

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 119 Higher Education Finance Policy
SPONSOR(S): Zapata and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 226

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|--------|----------|----------------|
| 1) Colleges & Universities Committee | | Hatfield | Tilton |
| 2) Education Appropriations Committee | | | |
| 3) Education Council | | | |
| 4) _____ | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

This bill proposes changes to higher education finance policies including student residency classification for tuition purposes, tuition and fee policies, financial aid policies and funding policies.

The bill requires university boards of trustees to develop policies and procedures to ensure timely completion of baccalaureate degrees; requires implementation of a universal tracking degree audit system; provides that certain hours in excess of 115% of the hours required for a degree will not be funded; and permits universities to assess students a surcharge for taking excess hours.

The bill revises provisions relating to the determination of a student's residency status for tuition purposes. The bill requires that students be classified as residents or nonresidents for the purpose of assessing tuition for instruction in postsecondary career and technical programs offered by school districts. The bill ties the statutorily-required minimum 12-month residency period to a student's initial enrollment in a Florida postsecondary institution and includes references to residency determination for purposes of determining eligibility to participate in certain financial aid programs.

The bill clarifies that dependent children of active duty military families who are stationed near a community college or university in a county contiguous to Florida are eligible for residency for tuition purposes and extends residency status to full-time employees of specified international multilateral organizations based in Florida and their spouses and dependent children.

The bill also provides an exemption from paying nonresident tuition at public postsecondary institutions to any student, other than a nonimmigrant alien within the meaning of federal law, who meets the following requirements:

1. The student has resided in Florida with a parent for at least three consecutive years immediately preceding the date the student received a high school diploma or its equivalent and has attended a Florida high school for at least three consecutive school years during such time.
2. The student has provided the community college or state university an affidavit stating that the student will file an application to become a permanent resident of the United States at the earliest opportunity the student is eligible to do so.

The bill limits this exemption to the top 2,000 students in academic performance in Florida high schools who register and enroll at a community college or state university.

The fiscal impact of the bill is indeterminate at this time. See FISCAL COMMENTS.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill requires postsecondary institutions to develop additional policies and procedures to ensure timely completion of degrees. Further, additional responsibilities and administrative costs may be incurred by postsecondary institutions in order to: assess an excess hour fee, determine student eligibility for tuition purposes and financial aid eligibility, and determine student eligibility to receive the exemption provided by the bill. School districts offering postsecondary career education programs may also incur additional responsibilities and administrative costs when having to determine the residency of all students enrolled in such programs.

Promote personal responsibility—The bill places additional responsibility on students to better determine hours needed to graduate by eliminating funding for excess hours and providing postsecondary institutions the ability to levy a fee on those students who register for excess hours.

Empower Families—The bill extends residency status to certain employees and their dependents as well as providing an exemption of payment of nonresident tuition to certain eligible students. Those who previously could not afford a postsecondary education may now be eligible for in-state tuition, providing a more affordable education.

B. EFFECT OF PROPOSED CHANGES:

TIMELY COMPLETION OF BACCALAUREATE DEGREE PROGRAMS

Background

Data provided by OPPAGA¹ indicate that the 2002-2003 graduating class from state universities accumulated 337,837 credit hours over 115% of their degree requirements, costing the state approximately \$29 million. Overall, 20% of the students earned 83% of all credit hours over the 115% standard.

Effect of Proposed Changes

This bill requires university boards of trustees to develop policies and procedures to ensure that students enrolled in baccalaureate degree programs complete their programs in a timely manner in order to make the most efficient use of instructional resources and provide capacity within the institution for additional students. Such policies must include implementation of a universal tracking degree audit system. A universal tracking degree audit system developed by a state university with state funds must be made available for use by other state universities at no cost. The degree audit system must have the capability to:

- Inform students of the courses they must successfully complete for their majors;
- Evaluate whether or not satisfactory progress is being made;
- Provide each student with a recommended semester-by-semester enrollment plan that identifies the courses that must be completed with a required GPA during the semester in which the course is indicated in order for the student to be on track for the designated major; and

¹ Report No. 04-44, OPPAGA Information Brief, *Stronger Financial Incentives Could Encourage Students to Graduate With Fewer Excess Hours*

- Provide university administrators with a semester-by-semester enrollment plan that identifies the courses that must be offered for students to be on track for their designated majors. The university must give priority each semester to offering such courses.

