# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Colleges & Universities Committee | 9 Y, 1 N, w/CS | Hatfield | Tilton |
| 2) Education Appropriations Committee | | Hamon | Hamon |
| 3) Education Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


This 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 provides that in order to be classified a "dependent child" a student must receive at least 51 percent of the true cost-of-living expenses from his or her parent.

The bill requires institutions of higher education to determine whether or not an admitted applicant is a dependent child and whether or not an admitted Florida resident applicant continues to meet the residency requirements at the time of initial enrollment.

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 residency status to:

- full-time employees of specified international multilateral organizations based in Florida and their spouses and dependent children; and
- any student, other than a nonimmigrant alien within the meaning of federal law, who meets the following criteria:
  - Has resided in Florida with a parent for at least 3 consecutive years immediately preceding the date the student received a high school diploma or its equivalent.
  - Has attended a Florida high school for at least 3 consecutive years during such time.
  - Has filed an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status or will file such application as soon as he or she is eligible to do so.

The overall fiscal impact of the bill is indeterminate at this time. See FISCAL COMMENTS for further details.

The bill provides an effective date of July 1, 2006.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill requires postsecondary institutions to affirmatively determine whether a student is a dependent child and whether or not a student granted Florida residency meets the requirements of s. 1009.21, F.S., at the time of initial enrollment. Additional responsibilities and administrative costs may be incurred by postsecondary institutions in order to accomplish these tasks.

Empower Families—The bill expands the categories of students who may be classified as residents for tuition purposes. Those who previously could not afford a postsecondary education may now be eligible for in-state tuition, providing a more affordable education. 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.

B. EFFECT OF PROPOSED CHANGES:

**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.[2]

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 as residents 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.[3]

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.[4] 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.[5] Due to the increased cost of

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[1] Section 1009.21, F.S.
[2] Section 1009.40, F.S.
[3] Section 1009.21(10), F.S.
[4] Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.
[5] See Plyler v. Doe, 457 U.S 202, 102 S. Ct. 2382, 72 L.Ed.2d 786 (1982).

attending a public postsecondary institution as a nonresident, these students may not be able to pursue their education at the postsecondary level.
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.[6]

*OPPAGA Recommendations Regarding Residency for Tuition Determinations*

OPPAGA Report No. 03-29[7] 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 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 provides that to be classified a "dependent child" one must receive at least 51 percent of the true cost-of-living expenses from his or her parent.

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[6] See http://uscis.gov/graphics/services/tempbenefits/index.htm, U.S. Citizenship and Immigration Services, Temporary Visitors.
[7] Report 03-29, OPPAGA Special Review, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*

The bill requires institutions of higher education to determine whether or not an admitted applicant is a dependent child and whether or not an admitted Florida resident applicant continues to meet the residency requirements at the time of initial enrollment.

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

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. In March 2005, 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. At that time, it was estimated that there were currently less then ten people who might qualify under this provision of the bill.[8]

The bill also extends the categories of persons that are classified as residents for tuition purposes to include a student, other than a nonimmigrant alien within the meaning of Title 8 U.S.C. § 1101(a)(15), who meets the following criteria:

- Has resided in Florida with a parent for at least 3 consecutive years immediately preceding the date the student received a high school diploma or its equivalent.
- Has attended a Florida high school for at least 3 consecutive school years during such time.
- Has filed an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status or will file such application as soon as he or she is eligible to do so.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 1009.21, F.S., revising provisions relating to determination of resident status for tuition purposes; revising definitions; tying the qualification period for determining residency to the student's initial enrollment in a postsecondary education program in Florida; providing conditions for reclassification as a resident for tuition purposes; requiring that evidence be provided relating to legal residency and dependent status; providing duties of institutions of higher learning; updating obsolete terminology; and providing additional categories within which students may be classified as residents for tuition purposes.

**Section 2:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

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 if they fall into one of the two new categories within which students may be classified as residents for tuition purposes. 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.[9]

Expanding the categories of students who may be classified as residents for tuition purposes may increase the number of students who 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, to the extent a student may have attended a state university or community college even if classified as an out-of-state student; an institution could experience a loss in tuition and fee revenues. Expanding the categories of students who may be classified as residents for tuition purposes could also result in the state funding more of the cost to provide instruction to such students.

The fiscal impact of the additional two new residency for tuition purposes categories on funding required or award amount for programs such as Bright Futures, FSAG, and FRAG is indeterminate.

The bill requires postsecondary institutions to affirmatively determine whether a student is a dependent child and whether or not a student granted Florida residency meets the requirements of s. 1009.21, F.S., at the time of initial enrollment. Additional responsibilities and administrative costs may be incurred by postsecondary institutions in order to accomplish these tasks.

## 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.[10] 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.

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

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

Constitution.[11] The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In Toll v. Moreno,[12] 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 specific criteria outlined in the bill. 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.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a “dependent child” receive at least 51 percent of the true cost-of-living expenses from his or her parent, as further defined in rules of the State Board of Education. “True cost-of-living expenses” may be problematic terminology as there is no set definition for what expenses this entails.

*History of Similar Legislation in other States and the Federal Government*
Nine 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, Kansas, and New Mexico. 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 United States District Court of Kansas[13] charging that the new law violated the U.S. Constitution’s Equal Protection clause of the 14th Amendment[14] and 1996 immigration laws.[15] The lawsuit, the first of its kind, argued that the Kansas statute violated the federal law that prohibits states from giving public benefits to immigrants who are in the country illegally and was discriminatory to out-of-state students who pay a higher tuition rate. The plaintiffs were all students from out of state attending Kansas universities claiming that they had been denied the same in-state tuition benefits afforded to illegal immigrants. On July 5, 2005, the Court held that the students lacked standing under both the federal statute prohibiting states from offering in-state tuition to illegal aliens and the Equal Protection Clause.[16]

A lawsuit was filed in California in December 2005, challenging 2001 state legislation that provides students, who meet certain criteria, with an in-state tuition classification. A group of out-of-state students and parents filed the class-action lawsuit against California’s public university and community college systems.

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

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[11] *Id.*
[12] Toll v. Moreno, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982).
[13] *Day v. Sebelius*, 376 F. Supp.2d 1022 (D. Kan. 2005).
[14] U.S. Const. amend. XIV, § 1.
[15] 8 U.S.C. 1621 and 8 U.S.C. 1623
[16] *Day v. Sebelius,* 376 F. Supp.2d 1022, 1040 (D. Kan. 2005).

introduced in 2003 and again introduced in 2004; however, Congress recessed without taking action on the Act. In November 2005, the DREAM Act was introduced as S. 2075, giving new life to the legislation.

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.[17] 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.[18] The DREAM Act would permit qualified students to become temporary legal residents, putting them on a path to permanent legal status.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 7, 2006, the Colleges and Universities Committee adopted a strike-all amendment to HB 119. The bill was reported favorably with a Committee Substitute (CS). The CS differs from the original bill in the following ways:

- Removes the word “exemption” from the catch-line to correct a drafting error.
- Includes an affidavit requirement for undocumented students that meet the eligibility requirements for residency for tuition purposes.
- Removes the financial aid section from the bill.

[17] National Immigration Law Center, *Immigrants' Rights Update: Immigrant Student Adjustment and Access to Higher Education*, Vol. 17, No. 5, September 4, 2003.
[18] Matthew Hansen, *Tuition relief for illegal immigrants?*, Lincoln Journal Star, January 19, 2005.