

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SBs 1228 and 2080

SPONSOR: Education Committee and Senators Wilson and Diaz de la Portilla

SUBJECT: Resident Status/Tuition

DATE: March 31, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>MS</u>	_____
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SBs 1228 and 2080 would classify the following persons as residents for purposes of assessing tuition in community colleges and state universities:

- Certain active duty members of a foreign nation’s military and their spouses and dependent children, at schools within 50 miles of the military establishment where they are stationed;
- Full-time employees of recognized international multilateral organizations based in Florida and their spouses and dependent children; and
- Dependent children of U.S. Armed Services members who are stationed in counties contiguous to Florida, at Florida schools within 50 miles of the military establishment where they are stationed.

The bill would also exempt any student from paying nonresident tuition, provided that she or he had:

- resided in Florida for 3 consecutive years
 - with a parent,
 - while attending a Florida high school,
 - immediately prior to receiving a high school diploma or its equivalent, and
- provided an affidavit stating that they will file an application to become a permanent U.S. resident at the earliest opportunity.

The bill excludes nonresident aliens, as defined in 8 U.S.C. 1001(a)(15), from qualifying for residency for tuition purposes under this new criterion.

This bill amends section 1009.21 of the Florida Statutes.

The bill will be effective upon becoming law.

II. Present Situation:

Section 1009.21, F.S., requires students to be classified as residents or nonresidents for the purposes of assessing tuition in the community colleges and state universities. Classification of a student as a resident for tuition purposes is a threshold eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant Program, the Florida Resident Access Grant Program, and other state-funded scholarships.

Residency requirements; service members in Alabama and Georgia and foreign nationals

A student may qualify as a resident for tuition purposes if the student, or his or her parents if the student is a dependent child, has established and maintained legal residence in the state for at least 12 months immediately prior to qualification. Section 1009.21(10)(b), F.S., currently provides that active duty members of the U.S. Armed Services and their spouses who are stationed at a base in a county contiguous to Florida may pay resident tuition at a community college or university, provided that the school is within 50 miles of the military establishment where they are stationed. The section also provides additional methods for qualifying for residency for tuition purposes, but these methods, for the most part, require legal residence of some duration in the state.

Undocumented aliens, with certain exceptions as provided in federal law, may not establish legal residence in the state for tuition purposes because their residency in the state is in violation of federal law, as they have not been properly admitted into the United States. Undocumented aliens are accordingly classified as nonresidents for tuition purposes. Many of these undocumented aliens attend Florida high schools and obtain a high school diploma or the equivalent, as the state may not bar these individuals from attending elementary, middle, or secondary schools. See Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). Due to the increased cost of attending a public postsecondary institution as a nonresident, these aliens are more likely not to obtain needed postsecondary skills or credentials to obtain higher paying jobs.

The undocumented status of these individuals leaves the state unable to reliably estimate their numbers. Moreover, the school districts, pursuant to a consent decree, are precluded from collecting data on undocumented aliens that are attending public schools. See League of United Latin American Citizens v. Florida Board of Education, Case No. 90-1913, (S.D. Fla. 1990).

8 U.S.C. s. 1623 prohibits any alien who is unlawfully present in the United States from receiving any postsecondary education benefit on the basis of residence in a state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope. Certain other states, such as Texas, California, and Utah, have enacted varying laws authorizing some undocumented aliens to qualify for certain financial aid programs.

Nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), are aliens lawfully admitted into the U.S. but whose duration of stay is set forth in the applicable visa under which admittance is granted. Most nonimmigrant visas, but not all, require the holder of the visa to intend to return to the nonimmigrant's country of residence upon termination of the visa. Students under an F visa or an M visa are required to intend to return to their country of residence. If a nonimmigrant stays beyond the limitations of the visa, the nonimmigrant is no longer lawfully within the U.S. and may be subject to deportation.

Resident tuition for Canadian military

Section 1009.21(10)(j), F.S., authorizes active duty members of the Canadian military residing or stationed in the state, and their spouses and dependent children, to pay in-state tuition at state universities and community colleges within 50 miles of where they are stationed.

