

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill creates reporting requirements for public universities and community colleges.

Empower families—The bill may give Florida residents previously unable to afford a higher education an opportunity to enroll in a public university or community college; however, this bill may also limit opportunities for foreign individuals or families by eliminating sources of financial assistance. The bill may also have the potential of decreasing the amount of private financial aid funds for Florida residents if institutions redirect such funds to foreign students in order to sustain the population of these students at an institution.

B. EFFECT OF PROPOSED CHANGES:

Background

The federal Immigration and Nationality Act (Act) governs the admission of all foreigners to the United States. The Act provides two nonimmigrant¹ visa categories for persons wishing to pursue full-time academic or vocational studies in the United States. The "F" visa is reserved for a nonimmigrant wishing to pursue academic studies or language training. The "M" visa is reserved for a nonimmigrant wishing to pursue nonacademic or vocational studies.

Foreign students seeking to study in the United States may enter under an F-1 or M-1 visa provided they meet the following criteria:

- The student must be enrolled in an "academic" educational program, a language-training program, or a vocational program;
- The school must be approved by United States Citizenship and Immigration Services;
- The student must be enrolled as a full-time student at the institution;
- The student must be proficient in English or be enrolled in courses leading to English proficiency;
- The student must maintain a residence abroad which he or she has no intention of giving up; and
- The student must have sufficient funds available for self-support during the entire proposed course of study.²
 - Sufficient funds must equal the amount an institution estimates will be needed to cover tuition, room and board, books, and any other living expenses and may be in the form of one or a combination of the following:
 - An affidavit from a person financially sponsoring the student;
 - The student's personal bank account information;
 - Proof of a scholarship received by the student; and
 - Proof of financial aid that the student will be receiving.³

¹ According to 8 U.S.C. § (a)(15)(F)(i), the term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens – an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study . . . at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States . . . which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student.

² <http://uscis.gov>.

Effect of Bill

Currently, financial assistance for students may be funded from a variety of sources such as state appropriations, indirect state grants distributed through state agencies, federal grants, tuition and fee revenues, and private contributions. Beginning in the 2006-2007 academic year, this bill prohibits a public postsecondary educational institution from using state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents to provide financial assistance to any student holding an F-1 or M-1 visa.

For purposes of this bill, financial assistance does not include compensation paid to students for assistantships or for participation in work-study programs. Universities use graduate student assistants to support classroom teaching and university research. Both community colleges and universities use work-study students to support academic and administrative institutional functions.⁴

Postsecondary institutions that wish to provide financial assistance to students with F-1 or M-1 visas can provide assistantships and work-study programs or use private funds or tuition and fees from non-residents.

By December 31, 2005, each state university and community college must report to the President of the Senate and the Speaker of the House of Representatives the total amount of state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents that was used to provide:

- Financial assistance during the 2003-2004 academic school year to students holding F-1 or M-1 visas and
- Need-based financial assistance during the 2003-2004 academic school year to students classified as residents for tuition purposes.

This bill requires that state funds appropriated directly or indirectly to the institution or tuition or fee revenues generated by Florida residents be redirected to provide additional need-based financial assistance to students classified as Florida residents for tuition purposes⁵. The redirected funds must not be used to reduce or supplant the existing level of funding Florida residents currently receive for need-based financial assistance from such sources. After the unmet need for Florida residents is fully satisfied without reliance on loans, any funds remaining must be used to provide merit-based financial assistance to students classified as residents for tuition purposes.

By July 1, 2007, and annually thereafter, the state universities and community colleges must also report to the President and the Speaker on the number of Florida residents benefiting from financial assistance as a result of the redirected funds.

According to the Department of Education (DOE), Florida's public postsecondary students are not currently reported by the type of visa, but by student residency. The DOE also indicated that the ability to clearly identify which revenues are used for financial aid to international students will require some administrative and accounting modifications.⁶

C. SECTION DIRECTORY:

³ Information received from a February 9, 2005, phone conversation with an employee of the Student and Exchange Visitor Program (SEVP), a division of U.S. Immigration and Customs Enforcement (ICE), the largest investigative arm of the Department of Homeland Security (DHS).

