

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 119 CS 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	9 Y, 0 N, w/CS	Hatfield	Tilton
2) Education Appropriations Committee		Hamon	Hamon
3) Education Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill proposes changes to higher education finance policies relating to student residency classification for tuition purposes and provides an exemption from paying nonresident tuition for certain eligible students.

The bill revises provisions relating to the determination of a student's residency status for tuition purposes. The bill ties the statutorily-required minimum 12-month residency period to a student's initial enrollment in a Florida postsecondary institution and provides for reclassification as a resident for tuition purposes for students who meet certain criteria.

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 certain requirements. 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 bill requires the Department of Education to administer the exemption program and develop an application form and guidelines for student participation.

The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study and report on current university degree tracking procedures.

The overall fiscal impact of the bill is indeterminate at this time. However, a recent OPPAGA report has estimated a potential increase of \$28.2 million in tuition revenue if the residency revisions in the bill are enacted. See FISCAL COMMENTS for further details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill requires postsecondary institutions to determine student eligibility for tuition purposes and determine student eligibility to receive the exemption provided by the bill. Additional responsibilities and administrative costs may be incurred by postsecondary institutions in order to accomplish these tasks.

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:

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.¹

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 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.²

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.³ Section 1101 of Title 8 U.S. Code provides definitions for terms relating to aliens and nationality and defines the term "immigrant" to mean

¹ Section 1009.21, F.S.

² Section 1009.21(10), F.S.

³ Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.

every alien except an alien who falls into one of a series of classes described as nonimmigrant aliens.⁴ 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.⁵

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.⁶ 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. 03-29⁷ 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.

Effect of Proposed Changes

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

⁴ 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.

⁵ <http://uscis.gov/graphics/services/natz/general.htm>, U.S. Citizenship and Immigration Services, General Naturalization Requirements.

⁶ See Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L.Ed.2d 786 (1982).

⁷ Report 03-29, OPPAGA Special Review, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*

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 dependent 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.⁸ 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.⁹

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 registered and enrolled in a community college or state university. The student may apply for a term deferral of any out-of-state fee assessed by the institution until eligibility for the exemption is determined.
3. 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.
4. The student has submitted an application for the exemption to the community college or state university in the manner prescribed by the Department of Education (DOE).

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 file an application to become a permanent resident of the U.S. 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.¹⁰

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

⁸ Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 6.

⁹ *Id.*

¹⁰ *Id.*

requirements of this exemption due to the 1990 consent decree.¹¹ Consequently, complete information on the number of individuals who may apply for the exemption is not available.

The bill also requires the DOE to administer the exemption program and develop an application form and guidelines for student participation. The community college or state university must enter all application criteria submitted by the student into the DOE's online database. The DOE then makes the final determination of the student's eligibility to receive the exemption. The DOE, by administering the exemption program, will be able to track the number of students participating in the program.

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.

TIMELY COMPLETION OF BACCALAUREATE DEGREE PROGRAMS

Background

Currently, s. 1007.28, F.S., requires the State Board of Education to maintain, within the DOE, a single, statewide computer-assisted student advising system, which must be an integral part of the process of advising, registering, and certifying students for graduation. The system must consist of a degree audit and an articulation component that includes certain characteristics, such as:

- Integral in the process of advising students and assisting them in course selection.
- Accessible to students at all times to identify course options that will meet the requirements of a degree and providing status reports with each grade report to that student.
- Integral in the registration process at public postsecondary educational institutions by providing student reports on their status toward completion of a degree and verifying they have completed requirements needed for graduation.
- Informative to decision-makers by providing data relating to student enrollment patterns and course demands in order to plan for corresponding course offerings and the student registration process.

Data provided by OPPAGA¹² 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 OPPAGA to conduct a study to examine how each state university supports students in making timely progress toward the completion of the student's degree. The study must also evaluate the effectiveness of each state university's system, assess the cost of implementing a universal tracking degree audit system, and assess what savings would be accrued from such a system. 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 January 1, 2006.