According to the DOE, research and experience suggest that advising systems such as those proposed are very effective in improving graduation rates. The University of Florida has had more than a 7% improvement in graduation rates since implementing its current system. Such systems are also quite expensive and time-consuming to implement, even if modeled after similar programs at other universities.²

The bill also provides that the state will not fund hours in excess of 115% of the hours required for a student's degree program. The bill defines which hours are included and excluded in the calculation of excess hours. The hours excluded from the excess hours calculations include:

- Credit hours earned through an acceleration mechanism identified in law.
- Credit hours earned in a course that does not count toward any degree at the institution.
- Credit hours earned in military science courses.
- Credit hours required to achieve a dual major.
- Credit hours required to achieve teacher certification which are not credited toward the student's first baccalaureate degree.
- Credit hours taken by active duty military personnel.
- Credit hours in courses from which a student must withdraw due to medical or personal hardship reasons.

The bill authorizes universities to assess a surcharge to students taking excess hours and caps the sum of tuition plus the surcharge at 100% of the full cost of instruction.

The policies developed by the university board of trustees must be submitted to the Board of Governors for review and approval prior to implementation. The excess hours policies take effect for students entering a community college or state university for the first time in 2005-2006 academic year and thereafter.

In order to determine whether excess hours is an issue that should also be addressed for associate and graduate level programs, the bill directs OPPAGA to conduct a study to determine how the number of hours taken by students at community colleges and state universities compare with the number of hours required to complete degree requirements. OPPAGA must submit the results of the study to the Speaker of the House of Representatives, the President of the Senate, and the Governor by February 1, 2006.

DETERMINATION OF RESIDENT STATUS

Background

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities.³ Although s. 1009.22(10), F.S., requires that , except as otherwise provide, fees for non-resident students in workforce development programs must offset the full cost of instruction, there is no specific requirement that school districts that offer postsecondary workforce programs classify students as residents or non-residents.

Classification as a resident for tuition purposes is also an eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant (FSAG) Program, and the Florida Resident Assistance Grant (FRAG) Program. The law further requires that the resident status for purposes of receiving state financial aid

² Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 3.

³ Section 1009.21, F.S.

awards must be determined in the same manner as resident status for tuition purposes pursuant to s. 1009.21 and rules of the State Board of Education.

To qualify as a resident for tuition purposes, a student, or the student's parents if the student is a dependent, must have established legal residence in the state and maintained legal residence in the state for at least 12 months immediately prior to the student's qualification. Presence in the state must have been for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

Current law designates certain categories of persons for residency for tuition purposes such as active duty members of the Armed Services of the U.S. residing or stationed in Florida and their dependents, U.S. citizens living on the Isthmus of Panama who have completed 12 consecutive months of college work at the FSU Panama Canal Branch and their dependents, and active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state and their dependents.⁴

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.⁵ Section 1101 of Title 8 U.S. Code provides definitions for terms relating to aliens and nationality and defines the term "immigrant" to mean every alien except an alien who falls into one of a series of classes described as nonimmigrant aliens.⁶ In order to apply for naturalization immigrants must have been lawfully admitted for permanent residence in the U.S. and must have resided in the U.S. for five years before they become citizens.⁷

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.⁸ Due to the increased cost of attending a public postsecondary institution as a nonresident, these students may not be able to pursue their education at the postsecondary level.