⁴ Florida Department of Education 2005 Legislative Bill Analysis, HB 21, January 21, 2005, at 3.

⁵ Section 1009.21(2), F.S., to qualify as a "resident for tuition purposes" a person must establish and maintain legal residence in this state for at least 12 months prior to qualification, make a statement as to his or her length of residence in the state, and further establish that such residence is not temporary but rather for the purpose of maintaining a "bona fide domicile".

⁶ Florida Department of Education 2005 Legislative Bill Analysis, HB 21, January 21, 2005, at 2-3.

Section 1. Creates an unnumbered section to provide legislative intent; creates reporting requirements for state universities and community colleges; prohibits use of certain funds to provide financial assistance to certain foreign students; and provides for redirection of such funds.

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The DOE reports that for the 2002-2003 school year, an estimated \$5.7 million from state funds and tuition and fee revenues would have been redirected to Florida resident students enrolled in the State University System⁷ and that an estimated \$2 million from state funds and tuition and fee revenues would have been redirected to Florida residents enrolled in the Florida Community College system.⁸

The DOE is currently collecting updated data from each institution in order to provide a new estimate of the total state funds and tuition and fee revenues that would have been redirected to Florida resident students for the 2003-2004 school year.

This bill may increase administrative costs due to new reporting requirements. Accounting systems may need to be modified to capture the information required in the bill. The fiscal impact of these modifications is indeterminate.⁹

According to the DOE, there would be no increase or decrease in expenditures from this bill; instead, the use of certain funds would be redirected.¹⁰ Florida residents previously unable to afford a higher education may now have the opportunity to receive such education as a result of the redirected funds; however, this bill may limit opportunities for foreign individuals or families by eliminating sources of financial assistance that might otherwise have been received. The bill may also have the potential of

⁷ In February 2004, the Division of Colleges and Universities provided a spreadsheet noting that the \$5.7M that would have been redirected came from 1,657 students that held an F-1 visa, were enrolled in a state university and received state funding.

⁸ Florida Department of Education 2005 Legislative Bill Analysis, HB 21, January 21, 2005, at 3.

⁹ *Id.*

¹⁰ *Id.*

decreasing the amount of private financial aid funds for Florida residents if institutions redirect such funds to foreign students in order to sustain the population of these students at an institution.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Equal Protection

Both the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Florida Constitution guarantee equal protection of the laws to "persons," not only to citizens. This bill may raise constitutional concerns under these provisions.

While Congress may, in light of its plenary power over immigration,¹¹ generally make classifications based on citizenship as long as they are not arbitrary and unreasonable,¹² state or local laws which do so are subject to strict scrutiny. Such laws must seek to advance a compelling governmental interest and must be narrowly tailored to advancing that interest.¹³

It could be argued that the bill meets strict scrutiny requirements because the bill determines that it is a compelling governmental interest to use a portion of the state's resources to expand access to postsecondary education and to reduce student indebtedness. Expanding access and increasing financial assistance not only will encourage Florida residents to pursue postsecondary education, but also will produce economic benefits for the state by increasing the levels of higher educational attainment and earning potential of Florida's citizenry. In addition, it appears to be narrowly tailored to advance the interest of the state in that it only prohibits use of state funds to provide financial assistance to students with an F-1 or M-1 visa, and does not include those students receiving paid compensation for assistantships or participation in work-study programs. Such students also may still receive financial assistance via federal and private moneys.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The bill sponsor plans to offer an amendment that will make the following changes:

- "public postsecondary educational institution" is amended to read "a state university or community college;"
- "eligible Florida residents" is defined to mean a student classified at the time of initial enrollment at a state university or community college as a resident for tuition purposes pursuant to s. 1009.21, F.S.; and

¹¹ See Art. I, s. 8, U.S. Const. ("Congress shall have Power To . . . establish an uniform Rule of Naturalization[.]")

¹² See *Mathews v. Diaz*, 426 U.S. 67 (1976).

¹³ See *Bernal v. Fainter*, 467 U.S. 216 (1984).

- all references to students classified as residents for tuition purposes, Florida residents or any similar variation are amended to read “eligible Florida residents.”

The amendment will provide for more consistent terms within the language of the bill.