According to the DOE, research and experience suggest that advising systems 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.¹³

¹¹ See League of United Latin American Citizens v. Florida Board of Education, Case No. 90-1913, (S.D. Fla. 1990).

¹² Report No. 04-44, OPPAGA Information Brief, *Stronger Financial Incentives Could Encourage Students to Graduate With Fewer Excess Hours*

¹³ Florida Department of Education 2005 Legislative Bill Analysis, HB 119, March 1, 2005, at 3.

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

C. SECTION DIRECTORY:

Section 1: Amends s. 1009.21, F.S., revising provisions relating to determination of resident status for tuition purposes; revises definitions; ties the qualification period for determining residency to the student's initial enrollment in a postsecondary education program in Florida; provides for reclassification under certain circumstances; updates obsolete terminology; classifies certain dependent children as residents for tuition purposes; classifies 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, and requiring the Department of Education to administer the exemption program.

Section 2: 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 3: Requires a study and report by the OPPAGA.

Section 4: Provides for severability of the provisions set forth.

Section 5: Provides an effective date of July 1, 2005.

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:

None

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:

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.¹⁴

The extension of tuition residency status to certain undocumented aliens and certain employees of international multilateral organizations and their dependents may 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 of the undocumented alien exemption 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 student 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 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:

The U.S. Constitution provides the Federal Government with preeminent power over the regulation of aliens within the U.S.¹⁵ 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.¹⁶ The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In *Toll v. Moreno*,¹⁷ 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.

¹⁴ Report 03-29, OPPAGA Special Review, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*

¹⁵ See *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948).

¹⁶ *Id.*

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

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 Kansas¹⁸ charging that the new law violated the U.S. Constitution's Equal Protection clause of the 14th Amendment¹⁹ and 1996 immigration laws.²⁰ 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.²¹

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.²² 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.²³

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 2005.²⁴

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.²⁵ 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.

¹⁸ *Day v. Sebelius*, No. 04-4085RDR (U.S. Dist. Ct. filed July 19, 2004).

¹⁹ U.S. Const. amend. XIV, § 1.

²⁰ 8 U.S.C. 1621 and 8 U.S.C. 1623

²¹ Terry Rombeck, *Immigration tuition to face challenge*, Lawrence Journal-World, May 25, 2004 (from interview with Matt All, chief counsel for Gov. Kathleen Sebelius).

²² *Plyler v. Doe*, 102 S. Ct. 2382 (1982).

²³ Telephone call with Clerk of Court of Federal District Court, District of Kansas (February 28, 2005).

²⁴ Matthew Hansen, *Tuition relief for illegal immigrants?*, Lincoln Journal Star, January 19, 2005.

²⁵ National Immigration Law Center, *Immigrants' Rights Update: Immigrant Student Adjustment and Access to Higher Education*, Vol. 17, No. 5, September 4, 2003.

Those students who live in the U.S for at least five years would also be eligible for federal financial aid.²⁶ 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 U.S. 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

On March 8, 2005, the Colleges & Universities Committee adopted an amendment to HB 119. The bill was reported favorable with a Committee Substitute (CS).

The CS differs from the original bill in the following ways:

- Removes provisions relating to the timely completion of baccalaureate degree programs, the degree audit tracking system and excess hours.
- Removes the requirement that OPPAGA study excess hours in associate and graduate degree programs. 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.
- Removes language relating to financial eligibility from the section of law relating to determination of resident status for tuition purpose.
- Removes the language requiring determination of residency for students in postsecondary career education programs offered by school districts.

The CS includes the following provisions of the original 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 CS also includes the following additional provisions:

- an OPPAGA study and report on how each state university supports students in making timely progress toward the completion of the student's degree, and
- administration of the exemption provided in the bill by the Department of Education.

²⁶ Matthew Hansen, *Tuition relief for illegal immigrants?*, Lincoln Journal Star, January 19, 2005.