Specific Appropriation 207 of the 2001-2002 General Appropriations Act allocates \$20,695,215 to the State University System for financial aid. Proviso language requires that a minimum of 71 percent of the funds provided in Specific Appropriation 207 must be allocated for need-based financial aid.

Fee Waivers

Proviso language in the 2000-2001 General Appropriations Act designated \$55,241,209 in Specific Appropriations 194, 195, 196, and 197 for fee waivers. These funds are typically used to support:

- Out-of-state fee waivers for students under the following categories: athletics, drama, exchange student, fellowship, fine arts, foreign student, graduate assistant, honors, music, and other.
- Matriculation fee waivers for graduate assistants and fellowships.

In November 2001, the Legislature cut the \$55,241,209 designated for fee waivers from the budget. However, proviso language provides that "... university presidents may waive student fees for

undergraduate and graduate students and/or use discretionary funds to provide scholarships and other financial aid for these students.”²

Other Sources of Funds for Financial Assistance

Section 240.287, F.S., authorizes each university to invest available agency and activity funds and to use the earnings from such investments for student scholarships and loans. Each university must provide procedures for the administration of these scholarships and loans by rules.

STATE SPONSORS OF INTERNATIONAL TERRORISM

Title 22 of the United States Code, Section 2656(f) requires the Department of State to provide to Congress a full and complete annual report on terrorism for certain countries and groups. The legislation additionally requires detailed assessments of foreign countries where significant terrorist acts occurred and countries about which Congress was notified during the preceding five years pursuant to Section 6(j) of the Export Administration Act of 1979. The Department of State’s most recent report, *Patterns of Global Terrorism*, as required by this provision was released by the Office of the Coordinator for Counterterrorism on April 30, 2001 providing the required information for the year 2000.

The Overview of State-Sponsored Terrorism portion of the report states that “[t]he designation of state sponsors of terrorism by the United States – and the imposition of sanctions – is a mechanism for isolating nations that use terrorism as a means of political expression. The United States is firmly committed to removing countries from the list once they have taken necessary steps to end their link to terrorism. In fact, the United States is engaged in ongoing discussions with North Korea and Sudan with the object of getting those governments completely out of the terrorism business and off the terrorism list.” Iran, Iraq, Syria, Libya, Cuba, North Korea, and the Sudan are the seven governments that the U.S. Secretary of State has designated as state sponsors of international terrorism.³ The report stresses that by law, if the United States deems a country to “repeatedly provide support for acts of international terrorism,” the U.S. Government is required to add such country to the list.

STUDENT CLASSIFICATIONS

Definitions

The Immigration and Naturalization Service (INS) defines the terms nonimmigrant, asylee, refugee, and permanent resident alien as follows:

- *Nonimmigrant* - as “an alien who seeks temporary entry to the United States for a specific purpose. The alien must have permanent residence abroad (for most classes of admission) and qualify for the nonimmigrant classification sought. The nonimmigrant classifications include: foreign government officials, visitors for business and pleasure, aliens in transit through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, exchange visitors, fiancé(e)s of U.S. citizens, intracompany transferees, NATO officials, religious workers, and some others. Most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.”
- *Asylee* - an alien in the United States or at a port of entry who is found to be unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of

² Chapter 2001-380, L.O.F.

³ List of countries as reported in the Secretary of State’s April 2001 *Patterns of Global Terrorism* report.

persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. For persons with no nationality, the country of nationality is considered to be the country in which the alien last habitually resided. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States. These immigrants are limited to 10,000 adjustments per fiscal year.

- *Refugee* - Any person who is outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. People with no nationality must generally be outside their country of last habitual residence to qualify as a refugee. Refugees are subject to ceilings by geographic area set annually by the President in consultation with Congress and are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States.
- *Permanent Resident Alien* - an alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories (INA section 101(a)(15)). An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien. Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent resident status by the Immigration and Naturalization Service in the United States.

The FCCS reports that its institutions have been instructed to classify students according to federal reporting standards for educational institutions. Institutions of higher education filing federal IPEDS⁴ reports use the following definitions for nonresident alien and resident alien:

- *Nonresident alien* - a person who is not a citizen or national of the United States and who is in this country on a visa or temporary basis and does not have the right to remain indefinitely.
- *Resident alien (and other eligible noncitizens)* - is defined as a person who is not a citizen or national of the United States and who has been admitted as a legal immigrant for the purpose of obtaining permanent resident alien status and who holds either an alien registration card (Form I-551 or I-151), a Temporary Resident Card (Form I-94) with notation that conveys legal immigrant status such as Section 207 Refugee, Section 208 Asylee, Conditional Entrant Parolee or Cuban-Haitian.

