

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

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BILL: CS/SB 1400

INTRODUCER: Education Committee and Senator Latvala and others

SUBJECT: Postsecondary Student Tuition

DATE: April 8, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	<b>Fav/CS</b>
2.	Brown	Cibula	JU	<b>Favorable</b>
3.	Frye	Elwell	AED	<b>Pre-meeting</b>
4.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1400 requires an undocumented immigrant be eligible for the waiver of out-of-state fees at a public postsecondary education institution if he or she spends three consecutive years in this state before graduating from high school in this state and requires public postsecondary education institutions to report the number and value of all fee waivers granted annually. However, the bill provides that these undocumented immigrants are not eligible for state financial aid. These waivers could save undocumented immigrant students approximately \$14,876 for undergraduate tuition at state universities; \$8,407 for lower-level, and \$11,815 for upper-level credit programs at Florida College System institutions; and \$7,267 for district workforce education programs per academic year.

The bill clarifies that U.S. citizens who are dependents of undocumented immigrants may not be denied in-state tuition solely based on the undocumented status of their parents.

The bill also grants tuition waivers to combat-decorated veterans who attend career centers saving them approximately \$2,443 per academic year, eliminates the automatic annual tuition increases at public postsecondary institutions, and reduces the costs of prepaid contracts from the Florida Prepaid Program by reducing the amounts the program will pay to public postsecondary institutions.

The bill codifies the federal district court decision of *Ruiz v. Robinson*<sup>1</sup>, which found that the regulations of the Board of Governors of the State University System violated the Equal Protection Clause of the U.S. Constitution. The regulations at issue prohibited students who otherwise qualified for in-state tuition from receiving in-state tuition because they were dependents of parents who had an undocumented immigration status. Accordingly, this bill conforms the statutes to the *Ruiz* decision and the revised regulations of the BOG which provide that the undocumented status of a student's parent cannot be used to determine a student's residency for tuition purposes.

The bill also:

- Updates statutorily set tuition and fees for postsecondary workforce education programs, the Florida College System (FCS) and the State University System.
- Eliminates the automatic increase in tuition and fees, when the rates are not otherwise provided in the General Appropriations Act (GAA), based on the rate of inflation for workforce education postsecondary programs and the FCS.
- Eliminates the automatic increase of resident undergraduate tuition for state universities, when the tuition rate is not otherwise provided in the GAA, based on the rate of inflation and prohibits state university boards of trustees from establishing and increasing the tuition differential fee for undergraduate courses.
- Clarifies the cap on increases to the aggregate sum of activity and service, health, and athletic fees that state universities may charge.
- Specifies that for an advance payment contract purchased before July 1, 2024, the amount assessed and paid by the Florida Prepaid College Board (Prepaid Board) to the state universities will follow the methodology previously utilized by the Prepaid Board for contracts purchased prior to July 1, 2009.
- Expands the mandatory tuition waiver benefit for recipients of a Purple Heart and other combat decorations who are enrolled at a state university or a FCS institution to also apply at career center operated by a school district or charter technical career center.

The bill has an indeterminate fiscal impact. See Section V.

The bill provides an effective date of July 1, 2014.

## II. Present Situation:

### Tuition and Fees

The term "tuition" is defined as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in this state."<sup>2</sup> A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.<sup>3</sup>

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<sup>1</sup> *Ruiz v. Robinson*, 892 F.Supp.2d 1321 (S.D. Fla. 2012).

<sup>2</sup> Section 1009.01(1), F.S. Additionally, the definition states that "[a] charge for any other purpose shall not be included within this fee." *Id.*

<sup>3</sup> Section 1009.21(1)(g), F.S.

An “out-of-state fee” is the additional fee for instruction provided by a public postsecondary institution charged to a student who does not qualify for the in-state tuition rate.”<sup>4</sup> A “non-resident for tuition purposes” is defined as a “person who does not qualify for the in-state tuition rate,”<sup>5</sup> and pays the out-of-state fee in addition to tuition.