OPPAGA Recommendations Regarding Residency for Tuition Determinations

OPPAGA Report No. 02-33⁹ reports that State Board of Education rules do not require school districts to establish residency requirements for workforce development students. According to the OPPAGA report, the department encourages school boards to develop residency policies at the local level since proof of residency is required for the purpose of charging fees. OPPAGA found that some districts have established specific guidelines for documenting residency, while others have minimal

⁴ Section 1009.21(10), F.S.

⁵ Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.

⁶ 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. These classes include, among others, foreign diplomats and their dependents, temporary business or tourist visitors, crew of merchant vessels and civil aircraft, and foreign students having *bona fide* residences abroad that they do not intend to abandon. 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-1 visa or an M-1 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. See <http://uscis.gov/graphics/services/tempbenefits/index.htm>, U.S. Citizenship and Immigration Services, Temporary Visitors.

⁷ <http://uscis.gov/graphics/services/natz/general.htm>, U.S. Citizenship and Immigration Services, General Naturalization Requirements.

⁸ See *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L.Ed.2d 786 (1982).

⁹ Report 02-33, OPPAGA Program Review, *Adult General Education Performance Improves; However, Placement Rates Need Improvement and the State's Residency Policy Needs Definition*

requirements. The OPPAGA report concludes that clear and enforced residency requirements are needed to ensure that non-resident students pay the full cost of instruction as required in Florida law.

The OPPAGA report further concludes that inconsistent eligibility requirements between community colleges and school districts can create an uneven playing field with regard to funding. The report recommends that the Legislature identify residency requirements specific to the workforce development education programs offered in both community colleges and school districts. This would provide uniform residency requirements for workforce development programs provided by both systems as well as within school district systems.

OPPAGA Report No. 03-29¹⁰ found that although Florida law and rules are intended to enable universities and community colleges to accurately and consistently classify students for in-state and out-of-state residency, the process is substantially flawed. OPPAGA found that institutions were using inconsistent screening criteria and procedures creating the potential for misclassifications and variations in the threshold a student must meet to qualify for residency. OPPAGA identified three costly weaknesses in the current criteria and procedures used in classifying students as residents for tuition purposes:

1. Current law and rules do not provide adequate criteria governing under what specific circumstances students should be reclassified as Florida residents.
2. Current criteria do not adequately specify the determination of students' dependency status.
3. Institutions are applying varying standards for documenting residency.

The report recommends that to improve the residency classification process, the Legislature should amend current law to require that students (or their parents if the students are dependents) must maintain legal residence in the state for at least 12 months immediately prior to the student's initial enrollment or registration at a Florida public postsecondary institution to be eligible for classification for in-state residency. OPPAGA also recommended that Legislature more clearly define when a non-resident student could be eligible for reclassification as a resident.

OPPAGA estimates that institutions could receive an additional \$28.2 million in tuition revenues from out-of-state students if reclassifications were eliminated and these individuals remained enrolled.

OPPAGA Report No. 03-70 reports that private colleges and universities are not required to follow the same residency determination process as public institutions, and that they use less stringent requirements. OPPAGA concluded that, as a result, there is an increased potential for state financial aid to be awarded to non-resident students.¹¹

Effect of Proposed Changes

This bill requires that students be classified as residents or nonresidents for the purpose of assessing tuition for instruction in postsecondary career and technical programs offered by school districts.