U.S. military establishments in Florida and contiguous states

There are three U.S. military commands in the state that have liaison officers from foreign nations of their staffs: (1) Joint Interagency Task Force East (Key West), (2) United States Central Command (Tampa), and (3) United States Southern Command (Miami). Currently, 12 foreign liaison officers are assigned to the Joint Interagency Task Force East. These officers serve two to three years and nearly all bring their dependents to the state. There are 345 liaison officers assigned to the United States Central Command. Most of the liaison officers serve a shorter tour ranging from 90 days to one year. Six liaison officers are assigned to the United States Southern Command. The liaison officers serve two to three year tours and are generally accompanied by their families. The liaison officers do not qualify as residents for tuition purposes unless they otherwise meet residence criteria. Under current law, with the exception of Canadian military personnel and their families, foreign nation's military personnel, their spouses and dependent children are classified as out-of-state residents for tuition purposes at Florida's public postsecondary institutions.

A liaison officer may serve in the United States for varying lengths of time. A spokesperson with the Joint Interagency Task Force South indicated there might be some 20 foreign military liaison officers who may qualify under the bill's provisions and whose assignment length of time might allow the pursuit of postsecondary education. Those persons are located at the Key West, Miami or Tampa bases/commands.

A spokesperson from the Joint Interagency Task Force South command in Key West indicated that there are 11 liaison officers at the Key West Command. All eleven are married. He thought there would be less than five dependents that would be of college-age.

Both Georgia and Alabama have military bases in counties contiguous to Florida. Of these, at least one – a base located in south Georgia – has certain members who attend classes at colleges and universities in north Florida.

Approved international multilateral organizations based in Florida

The United States Department of State develops and implements U.S. policy in the United Nations (UN), the UN's specialized agencies, and other international organizations. The Department of State works to advance U.S. policies and interests through multilateral diplomacy, which sometimes entails the implementation of multilateral agreements by specifically designated organizations. Most of these organizations are based overseas, in Geneva or Brussels. Information received from staff at the Department of State indicates that no Department of State-approved international multilateral organizations are based in Florida at this time.

III. Effect of Proposed Changes:*Exemption for high school graduates, including undocumented aliens, from paying nonresident tuition*

The bill exempts a student from paying nonresident tuition if the student has resided in the state with a parent for at least three consecutive years immediately preceding the date the student received a Florida high school degree or the equivalent, has attended a Florida high school for at least three consecutive years during such time, and has provided an affidavit to a community college or a state university that the student will file an application for permanent residency at the earliest opportunity the student is eligible. The bill specifically excludes nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), from meeting this new eligibility criterion for in-state tuition.

As noted above, the bill authorizes any student, other than nonimmigrant students, to classify as a resident for tuition purposes if the student meets the bill's criteria. Accordingly, residents of other states could qualify for residency for tuition purposes if they otherwise meet the eligibility criteria.

The affidavit requirement should not create a substantial burden for a student to qualify for residency for tuition purposes. Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.

Residency for foreign liaison officers and dependents

The bill classifies active duty members of a foreign nation's military serving as liaison officers and residing or stationed in this state, together with their spouses and dependent children, as residents for tuition purposes when attending a public postsecondary institution within 50 miles of the military establishment where they are stationed. The change in the proposed legislation would provide the same residency status for tuition purposes to a foreign nation's liaison officers as is currently extended to Canadian military personnel and their families stationed in Florida.

Residency for employees of international multilateral organizations based in Florida

The bill also provides that full-time employees of international multilateral organizations based in Florida that are recognized by the United State Department of State, together with their

spouses and dependent children, will qualify as residents for tuition purposes. Information provided by staff at the U.S. Department of State suggests that no such organizations are based in Florida at this time.

