

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: Domestic Security Committee

BILL: CS/SB 366

SPONSOR: Education Committee and Senator Wilson

SUBJECT: Postsecondary Tuition/Residents

DATE: April 7, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<u>Unfavorable</u>
3.	_____	_____	<u>EA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides an exemption to paying nonresident tuition for a student who meets the following criteria:

- Has resided in this state with a parent for at least three consecutive years immediately prior to the date of receiving a high school diploma or its equivalent;
- Has attended a high school in-state for at least three consecutive school years during that time;
- Has provided an affidavit to a community college or state university indicating that the student will file an application to legalize his or her immigration status or will file an application as soon as he or she is eligible; and
- Is not a nonimmigrant alien, as defined in federal law.

This bill also provides new categories of those who are eligible to be classified as residents for tuition purposes, which are:

- Nonresidents for tuition purposes who are reclassified if that person, or his or her parents if dependent, provides documentation evidencing permanent residency through full-time permanent employment or a home purchase and residency for the previous 12 months; and
- Full-time employees of international multilateral organizations recognized by the Department of State and based in-state, and their families.

Illegal immigrants who are reclassified for tuition purposes and students who will now be eligible for the exemption from paying nonresident tuition under this bill are excluded from receiving state financial aid.

The bill substantially implements the Office of Program Policy Analysis and Government Accountability's (OPPAGA) report, which recommended revising the requirements for determining residency for tuition purposes.¹ Specifically, the bill redefines a "dependent child" to mean a student who is claimed by his or her parent as a dependent under the federal income tax code and who receives at least 51 percent of the true cost-of-living expenses from his or her parent. Additionally, a student must now establish and maintain legal residence in the state for at least 12 consecutive months immediately prior to his or her enrollment in an institution of higher learning.

This bill substantially amends Section 1009.21 of the Florida Statutes.

II. Present Situation:

Section 1009.21, F.S.

Section 1009.21, F.S., addresses the determination of residency status for tuition purposes at public community colleges and state universities. The following definitions are provided in statute:

- Dependent child: any person, whether living with a parent or not, who is eligible to be claimed by a parent as a dependent pursuant to the federal income tax code.²
- Resident for tuition purposes: a person who qualifies for the in-state tuition rate.³
- Parent: the natural or adoptive parent or legal guardian of a dependent child.⁴
- Legal resident or resident: a person who has maintained his or her residence for the preceding year, has bought and occupied a home as his or her residence, or has established a domicile.⁵

To meet the residency requirement, a person, or a dependent child's parent or parents must have established and maintained legal residence in-state for at least 12 months immediately preceding the student's qualification.⁶ Additionally, the applicant is required to make a statement regarding length of residency in-state, and establish a bona fide domicile, for him or herself, or for a parent if the applicant is a dependent child.⁷ The purpose of the statement is to demonstrate that the in-state residency is not intended to be temporary and for the sole purpose of qualifying for in-state

¹ *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*, Office of Program Policy Analysis and Government Accountability, Report No. 03-29, April 2003.

² s. 1009.21(1)(a), F.S.

³ s. 1009.21(1)(e), F.S.

⁴ s. 1009.21(1)(d), F.S.

⁵ s. 1009.21(1)(c); s. 222.17(1), F.S., provides a method for manifesting and evidencing domicile by filing with the circuit court clerk of the county of residence a sworn statement showing an intent to maintain a permanent home in that county.

⁶ s. 1009.21(2)(a)1., F.S.

⁷ s. 1009.21(2)(a)2., F.S.

tuition. The law also recognizes residency where a dependent child lives with an adult relative other than a parent in certain circumstances.⁸

Additionally, specific classes of military persons and their spouses and dependent children shall be classified as residents for tuition purposes. These include:

- Active duty members of the Armed Services or the Florida National Guard residing or stationed in-state who qualify for the tuition assistance program.⁹
- Active duty members of the Armed Services attending a public community college or state university within 50 miles of the military establishment where they are stationed, if the military establishment is within a county contiguous to Florida.
- Active duty members of the Canadian military residing or stationed in-state under the North American Air Defense agreement attending a community college or state university within 50 miles of the military establishment where stationed.
- Active duty members of a foreign nation's military who are serving as liaison officers residing or stationed in this state, attending a community college or state university within 50 miles of the military establishment where stationed.¹⁰

Undocumented Aliens

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 U.S. Undocumented aliens are accordingly classified as nonresidents for tuition purposes. The state may not bar undocumented aliens from attending elementary, middle, or secondary schools.¹¹

Due to the undocumented status of these individuals, the state is unable to reliably estimate their numbers. Moreover, the school districts, pursuant to a consent decree, are precluded from collecting data on undocumented aliens who are attending public schools.¹²

Federal law prohibits any alien who is unlawfully present in the U.S. 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.¹³ Certain other states, such as Texas, California, and Utah, have enacted varying laws authorizing some undocumented aliens to qualify for certain financial aid programs.