This bill clarifies a student must also be classified as a resident or nonresident for the purpose of determining student eligibility to participate in the following programs: the Florida Public Student Assistance Grant Program; the Florida Private Student Assistance Grant Program; the Florida Postsecondary Student Assistance Grant Program; the Florida Bright Futures Scholarship Program; the Critical Teacher Shortage Program; the Seminole and Miccosukee Indian Scholarships; the Florida Teacher Scholarship and Forgivable Loan Program; the Minority Teacher Education Scholars Program; the grants for teachers for special training in exceptional student education; the occupational therapist or physical therapist critical shortage program; the Florida Minority Medical Education Program; the

¹⁰ Report 03-29, OPPAGA Special Review, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*

¹¹ OPPAGA Report No. 03-70, *Justification Review: Private Colleges and Universities Program – Department of Education*

Jose Marti Scholarship Challenge Grant Program; the Mary McLeod Bethune Scholarship Program; the Ethics in Business Scholarship Program for state universities; the Ethics in Business Scholarship Program for community colleges and independent postsecondary educational institutions; the Florida Work Experience Program; and the William L. Boyd, IV, Florida Resident Access Grant.

The bill revises residency criteria to require that a person reside in-state for 12 months immediately prior to initial enrollment in a postsecondary education program in Florida. The term "initial enrollment" is defined as the first day of classes. A student is eligible to be reclassified from nonresident to resident if the student provides documentation that supports the student's permanent residency in the state such as documentation of permanent full-time employment for a minimum of 12 months or purchase of a home in this state and residence in said home for a minimum of 12 months. If the student is a dependent child, the residency requirements apply to the student's parent.

The bill clarifies that dependent children of active duty military families who are stationed near a community college or university in a county contiguous to Florida are eligible for residency for tuition purposes.

The bill extends the categories of persons that are classified as residents for tuition purposes to include full-time employees of international multilateral organizations based in Florida that are recognized by the U.S. Department of State and their spouses and dependant children. Section 1 [22 U.S.C. 288] of P.L. 79-291 (International Organizations Immunities Act) approved on December 29, 1945 notes that an international organization is a public international organization in which the U.S. participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation and which are designated by the President through appropriate Executive Order. Examples of international organizations designated by Executive Order are: the United Nations, the World Trade Organization, the World Tourism Organization, the World Health Organization, and the International Committee of the Red Cross.¹² The Director of the Florida Branch of the Office of Foreign Missions indicated that the International Organization for Migration is the only international multilateral organization currently based in Florida. The Office of Foreign Missions is a department within the U.S. Department of State. It is estimated that there are currently less than ten people who might qualify under this provision of the bill.¹³

The bill also updates an obsolete reference to the North American Aerospace Defense Command (NORAD) agreement.

The bill provides an exemption from paying nonresident tuition at public postsecondary institutions to any student, other than a nonimmigrant alien within the meaning of Title 8 U.S.C. § 1101(a)(15), who meets the following requirements:

1. The student has resided in Florida with a parent for at least three consecutive years immediately preceding the date the student received a high school diploma or its equivalent and has attended a Florida high school for at least three consecutive school years during such time.
2. The student has provided the community college or state university an affidavit stating that the student will file an application to become a permanent resident of the United States at the earliest opportunity the student is eligible to do so.

The affidavit requirement should not create a substantial burden for a student to qualify for residency for tuition purposes. In fact, it may only serve as an additional regulatory burden on the community colleges and state universities. Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency. Moreover, the bill does not provide any penalties for failing to comply with the application requirement.

¹² Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 6.

¹³ *Id.*

According to the DOE, it is not clear how the affidavit would be binding and what recourse for recovery of funds would exist should the student eventually decide not to become a U.S. citizen.¹⁴

The bill limits the exemption to the top 2,000 students in academic performance in Florida high schools who register and enroll at a community college or state university. There is no estimate of the number of students who have graduated from Florida high schools in the past and would now meet the requirements of this exemption due to the 1990 consent decree.¹⁵ Consequently, complete information on the number of individuals who may apply for the exemption is not available.

According to the DOE, the requirement that the exemption be limited to the top 2,000 students in academic performance in Florida high schools would be extremely difficult to track and coordinate among all of the postsecondary institutions.¹⁶

The bill also reenacts section 1009.40, F.S., relating to general requirements for eligibility for state financial aid awards, for the purpose of incorporating the provisions of the bill that amend 1009.21, F.S.