Addition of dependents of active duty members of U.S. Armed Services

The committee substitute amends s. 1009.21(10)(b), F.S., which currently provides that active duty members of the U.S. Armed Services and their spouses residing in counties contiguous to Florida may pay resident tuition if they attend a Florida public community college or university within 50 miles of the military establishment where they are stationed. The bill permits dependents of these U.S. Armed Services members to receive resident status for tuition purposes under the same circumstances.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The U.S. Constitution provides the Federal Government with preeminent power over the regulation of aliens within the U.S. See Takahaski v. Fish & Game Commission, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948). Any state action that imposes discriminatory burdens upon the entrance or residence of aliens lawfully admitted into the U.S. conflicts with the Supremacy Clause of the U.S. Constitution. See id. The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In Toll v. Moreno, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982), a Maryland statute was struck down on Supremacy Clause concerns when the law categorically prohibited G-4 nonimmigrant aliens from acquiring in-state status for tuition purposes. G-4 nonimmigrant visa holders are not required to have intent to return to their country of residence. Unlike the Maryland law, the bill does not categorically prohibit a nonimmigrant alien from qualifying for residency; it provides only that a nonimmigrant may not qualify under the new criterion. There still remains a concern that the bill may be challenged for the limitation on the ability of lawfully admitted nonimmigrant aliens from obtaining in-state tuition status.

The bill authorizes any student to qualify for residency for tuition purposes if the student meets specified criteria. Accordingly, 8 U.S.C. s. 1623, which bars any alien who is

unlawfully present in the United States from receiving any postsecondary education benefit on the basis of residence in the state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope, would not be applicable.

It may be alleged that the bill discriminates against nonresident U.S. citizens in favor of non-U.S. citizens. However, nonresidency has not been determined to be a suspect class for purposes of the Equal Protection clause of the U.S. Constitution, and the state would likely only be required to demonstrate that the bill bears a rational relationship to the goal of providing greater access to postsecondary education within the state. Moreover, education is not a fundamental right for purposes of the Privileges and Immunities Clause of the U.S. Constitution, and a state would therefore be much less restricted in its actions with respect to nonresidents.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is anticipated that certain individuals would qualify for subsidized tuition as state residents; however, the precise fiscal impact of these qualifications is indeterminable. This bill would save the affected individuals the difference in cost between in-state and out-of-state tuition at certain Florida public postsecondary institutions. Non-resident undergraduate students pay 100 percent of the cost of their education. Students reclassified as in-state residents would pay approximately 20 percent of the cost of their education and the state would pay the remaining 80 percent to the educational institution. Based on the university tuition established in the 2003-2004 General Appropriations Act, an out-of-state undergraduate student pays tuition of \$328.74 per credit hour. A Florida resident undergraduate student pays tuition of \$63.41 per credit hour. Certain costs may be incurred by aliens attendant to meeting the bill's affidavit requirements.

It is not known how many liaison officers and members of their families would be affected by this provision, although the number should be relatively small.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate, as the state does not possess any reliable figures indicating the number of students that would qualify for the subsidized tuition as state residents. The Florida Immigrant Advocacy Center estimates that the number of students could be as high as 1,045 for the state universities and 1,780 for the public community colleges.

Given the indeterminate number of eligible students, the fiscal impact and additional regulatory burden on community colleges and state universities in collecting and processing the affidavits and confirming other eligibility requirements is not readily ascertainable.

The bill's inclusion of foreign liaison officers and employees of multilateral organizations creates an indeterminate fiscal impact. There are approximately 363 liaison officers currently serving in the state. Additionally, the number of their dependents is not known at this time. The liaison officers serve anywhere from 90 days to three years.

Because no international multilateral organizations approved by the Department of State appear to be based in Florida at this time, this aspect of the bill would have no fiscal impact, although it could have an undetermined impact at a later date.

There are an indeterminate number of dependents of U.S. Armed Services personnel stationed in south Georgia and south Alabama who could qualify to attend the few colleges and universities in north Florida that would be close enough to meet the 50-mile limit established in the bill for attendance with resident status.

The number of affected individuals currently or potentially taking courses at Florida community colleges and state universities is unknown. The change would result in the state paying for 75 to 80 percent of the cost of courses these individuals might take, instead of that amount being paid by a student classified as an out-of-state resident.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.