

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – HB 475 creates reporting requirements for public universities and community colleges.

Empowers Families – HB 475 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

Need-based Aid

To help students afford college, the state and federal government offer a variety of financial aid programs including both merit-based scholarships and need-based grants and loans. A student's eligibility for need-based programs is determined by computing the cost to attend an individual college or university and then subtracting the amount that the student's family is expected to contribute to the student's education. The cost of attendance includes tuition and fees, books and materials, room and board, transportation, and the personal expenses.

The cost of attending college varies by institution and a student's dependency status.¹ For a typical Florida community college student, the average cost of attending community college in 2007-08 was \$13,705.54. For universities, the average cost was \$15,727.36 for students living on campus and \$16,559 for those living off campus.²

To be considered for most need-based financial aid, a student must complete the Free Application for Federal Student Aid (FAFSA) form, and submit it to the US Department of Education. The federal government uses a formula to calculate the student's expected family contribution and then determines the student's unmet financial need by subtracting the expected family contribution from the total cost of attendance at their desired institutions.³

The Florida Student Assistance Grant (FSAG) Program consists of four state-funded financial assistance programs that are available to undergraduate students who demonstrate financial need. The FSAG is the State's primary need-based aid program. The FSAG Program is comprised of the following four programs: The Florida Public Student Assistance Grant Program, the Florida Private Student Assistance Grant Program, the Florida Postsecondary Student Assistance Grant Program and the Florida Public Postsecondary Career Education Student Assistance Grant. Each program is

¹ OPPAGA, *College Attendance Costs Vary and Result From Higher Tuition, Room, and Board*, Report No. 03-33, (June 2003)

² Office of Student Financial Assistance.

³ Id.

funded separately. According to the Office of Student Financial Assistance 2006 – 2007 End of Year Report, a total of 8,926 eligible students went unfunded through the Florida Public Student Assistance Grant. The State University System reported 4,362 eligible students who didn't receive funding and the community colleges reported 4,564 eligible students who didn't receive funding.⁴

F-1 and M-1 Visa

The Federal Immigration and Nationality Act (Act) provides two nonimmigrant visa categories for persons wishing to pursue full-time academic or vocational studies in the United States.⁵ The F-visa is reserved for nonimmigrants wishing to pursue academic studies and/or language training programs. The M-visa is reserved for nonimmigrants 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 U.S. Citizenship and Immigration Services (USCIS).
- 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/she has no intention of giving up.
- The student must have sufficient funds available for self-support during the entire proposed course of study.
 - Financial evidence must be provided that shows the student or their parents who are sponsoring the student has sufficient funds to cover tuition and living expenses during the period of their intended study.⁶

Effect of Proposed Changes

Effective for the 2009-2010 academic year and each year thereafter, state universities or community colleges are prohibited 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.

By December 31, 2008, each state university and community college must report to the President of the Senate and Speaker of the House of Representative 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:

⁴ Office of Student Financial Assistance, https://www.floridastudentfinancialaidsg.org/pdf/EOY_Reports.asp?year=2006

⁵ According to 8U.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.

⁶ Information received from a February 5, 2008, e-mail response from an employee of the Office of Congressional Relations, a division of U.S. Immigration and Customs Enforcement (ICE), a branch of the U.S. Department of Homeland Security (DHS).

- Financial assistance during the 2006-07 academic school year to students holding F-1 or M-1 visas and
- Need-based financial assistance during the 2006-2007 academic school year to students classified as residents for tuition purposes.

Effective for the 2009-2010 academic year and each year thereafter, the state funds appropriated directly or indirectly to the institution or tuition or fee revenues generated by Florida residents must be redirected to provide additional need-based financial assistance to eligible Florida residents.

HB 475 defines “eligible Florida resident” to mean a student classified at the time of initial enrollment at a state university or community college as a resident for tuition purposes. This definition prohibits students who become reclassified as a resident for tuition purposes from receiving the redirected aid.