The bill provides that the provisions of this act are severable and that this act takes effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Creates s. 1004.215, F.S., relating to timely completion of baccalaureate degree programs, to require university board of trustees to develop policies and procedures to ensure that students enrolled in baccalaureate degree programs complete their programs in a timely manner; to require a universal tracking degree audit system; to cap state funding for excess credit hours; to define the credit hours that are to be included and excluded for purposes of determining excess credit hours; to permit universities to assess a surcharge for excess hours; to require approval of university policies by the Board of Governors prior to implementation; and to provide that the law becomes effective for students enrolling in a community college or state university for the first time during the 2005-2006 academic year.

Section 2: Requires OPPAGA to study excess hours in associate and graduate degree programs.

Section 3: Amends s. 1009.21, F.S., relating to determination of resident status for tuition and financial assistance eligibility purposes and exemption, to provide that students must be classified as residents or nonresidents for the purpose of assessing tuition for instruction in postsecondary career and technical programs offered by school districts; to clarify that students must be classified as Florida residents to participate in certain financial assistance programs; to define terms; to tie the qualification period for determining residency to the student's initial enrollment in a postsecondary education program in Florida; to provide conditions for reclassification; to classify certain dependent children as residents for tuition purposes; to update obsolete terminology; to classify certain employees of international multilateral organizations as residents for tuition purposes; and provide certain students who are not permanent residents of the United States an exemption from paying nonresident tuition, limiting enrollment to the top 2,000 students in academic performance.

Section 4: Reenacts paragraph (a) of subsection (1) of s. 1009.40, F.S., regarding general requirements for student eligibility for state financial aid, for the purposes of incorporating the amendment to s. 1009.21, F.S., in a reference thereto.

Section 5: Provides for severability of the provisions set forth.

Section 6: Provides an effective date of July 1, 2005.

¹⁴ *Id.*

¹⁵ See *League of United Latin American Citizens v. Florida Board of Education*, Case No. 90-1913, (S.D. Fla. 1990).

¹⁶ Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 6.

II. 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:

None

2. Expenditures:

School districts with postsecondary career and technical programs may incur expenses to develop and administer the residency requirements in a consistent manner throughout the state.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Students who, in the past, may have been unable to afford a postsecondary education will have expanded educational opportunities due to the exemption provided in the bill. However, the revised conditions for determining initial enrollment and reclassification may increase the number of students not eligible for residency for tuition purposes, resulting in a more expensive education for others.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate at this time.

Degree Tracking System

According to the DOE, the cost to implement a degree tracking system at each university is unknown. Based on information from Florida State University, the cost of the system that is currently being implemented is very significant, but an exact amount cannot be determined at this time. Such systems are quite expensive and time-consuming to implement, even if modeled after similar programs at other universities. It would also be difficult for a system developed at one university to be seamlessly transferable to other universities because every university has their own unique student data system and each school will need to program this themselves; much like each school must have their own Student Academic Support Service (SASS) interface.¹⁷

Excess Hours

An OPPAGA analysis¹⁸ of the 2002-2003 graduating class found that they accumulated 337,837 credit hours over 115% of their degree requirements, costing the state approximately \$29 million. OPPAGA further found that 20% of the students earned 83% of all credit hours above the 115% standard. State universities will no longer receive funding for credit hours generated by students who have taken in excess of 115% of the hours required for the student's degree program. Universities may require students who take in excess of 115% to pay a surcharge.

¹⁷ Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 7.

¹⁸ Report No. 04-44, OPPAGA Information Brief, *Stronger Financial Incentives Could Encourage Students to Graduate With Fewer Excess Hours*

According to the DOE, for state universities there would be an undetermined negative impact on the amount of funds received from the state, since the bill prohibits funding for credits taken in excess of 115% of those required for graduation. However, the shortfall in state revenue could be offset by a surcharge that institutions may assess students taking excess hours pursuant to the provisions of the bill.¹⁹

Increased administrative costs may be incurred by postsecondary institutions in assessing an excess hour fee.