⁸ s. 1009.21(2)(b), F.S.

⁹ s. 250.10(7) and (8), F.S., authorize the Adjutant General and the State Board of Education to establish education assistance and tuition exemption programs for members in good standing of the active Florida National Guard, provided that certain conditions are met.

¹⁰ s. 1009.21(10), F.S.

¹¹ See *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), in which the U.S. Supreme Court held unconstitutional on equal protection grounds a Texas statute which withheld school funding for children who were not legally admitted into the U.S. and permitted local school districts to deny their enrollment.

¹² See *League of United Latin American Citizens v. Florida Board of Education*, Case No. 90-1913 (S.D. Fla. 1990).

¹³ 8 U.S.C. s. 1623

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 expiration 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 limitation of the visa, the nonimmigrant is no longer lawfully within the U.S. and is subject to deportation.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Report¹⁴

In response to a legislative request, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed the process used by the state universities and community colleges to determine whether students qualify for in-state tuition rates. It found that between 1998-1999 and 2000-2001, 28 percent of students in the community college system and 25 percent of the students in the state university system were reclassified from nonresident to resident for tuition purposes. Moreover, of those students who were reclassified as residents, 72 percent and 60 percent of the students in the community college system and state university system respectively were reclassified after they had lived in the state for 12 months. Upon review, OPPAGA made the following principal findings:

- Residency criteria and documentation requirements are unclear and inconsistently applied;
- Dependency status criteria and documentation requirements provide insufficient guidance and are inconsistently applied; and
- Postsecondary institutions frequently misclassify nonresidents as residents.

The Office of Program Policy Analysis and Government Accountability recommended the following major changes to the law, rules, and guidelines:

- Amend state 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 their initial enrollment or registration at a state postsecondary institution to be eligible for classification for in-state residency;
- Amend state law to require that a nonresident student may be reclassified as a resident if the individual can provide evidence of having established a permanent domicile in the state for a 12-month period during which the individual was not enrolled in an educational institution. Evidence of domicile should include the purchase of a home, gainful employment in the state, or financial independence supporting 51 percent of the true cost of living expenses;
- Amend state law to require that students under the age of 25 claiming to be independent should be required to provide copies of tax returns showing that they have not been claimed as dependents by their parents or others for income and employment records showing that they are financially self-supporting;
- Amend rules to require postsecondary institutions to establish internal reviews;

¹⁴ *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*, Office of Program Policy Analysis and Government Accountability, Report No. 03-29, April 2003.

- Amend rules to establish minimum documentation standards for residency applications;
- Modify the Postsecondary Residency Guidelines to clarify the minimum documentation requirements;
- Modify the standard residency application form to include questions about filed taxes or earned wages;
- Develop standards to evaluate a student's independent status; and
- Compile results from internal reviews by postsecondary institutions of residency determinations to identify problem areas needing correction as well as best practices.

III. Effect of Proposed Changes:

This bill allows a student who meets the following criteria to pay tuition at the resident rate:

- Has resided in this state with a parent for at least three consecutive years immediately prior to the date of receiving a high school diploma or its equivalent;
- Has attended a high school in-state for at least three consecutive school years during that time;
- Has provided an affidavit to a community college or state university indicating that the student will file an application to legalize his or her immigration status or will file an application as soon as he or she is eligible; and
- Is not a nonimmigrant alien, as defined in federal law.¹⁵

However, these students are not eligible for state financial aid awards.

This bill authorizes a person who is classified as a nonresident for tuition purposes to become reclassified as a resident for tuition purposes if that person, or his or her parents if that person is a dependent child:

- Provides documentation that supports permanent residency, such as documentation of full-time permanent employment for the last 12 months, or a home purchase and residence in-state for the last 12 months; or
- If a dependent child who is a high school student moves to this state with his or her parent, the child graduates from a high school in-state, and the parent qualifies for permanent residency.