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 state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents. After the unmet need for eligible Florida residents is fully satisfied without reliance on loans, any funds remaining must be used to provide merit-based financial assistance to eligible Florida residents.

C. SECTION DIRECTORY:

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; defines the term “eligible Florida resident;” and provides for redirection of funds to provide additional need-based financial assistance to eligible Florida residents.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The State University System reports that for the 2006-2007 academic year an estimated \$8.2 million from state funds and tuition and fee revenues would have been redirected to Florida residents enrolled in the State University System. The State University System during the 2006-2007 academic year had an estimated 1709 students with F-1 and M-1 visas.⁷

The Department of Education reports that for the 2006-2007 academic year an estimated \$1.2 million from state funds and tuition and fee revenues would have been redirected to Florida residents enrolled in the community colleges. The community colleges reported that 351 students with F-1 visas were enrolled during the 2006-07 academic year. No students with M-1 visas enrolled in community colleges during the 2006-07 academic year.⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Federal Constitution: The federal constitution grants Congress plenary power to regulate immigration.⁹ Congress may make classifications based on citizenship as long as they are not arbitrary and unreasonable.¹⁰ F-1 or M-1 foreign students are required by federal law to maintain residency status in

⁷ Information on the state university system and community college system provided by the Florida Board of Governors on January 14, 2008 by e-mail

⁸ Id.

⁹ U.S. Const. art I, § 8.

¹⁰ *Mathews v. Diaz*, 426 U.S. 67, 82-83 (1976).

their native country with no intention of abandoning it. Such a person must be a student and is only authorized to remain in the country until completion of a course of study.¹¹

The Equal Protection clause of the Federal Constitution protects individuals from statutory classifications that burden constitutionally protected fundamental rights.¹² The U.S. Supreme Court has subjected statutory classifications that burden fundamental rights to strict scrutiny review.¹³ To be constitutional, the classification must be necessary to advance a compelling state interest using the least restrictive means available.¹⁴ Statutory classifications that do not burden a fundamental right are subject to rational basis review -- a lesser standard. Under rational basis review, the classification must be rationally related to a legitimate state interest. The court has held that education is not a fundamental right.¹⁵ Thus, a classification in the area of education that rationally relates to a legitimate state interest will stand.¹⁶

State statutes that classify persons based on alienage may also implicate equal protection.¹⁷ The court has applied strict scrutiny to invalidate state statutes that create alienage classifications. In each case, the statute in question drew a distinction between the rights of citizens and those of *resident aliens*.¹⁸ The court applies this standard to resident aliens based on their close connection to the country and near citizen-like status.¹⁹

The court has either applied rational basis review or has declined to apply equal protection analysis in cases involving nonresident aliens.^{20 21} Thus, it appears that nonresident aliens are not a suspect class for equal protection purposes.²² Other federal courts have upheld statutory classifications burdening nonresident aliens.²³

Florida Constitution: Florida courts, in determining whether an alienage classification is valid, appear to place heavy emphasis on whether the alien's status is permanent or temporary. The Florida Supreme Court has held that a temporary nonresident alien who is in the country indefinitely due to political persecution may not claim residency status for homestead exemption purposes.²⁴ The court held that, while holders of permanent alien status might lawfully claim residency for such purposes, temporary

¹¹ 8 U.S.C.A. 1101(a)(15)(F)(i) and (M)(i).

¹² U.S. Const. amend. XIV, § 1.

¹³ See *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978)(Right to marry) and *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996)(Parental rights).

¹⁴ *Bernal v. Fainter*, 467 U.S. 216 (1984).

¹⁵ *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 37-38 (1973).

¹⁶ *San Antonio Independent School Dist.*, 411 U.S. at 54-55.