Determination of Resident Status

The DOE found that currently the number of school district postsecondary students that would be reclassified as non-residents for tuition purposes is unknown; therefore, it is not possible at this time to estimate the revenue impact for this sector.²⁰

The bill reduces the ability for a nonresident to be reclassified as a resident for tuition purposes; therefore, increasing potential tuition revenues from nonresident students if these individuals remain enrolled at a Florida public postsecondary institution. OPPAGA has estimated that if Florida eliminated the reclassification of nonresident students completely, institutions could receive \$28.2 million in additional tuition revenue from nonresidents if these individuals remained enrolled at a Florida public postsecondary institution.²¹

The fiscal impact of the extension of residency status to certain employees of international multilateral organizations and their dependents, and the exemption of payment of nonresident tuition for eligible students is indeterminate. There may be an increase the number of students that enroll in state universities and community colleges because of the reduced cost to such students; therefore, these institutions may experience an increase in tuition and fee revenues. However, those students who would have attended a state university or community college even if classified an out-of-state student means a loss in tuition and fee revenues for institutions. This would also result in the state paying for 75% or more 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.

The fiscal impact on funding required or award amount for programs such as Bright Futures, FSAG, and FRAG is indeterminate; however, the number is limited to the 2,000 cap.

Increased administrative costs may be incurred by postsecondary institutions in determining whether or not a student meets the criteria and is eligible to be classified as a resident for tuition purposes and financial aid eligibility, and determining whether or not a student meets the criteria and is eligible to receive the exemption provided by this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds.

2. Other:

¹⁹ Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 7.

²⁰ *Id.*

²¹ Report 03-29, OPPAGA Special Review, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*

The U.S. Constitution provides the Federal Government with preeminent power over the regulation of aliens within the U.S.²² 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.²³ The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In *Toll v. Moreno*,²⁴ 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 criteria. There still remains a concern that the bill may be challenged because of the limitation on the ability of lawfully admitted nonimmigrant aliens to obtain 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.

Eight other states have a similar law that provides students, who meet certain criteria, with an in-state tuition classification. These states are: California, Texas, New York, Utah, Washington, Illinois, Oklahoma, and Kansas. Similar legislation is being considered this year in Nebraska, Colorado, and Arkansas. The laws differ slightly between the states, as some statutes offer state financial aid benefits along with the tuition classification, while other statutes are purely for tuition purposes. Currently, federal law prohibits illegal immigrant students from receiving federal loans and grants; work-study jobs are also prohibited.

After the Kansas legislation was signed into law in May 2004, a lawsuit was filed in the Federal District Court for the District of Kansas²⁵ charging that the new law violated the U.S. Constitution's Equal Protection clause of the 14th Amendment²⁶ and 1996 immigration laws.²⁷ The lawsuit, the first of its kind, argues that the Kansas statute violates the federal law that prohibits states from giving public benefits to immigrants who are in the country illegally and is discriminatory to out-of-state students who pay a higher tuition rate. The plaintiffs, all students from out of state attending Kansas universities, claim that they have been denied the same in-state tuition benefits afforded to illegal immigrants.

Those who argue that the statute does not violate federal law claim that the federal law prevents states from providing benefits to illegal aliens based on residency in a state. The immigration tuition law specifically provides the benefit to those who attended Kansas high schools or received a GED in Kansas, a wording difference that many think will withstand constitutional scrutiny.²⁸

Those in favor of the Kansas law and the other similar laws that have been passed or are currently being considered in other states, argue that these children were brought to the U.S. very young and have grown up being treated as residents. Undocumented immigrants have been a presence in American schools since the U.S. Supreme Court ruled in 1982, in *Plyler v. Doe*, that all children, regardless of immigration status, were entitled to a free elementary and secondary education.²⁹

²² See *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948).

