

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 795 CS

Student Financial Assistance

**SPONSOR(S):** Flores

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1750

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Colleges &amp; Universities Committee</u>	<u>9 Y, 1 N, w/CS</u>	<u>Hatfield</u>	<u>Tilton</u>
2) <u>Education Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Education Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

HB 795 creates the First Generation Matching Grants Program (program). The program is created to enable each state university and community college to provide donors with a matching grant incentive for contributions that will create grant-based student financial aid for undergraduate students who demonstrate financial need and whose parents have not earned a baccalaureate degree. The bill requires that applicants meet certain eligibility requirements to be eligible to receive a grant.

The bill requires appropriated funds for the program to be allocated by the Office of Student Financial Assistance (OSFA) to match private contributions on a dollar-for-dollar basis. The bill requires that 50 percent of the allocated funds be reserved for state universities and the remaining 50 percent for community colleges. Within this allocation, OSFA must reserve a proportionate allocation for each state university and community college on the basis of full-time equivalent enrollments. Funds that remain unmatched as of December 1 must be reallocated to state universities and community colleges that have remaining unmatched private contributions for the program on the basis of full-time equivalent enrollments.

Each participating state university and community college is required to establish an application process, determine student eligibility for initial and renewal awards in conformance with the eligibility requirements each applicant must fulfill, identify the amount awarded to each recipient, and notify recipients of the amount of their awards. The bill also requires annual reports by each participating institution.

This bill also revises provisions relating to the determination of a student's residency status for tuition purposes by extending residency status to 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 bill does not currently provide an appropriation for the First Generation Program. In order to implement the program, this should be addressed in a subsequent committee or in the General Appropriations Act. The overall fiscal impact of the provisions relating to residency is indeterminate at this time. Please see the FISCAL COMMENTS section for further details.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0795a.CU.doc

**DATE:** 3/7/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill creates the First Generation Matching Grant Program to provide financial aid to undergraduate students with financial need whose parents have not earned college degrees. In creating this program, the bill provides duties of state universities and community colleges participating in the program.

Safeguard individual liberty—The bill provides for grants to be awarded to eligible applicants to cover the annual cost of attendance at a state university or community college. Recipients of this grant have the ability to attend a state university or community college where previously this may not have been possible.

Empower families—The bill provides for grants to be awarded to eligible applicants to cover the annual cost of attendance at a state university or community college. This may benefit families who do not have the financial means to send a family member to college if a family member is awarded a grant under this program. 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.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

On January 11, 2006 Governor Bush announced his Access and Diversity Initiative (Initiative). According to the Governor's January 11<sup>th</sup> Press Release, the purpose of the Initiative is to provide incentives to traditionally underrepresented students seeking an education in Florida's state university system. The Initiative includes recommendations by the Governor for increased funding for need based financial aid, the creation of a new scholarship program titled the First Generation Matching Grants, and the creation of an Access and Diversity Commission (Commission).

In addition to the announcement of the Initiative, the Governor also signed Executive Order 06-05 creating the 17-member Commission. The Executive Order provides for the Commission to meet in conjunction with the Student Affairs Committee of the Florida Board of Governors to evaluate issues surrounding disadvantaged and traditionally underrepresented students and advocate and make recommendations concerning the following:

- Specific accountability and performance measures regarding traditionally underrepresented and economically disadvantaged students for the Board of Governors and state universities to include in their strategic plans or performance evaluations.
- Need-based financial aid: Enhanced public and private need-based aid and financial assistance and, specifically, increased funding for Florida Student Assistance Grants (FSAG).
  - According to the Governor's Press Release, the Governor plans to recommend a \$35.8 million increase in need-based funding through FSAG and will also recommend an additional \$1.1 million in funding for need-based financial aid at Florida's four Historically Black Colleges and Universities.
- College Board Partnership: Additional funding for the College Board Partnership to expand services that enhance student college readiness for traditionally underrepresented students.

Services include AP, PSAT and SAT teacher training; college admission test preparation; SAT preparation; tutoring programs to help students transition into college and family information on colleges.