¹⁷ *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

¹⁸ *Graham v. Richardson*, 403 U.S. 365, 372 (1971)(Arizona law requiring five year durational residency requirement for welfare benefits); *Application of Griffiths*, 413 U.S. 717, 721-722 (1973)(Connecticut rule restricting state bar admission to citizens); *Examining Board v. Flores de Otero*, 426, U.S. 572, 601-602 (1976)(Puerto Rico law denying engineering license to aliens); *Nyquist v. Maucetlet*, 432, U.S. 1 (1977)(New York law providing eligibility for state student financial aid program to citizens and resident aliens who had either applied for or filed intent to apply for citizenship).

¹⁹ *Application of Griffiths*, 413 U.S. 717, 722 (1973).

²⁰ *Plyler v. Doe*, 457 U.S. 202, 224-230 (1982)(Invalidating a Texas law denying undocumented alien children free access to public schools. Holding that such persons are not a suspect class because their presence in the country is illegal. Holding that education is not a fundamental right that triggers strict scrutiny review).

²¹ *Toll v. Moreno*, 458 U.S. 1, 9-14 (1982)(Maryland law prohibiting G-4 nonresident aliens from claiming residence for in-state tuition purposes was invalid because it conflicted with federal immigration law. Federal requirements for G-4 aliens do not preclude such persons from declaring U.S. residency. The court specifically cites that F-1 visa status would not authorize the holder to establish residency in the U.S. for tuition purposes).

²² See *Plyler*, 457 U.S. at 223 and *Toll*, 458 U.S. at 12-14 (1982).

²³ *LeClerc v. Webb*, 419 F.3d 405 (5th Cir. 2005)(Louisiana rule prohibiting nonresident aliens from sitting for the Louisiana bar examination upheld); *United Latin American Citizens v. Bredesen*, 500 F.3d 523 (6th Cir. 2007)(Tennessee statute limiting the issuance of driver's licenses to citizens and resident aliens while requiring nonresident aliens to obtain a separate driver's credential upheld. The court applied rational basis review, reasoning that the statute in question did not classify "citizens" versus "aliens." Instead, the classification was based on the legality of the alien's presence or the length of time the alien was authorized to remain in the country and, thus, was permissible).

²⁴ *Juarrero v. McNayr*, 157 So.2d 79, 80-81 (Fla. 1963).

aliens cannot.²⁵ The court also held that such persons did not constitute a suspect class under the state equal protection clause because all similarly situated individuals were treated equally.²⁶

If the bill is challenged on equal protection grounds and the court subjects it to strict scrutiny review, it could be argued that the bill serves a compelling state interest in reserving limited state resources to expand access to postsecondary education and reduce student loan debt for Florida residents. Expanding access and increasing financial assistance may benefit the state economically if more Florida residents earn a postsecondary degree, increase their earning potential, and remain in Florida to contribute to its economy. The bill 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 monies.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

This legislation allows children of Florida taxpayers who qualify for need based aid to move to the front of the "tuition aid" line in order to attend one of Florida's public institutions of higher learning.

Most importantly, this legislation DOES NOT deny foreign students the opportunity to secure state funding. It allows residents of the State of Florida first preference in acquiring these limited funds on a need based aid basis.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

²⁵ *Jaurrero*, at 80-81.

²⁶ *Id.* See also *Lisboa v. Dade County Property Appraiser*, 705 So.2d 704 (Fla. 3rd DCA 1998)(Holding that certain asylum applicants could claim permanent residency in Florida for homestead exemption purposes. The 3rd DCA declined to follow *Juarrero*, because the alien status considered there was changed to allow such persons to opt for permanent status. The court held that such denial did not violate equal protection. However, it decided the case in favor of plaintiff after determining his status to be permanent. The court certified the question to the Florida Supreme Court, which subsequently declined to hear the case. Thus, it appears that the general holding in *Jaurrero* still stands. That is, an alien must have a permanent visa status to establish permanent residency in Florida. See *Lisboa v. Dade County Property Appraiser*, 737 So.2d 1078 (Fla. 1999)).