An illegal immigrant who qualifies as a resident for tuition purposes under this reclassification is not eligible for state financial aid.

¹⁵ Immigrants are generally considered aliens. Federal law defines nonimmigrant aliens as including certain diplomat officials and employees; aliens who have a residence in a foreign country and who are in the U.S. temporarily, such as to pursue certain studies or participate in approved international cultural exchange programs; aliens in immediate and continuous transit through the U.S., including crewmen; aliens engaged in substantial trade activity with the U.S.; aliens employed in certain industries for the purpose of engaging in that specialty occupation in the U.S., such as members of the foreign press, scientists, athletes, or fashion models; aliens who are engaged to a U.S. citizen and in the process of entering into a valid marriage; a child of a parent who is accorded special immigrant status or who holds this status him or herself; and aliens with specific information on criminal activity.

Full-time employees of international multilateral organizations based in-state that are recognized by the U.S. Department of State, their spouses, and dependent children are classified as residents for tuition purposes under this bill.

Institutes of higher education are required under this bill to affirmatively determine when an admitted applicant is a dependent child and meets residency requirements by the time of the first day of class.

The definition of a dependent child is revised to additionally require that the child receive at least 51 percent of the true cost-of-living expenses from his or her parent, as defined in rule by the State Board of Education.

The term “initial enrollment” is defined as the first day of class at an institution of higher education.

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.¹⁶ 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.¹⁷ The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In Toll v. Moreno, U.S. Supreme Court struck down a Maryland statute on Supremacy Clause grounds when the law categorically prohibited G-4 nonimmigrant aliens from acquiring in-state status for tuition purposes.¹⁸ G-4 nonimmigrant visa holders are not required to have the intent to return to their country of residence. Unlike the Maryland law, this 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. The bill may potentially be challenged, however,

¹⁶ See *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-43, 92 L.Ed. 1478 (1948).

¹⁷ *Id.*

¹⁸ *Toll v. Moreno*, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982).

based on the limitation on the ability of lawfully admitted nonimmigrant aliens to obtain in-state tuition status.

This 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 relief, regarding the Board of Governor's powers and duties with respect to the state university system.¹⁹ The results of this lawsuit may have an impact on the bill regarding 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 2004-05 General Appropriations Act, an out-of-state undergraduate student pays tuition on average of \$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.

Full-time employees of international multilateral organizations based in the state that are recognized by the U.S. Department of State and their spouses and dependent children would pay the reduced in-state tuition rate at the state's community colleges and

¹⁹ See *Floridians for Constitutional Integrity, Inc., v. State Board of Education*, No. 2004-CA-003040 (2nd Cir. Fla. filed Dec. 21, 2004).

universities. The number of individuals eligible to avail themselves of this provision is indeterminate.

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. Therefore, a decrease in revenue generated by tuition is expected to result.

Full-time employees of international multilateral organizations based in the state that are recognized by the U.S. Department of State and their spouses and dependent children would pay the reduced in-state tuition rate at the state's community colleges and universities. The number of individuals eligible to avail themselves of this provision is indeterminate.

The Office of Program Policy Analysis and Government Accountability estimates that the state could save approximately \$28 million annually by revising the residency for tuition purposes criteria, coupled with consistent implementation by the postsecondary institutions, if the students remain enrolled.

VI. Technical Deficiencies:

There is a typographical error on page 5 line 14 of the bill. The correct reference to U. S. Code should read 8 U.S.C. s. 1101 (a) (15).

VII. Related Issues:

The Legislature passed SB 2264 during the 2005 session. On June 23, 2005, the Governor vetoed SB 2264. CS/SB 366, though not identical, contains some similar provisions to SB 2264. In his veto message, the Governor cited the following as a ground for objection:

...the bill requires nonresident students seeking to be reclassified as residents for tuition purposes to document "permanent, full-time employment in this state and domicile in this state for 12 consecutive months while not enrolled full-time at an

institution of higher education.” However, if a student is claimed as a dependent by a parent, then the parent must comply with the “employment” criterion in order for the student to be reclassified as a resident. Consequently, the dependent children of a retiree or a part-time employee would be denied the same benefit as the dependent children of a full-time employee.

Although CS/SB 366 authorizes reclassification pursuant to the same employment criteria as that provided in SB 2264, an additional basis is provided, which is the purchase of a home in-state and residence in that home for the previous 12 months. Therefore, children of retirees or part-time employees are still eligible to qualify for reclassification, provided that the second criterion is met.

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

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.