²³ *Id.*

²⁴ *Toll v. Moreno*, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982).

²⁵ *Day v. Sebelius*, No. 04-4085RDR (U.S. Dist. Ct. filed July 19, 2004).

²⁶ U.S. Const. amend. XIV, § 1.

²⁷ 8 U.S.C. 1621 and 8 U.S.C. 1623

²⁸ Terry Rombeck, *Immigration tuition to face challenge*, Lawrence Journal-World, May 25, 2004 (from interview with Matt All, chief counsel for Gov. Kathleen Sebelius).

²⁹ *Plyler v. Doe*, 102 S. Ct. 2382 (1982).

Those in support of the Kansas statute argue these children should now be given the opportunity to advance themselves and be productive individuals within society. A ruling is expected in the spring of 2005 from the Kansas Federal District Court.³⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A proposal in the U.S. Congress may also affect states that provide in-state tuition without regard to immigration status. The Development, Relief, and Education for Alien Minors (DREAM) Act, was first introduced in 2003 by Senator Orrin Hatch of Utah and again introduced in 2004; however, Congress recessed without taking action on the Act. The Senator is expected to reintroduce this legislation again in 2005.³¹

The DREAM Act would enact two major changes in current law: eliminate the federal provision that discourages states from providing in-state tuition without regard to immigration status and permit some immigrant students who have grown up in the U.S. to apply for legal status.³² If passed it would provide illegal immigrants in the U.S. the ability to sustain legal status if they graduated from high school, attended at least two years of college or spent two years in the military, and stayed out of trouble. Those students who live in the U.S for at least five years would also be eligible for federal financial aid.³³ The DREAM Act would permit qualified students to become temporary legal residents, putting them on a path to permanent legal status.

HB 119 provides that students file an application to become a permanent resident of the US at the earliest opportunity they are eligible to do so. Many students who are not in the U.S. legally, but who may be eligible for the exemption provided in the bill, would find it difficult to become eligible to apply for permanent residency as currently there does not appear to be any category under Title 8 of the Code of Federal Regulations under which they could qualify for lawful admission as dependent children. Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency. Passage of the DREAM Act would also enable these students to legally apply for permanent residency. This would eliminate the concern that in the bill, the affidavit these students provide state universities and community colleges would not be binding due to many of these students never being eligible to apply for permanent residency.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The sponsor of the bill indicated he will be filing a strike-all amendment that would remove provisions relating to the timely completion of baccalaureate degree programs, the degree audit tracking system and excess hours.

The requirement that OPPAGA study excess hours in associate and graduate degree programs is also removed. The study on excess hours for associate level programs has already been completed by OPPAGA and is in the process of being published. The issue of excess hours at the graduate level is currently under review.

The strike-all amendment will also remove the language relating to financial aid eligibility and the language requiring determination of residency for students in postsecondary career education programs offered by school districts.

³⁰ Telephone call with Clerk of Court of Federal District Court, District of Kansas (February 28, 2005).

³¹ Matthew Hansen, *Tuition relief for illegal immigrants?*, Lincoln Journal Star, January 19, 2005.

³² National Immigration Law Center, *Immigrants' Rights Update: Immigrant Student Adjustment and Access to Higher Education*, Vol. 17, No. 5, September 4, 2003.

³³ Matthew Hansen, *Tuition relief for illegal immigrants?*, Lincoln Journal Star, January 19, 2005.

The strike-all amendment includes the following provisions of the bill:

- determination of residency for tuition tied to initial enrollment,
- requirements of when a non-resident is eligible for reclassification,
- extension of residency status to certain employees of international multilateral organizations and their dependents, and
- exemption of payment of nonresident tuition for eligible students.

The strike-all amendment also includes the following additional provisions:

- an OPPAGA study and report on current university degree tracking procedures, and
- administration of the exemption provided in the bill by the Department of Education.