Student Visas⁵

The INA provides two nonimmigrant visa categories for persons wishing to study in the United States. The "F" visa is for academic studies, and the "M" visa is for nonacademic or vocational studies.

⁴ IPEDS stands for "Integrated Postsecondary Education Data System". According to IPEDS FAQs, "Institutions that have a Program Participation Agreement with the US Department of Education for eligible students to receive Title IV federal student financial aid are required to participate [must submit IPEDS reports]."

⁵ Department of State - <http://travel.state.gov/visa/foreignstuden.html>

The student visa applicant must have successfully completed a course of study normally required for enrollment. The student, unless coming to participate exclusively in an English language training program, must either be sufficiently proficient in English to pursue the intended course of study, or the school must have made special arrangements for English language courses or teach the course in the student's native language.

Applicants must also prove that sufficient funds are or will be available from an identified and reliable financial source to defray all living and school expenses during the entire period of anticipated study in the United States. Specifically, applicants must prove they have enough readily available funds to meet all expenses for the first year of study, and that adequate funds will be available for each subsequent year of study. The M-1 student visa applicants must have evidence that sufficient funds are immediately available to pay all tuition and living costs for the entire period of intended stay. Students with student visas are not eligible to apply for federal financial aid. Florida State University (FSU) International Center staff reports that "[t]here are no grants, loans, or scholarships awarded to international undergraduate students." F-1 visa undergraduate students are, however, permitted to apply for a limited number of out-of-state fee waivers.⁶ Graduate students attending FSU on an F-1 visa may apply for assistantships or fellowships as well.

An F-1 student may not accept off-campus employment at any time during the first year of study; however, the INS may grant permission to accept off-campus employment after one year. F-1 students may accept on-campus employment from the school without INS permission. State aid in the form of an assistantship qualifies as on-campus employment. Except for temporary employment for practical training, an M-1 student may not accept employment.

A spouse and unmarried, minor children may also be classified for a nonimmigrant visa to accompany or follow the student. Family members must meet all visa eligibility requirements, including evidence that they will have sufficient funds for their support, and that they will depart the United States when the student's program ends. Spouses and children of students may not accept employment at any time.

Educational Exchange Students⁷

The INA provides two nonimmigrant visa categories for persons to participate in exchange visitor programs in the United States. The "J" visa is for educational and cultural exchange programs designated by the U.S. Department of State, Exchange Visitor Program and Designation Staff, and the "Q" visa is for international cultural exchange programs designated by the INS.

The "J" exchange visitor program is designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and sciences. Participants include students at all academic levels; trainees obtaining on-the-job training with firms, institutions, and agencies; teachers of primary, secondary, and specialized schools; professors coming to teach or do research at institutions of higher learning; research scholars; professional trainees in the medical and allied fields; and international visitors coming for the purpose of travel, observation, consultation, research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs.

Students in the United States on a J-1 visa must return to their country of origin; however, students may be eligible for Optional Practical Training following graduation for up to one year. Upon completion of the year of work, the student must return to his or her country unless his or her employer "sponsors" the student. If an employer chooses to sponsor the student so he or she may

⁶ The FSU International Center estimated funding 15-20 students for 5-9 credit hours of out-of-state fee waivers. Recipients are selected through a competitive application process and the student must have at least a 3.7 grade point average to apply.

⁷ Department of State - <http://travel.state.gov/visa/exchange.html>

remain in the United States to work for the company, the student would then receive an H1-B visa for up to six years.

Participants in the "J" exchange visitor program must have sufficient funds to cover all expenses, or funds must be provided by the sponsoring organization in the form of a scholarship or other stipend. FSU reports that the majority of J-1 students at FSU fall into two categories: students supported by their governments or Fulbright Scholars.