- According to the Governor's Press Release, the Governor plans to recommend an increase in funding for the state's partnership with the College Board from \$7.1 million to \$10.1 million.
- Stanley Tate Project STARS SCHOLARSHIP Program: Additional funding for the STARS Program, which provides prepaid scholarships for at-risk, low-income students who remain drug and crime-free, stay in school and work with a mentor.
  - According to the Governor's Press Release, the Governor plans to recommend an increase in funding for this program by \$4 million, for a total of \$10 million. These state funds combined with private donations will provide an additional 2,090 scholarships, which pay for tuition at state universities and community colleges.
- College Reach-Out Program (CROP): Increased funding for CROP to provide additional after-school and weekend counseling and tutorial services, to increase participation in AP classes, to provide transportation to classes for dually enrolled students, and to purchase computers to provide increased access to the Florida Virtual School.
  - According to the Governor's Press Release, the Governor will recommend a \$1 million increase in funding for the CROP program. The funding will expand counseling and tutorial services, serving an additional 1,654 individuals, for a total of 10,200 students. It will also help expand after-school and Saturday programs, provide transportation to classes for dually enrolled students and assist in the purchase of computers to provide access to the Florida Virtual School across the 38 CROP postsecondary institutions.
- First Generation Matching Grants: The establishment of this program will provide scholarships to full-time students who are Florida residents, are the first in their families to attend college, and have demonstrated a financial need.
  - According to the Governor's Press Release, this \$6.5 million program will provide a dollar-for-dollar match for private donations to state universities
- University Presidents' Focus on Achievement Mentoring Partnership: Expanding mentoring to target low income middle school students and matching them with local campus compact mentors trained by Volunteer Florida Foundation. The purpose is to encourage economically disadvantaged and traditionally underrepresented students to pursue postsecondary goals and prepare these students for state university enrollment.

Executive Order 06-05 requires the Commission to present a Final Report on its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Board of Governors by June 30, 2006. At such time the Commission will also disband.

### ***Residency***

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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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.

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.<sup>4</sup>

### **Effect of Proposed Changes**

The bill creates the First Generation Matching Grant Program (program), one of the seven initiatives addressed by the Governor's Executive Order. The program is created to enable each state university and community college to provide donors with a matching grant incentive for contributions that will create grant-based student financial aid for undergraduate students who demonstrate financial need and whose parents have not earned a baccalaureate degree.

The bill requires appropriated funds for the program to be allocated by the Office of Student Financial Assistance (OSFA) to match private contributions on a dollar-for-dollar basis. Matching funds must be generated through contributions pledged for the purpose of this program and not for any other state matching program. Pledged contributions are not eligible for matching prior to the actual collection of the total funds. The bill requires that 50 percent of the allocated funds be reserved for state universities and the remaining 50 percent for community colleges. Within this allocation, OSFA must reserve a proportionate allocation for each state university and community college on the basis of full-time equivalent enrollments. Funds that remain unmatched as of December 1 must be reallocated to state universities and community colleges that have remaining unmatched private contributions for the program on the basis of full-time equivalent enrollments.

The bill provides that payment of the state matching grant is to be transmitted to the president of each participating institution or his or her representative in advance of the student registration period.

Each participating state university and community college must establish an application process, determine student eligibility for initial and renewal awards in conformance with the eligibility requirements each applicant must meet, identify the amount awarded to each recipient, and notify recipients of the amount of their awards.

In order to be eligible to receive a grant from this program, the bill requires an applicant to:

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<sup>1</sup> Section 1009.21(10), F.S.

<sup>2</sup> Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.

<sup>3</sup> See *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L.Ed.2d 786 (1982).

<sup>4</sup> See <http://uscis.gov/graphics/services/tempbenefits/index.htm>, U.S. Citizenship and Immigration Services, Temporary Visitors.

- Be a resident for tuition purposes pursuant to s. 1009.21, F.S.
- Be a first-generation college student. For the purposes of this program, a student is considered “first-generation” if neither of the student’s parents, as defined in s. 1009.21(1), F.S., earned a college degree at the baccalaureate level or higher.
- Be accepted at a state university or community college.
- Be enrolled for a minimum of six credit hours per term as a degree-seeking undergraduate student.
- Have demonstrated financial need by completing the Free Application for Federal Student Aid.

The bill requires that the award amount be based on the student’s need assessment after any scholarship or grant aid, including, but not limited to, a Pell Grant or a Bright Futures award, has been applied. No award may exceed the institution’s estimated annual cost of attendance for comparable undergraduate students attending the institution.

Each participating institution must report the eligible students to whom grant moneys are dispersed each academic term to OSFA by the date they establish. Institutions are also required to certify the amount of funds disbursed to each student and remit undisbursed funds to OSFA by June 1 of each year.

The bill also requires an annual report by each participating institution to be submitted to the Executive Office of the Governor, the Speaker of the House of Representatives, and the President of the Senate. Each community college must also report to the State Board of Education and each state university must also report to the Board of Governors. The annual report must include eligibility requirements for recipients, the aggregate demographics of recipients, retention and graduation rates of recipients, and a delineation of funds awarded to recipients.

