

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.)

Prepared By: Education Committee

BILL: SB 226

SPONSOR: Senator Wilson

SUBJECT: Tuition/Resident Status

DATE: February 3, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Favorable
2.	_____	_____	EA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill would exempt any student from paying nonresident tuition at the state's community colleges and universities if the student:

- 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 he or she will file an application to become a permanent U.S. resident at the earliest opportunity.

However, students qualifying for resident tuition under s. 1009.21(11), F.S., would not be eligible for state-sponsored financial assistance. The bill excludes nonimmigrant aliens, as defined in 8 U.S.C. 1001(a)(15), from qualifying for residency for tuition purposes under this new criterion.

The bill also clarifies that military dependents qualifying for resident tuition on the basis of active military service by their parents only qualify for the resident rate at a community college or state university located within 50 miles of the military base at which their parent is assigned.

This bill amends the following sections of the Florida Statutes: 1009.21 and 1009.40.

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.

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. 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.¹ 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.²

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.

III. Effect of Proposed Changes:

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

¹ See Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

² See League of United Latin American Citizens v. Florida Board of Education, Case No. 90-1913, (S.D. Fla. 1990).

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.

However, a student qualifying for resident tuition under this section would not be eligible for state-sponsored financial assistance.

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.

The bill also clarifies that dependents qualifying for resident tuition on the basis of active military service by their parents only qualify for the resident rate at a community college or state university located within 50 miles of the military base at which their parent is assigned.

The bill shall take effect upon becoming a law.

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:

Regulation of aliens; Supremacy Clause

The U.S. Constitution provides the Federal Government with preeminent power over the regulation of aliens within the U.S.³ Any state action that imposes discriminatory burdens

³ See Takahashi v. Fish & Game Commission, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948).

upon the entrance or residence of aliens lawfully admitted into the U.S. conflicts with the Supremacy Clause of the U.S. Constitution.⁴ The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In *Toll v. Moreno*,⁵ 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.

Board of Governors; Art. IX, Section 7 of the State Constitution

Article IX, Section 7 of the State Constitution provides that the Board of Governors shall operate, regulate, control, and be fully responsible for the management of the whole university system. The courts have not interpreted this provision with respect to the extent of the powers and duties of the Board of Governors. A lawsuit was filed on December 21, 2004, against the Board of Governors and the State Board of Education seeking a declaratory action, among other things, regarding the Board of Governor's powers and duties with respect to the state university system. The results of this lawsuit may have an impact on the bill with respect to the state universities.

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. Nonresident undergraduate students pay 100 percent of the cost of their education. In general, students reclassified as in-state residents would pay approximately 25 percent of the cost of their education and the state would pay the remaining 75 percent to the educational institution. However, based on the university tuition established in the 2004-2005 General Appropriations Act, an out-of-state undergraduate student pays tuition on average of

⁴ *Id.*

⁵ *Toll v. Moreno*, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982).

\$462.31 per credit hour. A state resident undergraduate student pays tuition of \$68.16 per credit hour. Additionally, the affected students may incur certain costs attendant to meeting the bill's affidavit requirements.

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. In 2004, the Florida Immigrant Advocacy Center estimated that the number of alien 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 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 percent 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