State Board of Education Rules -- Residency of Nonimmigrants for Tuition Purposes

Rule 6A-10.044, F.S., provides that non-U.S. citizens such as permanent residents, parolees, asylees, refugees, or other permanent status persons (e.g., conditional permanent residents and temporary residents), who have applied to and have been approved by the U.S. Immigration and Naturalization Service with no date certain for departure must be considered eligible to establish Florida residency for tuition purposes. In addition, nonimmigrants holding one of the following visas must be considered eligible to establish Florida residency for tuition purposes. Persons in visa categories not listed are ineligible to establish Florida residency for tuition purposes.

- Visa category A - Government official.
- Visa category E - Treaty trader or investor.
- Visa category G - Representative of an international organization.
- Visa category H-1 - Temporary worker performing professional nursing services or in a specialty occupation.
- Visa category H-4 - Only if spouse or child of alien classified H-1.
- Visa category I - Foreign information media representative.
- Visa category K -Fiance, fiancée, or a child of United States citizen(s).
- Visa category L - Intracompany transferee (including spouse or child).
- Visa category N - Parent or child of alien accorded special immigrant status.
- Visa category O-1 - Workers of "extraordinary" ability in the sciences, arts, education, business, or athletics.
- Visa category O-3 - Only if spouse or child of O-1 alien.
- Visa category R - Religious workers.
- Visa category NATO 1-7 - Representatives and employees of NATO and their families.

The rule additionally provides non-U.S. citizens who fall within the following categories must also be considered eligible to establish Florida residency for tuition purposes:

- Citizens of Micronesia.
- Citizens of the Marshall Islands.
- Beneficiaries of the Family Unity Program.
- Individuals granted temporary protected status.
- Individuals granted withholding of deportation status.
- Individuals granted suspension of deportation status or cancellation of removal.
- Individuals granted a stay of deportation status.
- Individuals granted deferred action status.
- Individuals granted deferred enforced departure status.
- Applicants for adjustment of status.
- Asylum applicants with INS receipt or Immigration Court stamp.

Representatives of Florida State University report that although the above categories of students are eligible to establish Florida residency for tuition purposes, they could be classified as

“nonresident aliens” for reporting purposes. However, once any student attains resident alien status, he or she would no longer be on a J, F, or M visa.

NATIONAL TRACKING OF STUDENT VISAS

In 1996, Congress passed a law requiring a system of computerized tracking of students when they received visas, when they entered the country, and when they enrolled in college. The system is designed to allow the immigration service to quickly detect when a student has violated his or her visa conditions. The system is also designed to track a student’s course of study and any change of address. Congress has twice delayed the start date for the system. It is now scheduled to be available in January 2003.

Representatives of the Division of Colleges & Universities with the Florida Department of Education report that the new mandated tracking system of students visas, known as the Student and Exchange Visitor Information System (SEVIS) may be implemented as early as June 2002 by the U.S. Immigration and Naturalization Service. According to DOE, “[i]n February – March 2002, there will be an opportunity for personnel from educational entities to attend one day workshops that will provide education on the technology and business practice of SEVIS and provide a place where there can be discussion on the challenges and development strategies for school-specific solutions for implementing SEVIS.”

C. EFFECT OF PROPOSED CHANGES:

CS/HB 665 notwithstanding any other provision of law to the contrary and prohibits any funds from general revenue, the lottery, or financial aid fee revenues from being used to provide scholarships, fellowships, grants, loans, tuition or fee waivers, or other financial assistance to any nonresident alien student who is enrolled in a Florida public postsecondary institution and who is a citizen of any country that has been identified by the United States Department of State as terrorist or supporting terrorism. A student’s country of citizenship is to be determined at the time of the student's enrollment.

CS/HB 665 further provides that once a nonresident student has been determined ineligible under this provision, he or she must remain ineligible for such financial assistance while enrolled at a public postsecondary institution.

The U.S. Secretary of State has designated seven governments as state sponsors of international terrorism. The seven governments include Iran, Iraq, Syria, Libya, Cuba, North Korea, and the Sudan.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that students are forced to leave due to the lack of financial assistance from the state, private businesses may suffer slight decreases in revenue.

D. FISCAL COMMENTS:

Representatives of the Florida Department of Education report that the lack of state-funded student financial assistance may limit the number of students who are able to continue their enrollment at Florida public institutions. Therefore, there could be decreased enrollments in community colleges and state universities resulting in the loss of tuition and fees to the institutions. Additionally, some institutions may have to fill employee positions currently occupied by such students if the student is unable to maintain enrollment without the state financial assistance. The DOE also reports that institutions will also need to put into place a tracking system to report on these students.