The bill requires that the program be implemented as specifically funded.

***Residency***

The bill also revises provisions relating to the determination of a student’s residency status for tuition purposes by extending residency status to 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 effective date of the bill is July 1, 2006.

**C. SECTION DIRECTORY:**

**Section 1:** Creates s. 1009.701, F.S., which creates the First Generation Matching Grant Program to provide financial aid to undergraduate students with financial need whose parents have not earned a baccalaureate degree; providing for appropriation, allocation, and distribution of funds; providing student eligibility requirements; providing the basis for the amount of awards; and providing duties of institutions participating in the program

**Section 2:** Amends s. 1009.21, F.S., providing an additional category within which students may be classified as residents for tuition purposes.

**Section 3:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Please see FISCAL COMMENTS.

#### 2. Expenditures:

Please see FISCAL COMMENTS.

### 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:

The bill requires matching funds; therefore, there will be an impact on the private sector as universities and community colleges will need donations to be made for this program in order to receive any funding from the state.

The bill provides for grants to be awarded to eligible applicants to cover the annual cost of attendance at a state university or community college. Recipients of this grant have the ability to attend a state university or community college where previously this may not have been possible.

In addition, students who, in the past, may have been unable to afford a postsecondary education will have expanded educational opportunities if they fall into the new category within which students may be classified as residents for tuition purposes.

### D. FISCAL COMMENTS:

#### *First Generation Matching Grant Program*

The bill does not currently provide an appropriation for the program. In order to implement the program, this should be addressed in a subsequent committee or in the General Appropriations Act.

According to the Governor's January 11, 2006 Press Release, Governor Bush and Lt. Governor Jennings are recommending a total of \$52.4 million in the 2006-07 budget for the Governor's Access and Diversity Initiative. Line item 79 of the Governor's Budget Recommendations for fiscal year 2006-07 provides \$6.5 million from the General Revenue Fund for the First Generation Matching Program created in this bill. Note that the Governor's \$6.5 million recommendation only included state universities.

#### *Residency*

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 residency for tuition purposes category on funding required or award amount for programs such as Bright Futures, FSAG, and FRAG is indeterminate.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city 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.<sup>5</sup> 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.<sup>6</sup> The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In *Toll v. Moreno*,<sup>7</sup> 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:

##### *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<sup>8</sup> charging that the new law violated the U.S. Constitution's Equal Protection clause of the 14<sup>th</sup> Amendment<sup>9</sup> and 1996 immigration laws.<sup>10</sup> The lawsuit, the first of its kind, argued that the Kansas statute violated the federal law that prohibits states from giving public benefits to

<sup>5</sup> See *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948).

<sup>6</sup> *Id.*

<sup>7</sup> *Toll v. Moreno*, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982).

<sup>8</sup> *Day v. Sebelius*, 376 F. Supp.2d 1022 (D. Kan. 2005).

<sup>9</sup> U.S. Const. amend. XIV, § 1.

<sup>10</sup> 8 U.S.C. 1621 and 8 U.S.C. 1623

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.<sup>11</sup>

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 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.<sup>12</sup> 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.<sup>13</sup> 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 amendments to HB 795. The bill was reported favorably with a Committee Substitute (CS). The CS differs from the original bill in the following ways:

- Extends the First Generation Matching Grant Program to include community colleges.
- Provides for allocation of funds by the Office of Student Financial Aid instead of the Board of Governors due to the addition of community colleges.
- Requires a 50-50 split in allocated funds between the 28 community colleges and 11 state universities. Within each 50-percent allocation a proportionate allocation is reserved for each state university and community college on the basis of full-time equivalent enrollments.
- Provides for any unmatched funds as of December 1 to be reallocated to state universities and community colleges that have remaining unmatched funds.
- Removes duplicative Pell Grant eligibility requirement.
- Clarifies that any award from the program will be issued after other aid has been applied.
- Requires participating institutions to fulfill certain reporting requirements.

The CS also revises provisions relating to the determination of a student's residency status for tuition purposes by extending residency status to 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.

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<sup>11</sup> *Day v. Sebelius*, 376 F. Supp.2d 1022, 1040 (D. Kan. 2005).

<sup>12</sup> National Immigration Law Center, *Immigrants' Rights Update: Immigrant Student Adjustment and Access to Higher Education*, Vol. 17, No. 5, September 4, 2003.

<sup>13</sup> Matthew Hansen, *Tuition relief for illegal immigrants?*, Lincoln Journal Star, January 19, 2005.



- 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.