The Florida Community College System and the State University System report a total of 453 students classified as nonresident aliens from countries that the U.S. Secretary of State has deemed state sponsors of international terrorism. The SUS reported awarding \$183,910 in state-funded financial assistance to students from these countries for Fall 2001, while the FCCS awarded \$20,961. The following tables detail the total amounts awarded by country, award type, and system. Information has been requested regarding exactly which classifications of visa bearing or non-visa bearing students are included in the figures reported below by the FCCS and the SUS. The information does not seem to be readily available; the information has not yet been provided.

FLORIDA COMMUNITY COLLEGE SYSTEM (FCCS)

	Cuba	Iran	Iraq	Libya	N. Korea	Sudan	Syria	Total
Scholarships	\$0	\$163						\$1,663
Fellowships	\$0							\$0
Grants	\$ 3,650	\$1,640	\$1,300			\$650		\$26,478
Loans	\$13,558							\$41,084
Tuition waivers	\$0							\$0
Other	\$0							\$800
Total CC Financial Aid	\$17,208	\$1,803	\$1,300	\$0	\$0	\$650	\$0	\$20,961

STATE UNIVERSITY SYSTEM (SUS)

	Cuba	Iran	Iraq	Libya	N. Korea	Sudan	Syria	Total
Undergraduates								
Scholarships	\$0	\$26,209	\$4,346	\$0	\$2,086	\$1,794	\$1,359	\$35,794
Fellowships	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grants	\$0	\$21,632	\$773	\$0	\$1,250	\$0	\$3,573	\$27,228
Loans	\$0	\$4,250	\$0	\$0	\$0	\$0	\$0	\$4,250
Tuition waivers	\$0	\$13,175	\$0	\$0	\$0	\$0	\$0	\$13,175
Other	\$0	\$3,002	\$0	\$0	\$0	\$0	\$0	\$3,002
Undergrad Total	\$0	\$68,268	\$5,119	\$0	\$3,336	\$1,794	\$4,932	\$83,450
Graduate Students								
Scholarships		\$750	\$0	\$0	\$1,055	\$500	\$0	\$2,305
Fellowships	\$0	\$4,885	\$0	\$0	\$0	\$2,500	\$0	\$7,385
Grants	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Loans	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Tuition waivers	\$5,216	\$28,517	\$0	\$0	\$10,175	\$2,267	\$10,730	\$56,905
Other	\$0	\$14,215	\$0	\$0	\$7,042	\$5,342	\$7,267	\$33,866
Grad Total	\$5,216	\$48,367	\$0	\$0	\$18,272	\$10,609	\$17,997	\$100,461
Total SUS Financial Aid	\$5,216	\$116,635	\$5,119	\$0	\$21,608	\$12,403	\$22,929	\$183,910

Total Combined State Funded Student Financial Assistance for the FCCS and the SUS

	Cuba	Iran	Iraq	Libya	N. Korea	Sudan	Syria	Total
Total Combined Financial Aid	\$22,424	\$118,438	\$6,419	\$0	\$21,608	\$13,053	\$22,929	\$204,871

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 1981, 42 U.S.C.

Section 1981 of Title 42 of the United States Code provides for equal rights under the law for all persons in the United States:

“All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

Equal Protection Under the U.S. Constitution⁸

The Equal Protection Clause of the Fourteenth Amendment to the U.S Constitution has evolved over time into a general restraint on the use of classifications by any federal or state government. It shields groups and individuals from arbitrary categorization through state action. In order for an act to fall under the Equal Protection Clause, the following elements must be present:

A state action – A state action is required before courts will intervene on equal protection grounds. The United States Supreme Court has held that certain activities are so traditionally the domain of the state that they constitute state action even when undertaken by a private individual.⁹ The United States Supreme Court has found state action also where the state facilitates, encourages, or authorizes acts by private citizens. However, in this case, some affirmative act by the state is required.¹⁰

Proof of discrimination – Generally, the state must intend to discriminate before the courts will find a violation of the Equal Protection Clause. (*Washington v. Davis*, 426 U.S. 229 (1976)).

Discrimination by the state can be demonstrated in three ways:

- **Facial Discrimination:** A law discriminates on its face if it cannot be explained except in terms of race, alienage, legitimacy, or gender. Under such circumstances, illegal discrimination may be readily established.
- **Discriminatory Application:** Although a law appears neutral on its face, discrimination can be established if it is shown that government officials applying the law had a discriminatory purpose and used discriminatory standards¹¹.
- **Discriminatory Motive:** If the plaintiffs can show that the law was designed to discriminate, this will generally establish discrimination.¹²

⁸ Boning, Charles R., *Detecting Constitutional Problems in Florida Legislation 1996-1997*; Florida House of Representatives, Committee on Governmental Operations.

⁹ The Court has only reviewed two examples: Running a company town (*Marsh v. Alabama*, 326 U.S. 501 (1946)); and running an election for public office (*Terry v. Adams*, 345 U.S. 461 (1953)).

¹⁰ It is insufficient if the state merely acquiesces or allows the conduct to occur (*Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974)).

¹¹ *Batson v. Kentucky*, 476 U.S. 79 (1986)(prohibiting race-based preemptory challenges); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)(invalidating law which was applied to discriminate against Chinese business owners); *State v. Allen*, 616 So.2d. 452 (1993)(prohibiting preemptory challenges based on ethnicity)..

¹² *Washington v. Davis*, 426 U.S. 229 (1976).

Suspect Classifications – Equal protection rarely becomes an issue unless state action impacts a suspect class or fundamental right. When no suspect class is disturbed and when no fundamental rights or liberties are violated, the Equal Protection Clause is “offended only if the classification rests on grounds wholly irrelevant to the achievement of the State’s objective.”¹³ Distinctions based on race or national origin, which lead to unequal treatment, almost invariably violate the Equal Protection Clause.¹⁴

Classifications based on race or national origin, are reviewed by courts under a strict scrutiny standard. To withstand strict scrutiny, the law (1) must be necessary to advance a *compelling state interest* and (2) must be *narrowly tailored* to achieve the state’s objective. State and local laws that make distinctions based on alienage are subject to strict scrutiny. To pass muster, the law must be narrowly tailored to advance a compelling government interest.¹⁵ Congress, with its power over immigration, can make classifications as long as these are not arbitrary and unreasonable.¹⁶

As a general rule, the Equal Protection Clause forbids state governments from requiring citizenship for the receipt of benefits or subsidies. There are, however, several exceptions. For example, states may prefer citizens over legal aliens when hiring for certain public jobs, such as policy-making positions, law enforcement positions, and public school teaching positions.¹⁷

It must be noted that no court has ever reviewed a policy that denies state funded financial assistance to nonresident alien students from countries that have been identified by the United States Department of State as terrorist countries or countries that support terrorism.

Equal Protection Under the Florida Constitution

Article I, Section 2, of the Florida Constitution provides in relevant part, “All natural persons are equal before the law...No person shall be deprived of any right because of race, religion, or physical handicap.” Although the Florida Equal Protection Clause protects only natural persons, the courts have employed it in a more inclusive manner (see supra).

Regulations that do not limit fundamental rights or promulgate suspect classifications have generally been upheld by state courts using the rational basis test. For a law to withstand rational basis, it must be rationally related to a legitimate government purpose. Examples of regulations subject to the rational basis test are age-based discrimination, business and economic regulations, and selective enforcement of the law.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

¹³ *McGowan v. Maryland*, 366 U.S. 420 (1961)

¹⁴ *Loving v. Virginia*, 388 U.S. 1 (1967); *McLaughlin v. Florida*, 379 U.S. 184 (1964); *Brown v. Board of Education*, 347 U.S. 483 (1954).

¹⁵ *Bernal v. Fainter*, 467 U.S. 216 (1984)(striking down a requirement that a notary public be a citizen).

¹⁶ *Mathews v. Diaz*, 426 U.S. 67 (1976).

¹⁷ *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982); *Ambach v. Norwick*, 441 U.S. 68 (1979).

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 5, 2002, the Committee on Colleges & Universities adopted one amendment and reported the bill favorably as CS/HB 665. CS/HB 665 provides that once a nonresident student has been determined ineligible under this provision, he or she must remain ineligible for such financial assistance while enrolled at a public postsecondary institution.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:

Staff Director:

Maria L. Eckard

Betty H. Tilton, Ph.D.