Residents for tuition purposes are charged in-state rates for tuition while non-residents pay out-of-state fees in addition to tuition, unless these costs are exempted or waived.<sup>6</sup> Residents for tuition purposes also have access to need-based, merit-based, and other state financial aid upon meeting specified requirements.<sup>7</sup>

### ***Workforce Education Postsecondary Fees***

A student who enrolls in workforce education postsecondary programs is charged tuition and other fees, unless the student is eligible for an exemption or a waiver.<sup>8</sup> The Legislature establishes the standard tuition and out-of-state fee per contact hour. For programs leading to a career certificate or an applied technology diploma, standard tuition is \$2.22 per contact hour for residents and nonresidents. The out-of-state fee for these programs is \$6.66 per contact hour.<sup>9</sup> For adult general education programs, a block tuition of \$45 per half year or \$30 per term is assessed for residents and nonresidents. The out-of-state fee for these programs is \$135 per half year or \$90 per term.<sup>10</sup>

The tuition and out-of-state fee per credit hour increase automatically at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act (GAA). The Office of Economic and Demographic Research (EDR) must report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education (SBE) each year prior to March 1. The rate of inflation is defined as “the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year.”<sup>11</sup> If the percentage change is negative, the tuition and out-of-state fee per credit hour must remain the same as the prior fiscal year.<sup>12</sup>

### ***Florida College System Institution Student Fees***

A student who enrolls in a course for college credit, a college preparatory course, or an educator preparation institute (EPI) program at a Florida College System (FCS) institution is charged tuition and other fees, unless the student is eligible for an exemption or a waiver.<sup>13</sup> The Legislature establishes the standard tuition and out-of-state fee per credit hour. The standard tuition per credit hour for residents and non-residents enrolled in advanced and professional,

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<sup>4</sup> Section 1009.01(2), F.S. Adding that “[a] charge for any other purpose shall not be included within this fee.” *Id.*

<sup>5</sup> Section 1009.21(1)(e), F.S.

<sup>6</sup> Sections 1009.22(2) and (3)(c), 1009.23(2)(a) and (3)(b)2., and 1009.24(2) and (5), F.S.

<sup>7</sup> Section 1009.40, F.S.

<sup>8</sup> Sections 1009.22(2), 1009.25, and 1009.26, F.S.

<sup>9</sup> Section 1009.22(3)(c), F.S.

<sup>10</sup> Section 1009.22(3)(c), F.S.

<sup>11</sup> Section 1009.22(3)(d), F.S.

<sup>12</sup> Section 1009.22(3)(d), F.S.

<sup>13</sup> Sections 1009.23(1)-(2)(a), 1009.25, and 1009.26, F.S.

postsecondary vocational, developmental education, and EPI programs is \$68.56. The out-of-state fee for such programs is \$205.82 per credit hour.<sup>14</sup> For baccalaureate programs, the tuition per credit hour for resident students is \$87.42 per credit hour.<sup>15</sup> The sum of tuition and out-of-state fees per credit hour for non-resident students must not be more than 85 percent of the sum of tuition and out-of-state fee at the state university nearest to the FCS institution.<sup>16</sup>

The tuition and out-of-state fee per credit hour increase automatically at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the GAA. Current law requires EDR to report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the SBE each year prior to March 1. The rate of inflation is defined as “the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year.”<sup>17</sup> If the percentage change is negative, the tuition and out-of-state fee per credit hour must remain the same as the prior fiscal year.<sup>18</sup>

### ***State University Student Fees***

A student who enrolls in a college credit course at a state university is charged tuition and other fees, unless the student is eligible for an exemption or a waiver.<sup>19</sup> The Legislature establishes the amount of resident undergraduate tuition per credit hour. Resident undergraduate tuition is \$103.32 per credit hour for lower-level and upper-level coursework at a state university.<sup>20</sup>

The resident undergraduate tuition per credit hour increases automatically at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the GAA. The EDR must report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. The rate of inflation is defined as “the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year.”<sup>21</sup> If the percentage change is negative, the resident undergraduate tuition must remain the same as the prior fiscal year.<sup>22</sup>

In addition to the resident undergraduate tuition, the Legislature also establishes the financial aid fee, Capital Improvement Trust Fund fee, technology fee, and distance learning course fee as a specified dollar amount or percent of tuition.<sup>23</sup> Additionally, the board of trustees for each state university may establish certain fees subject to the approval of the Board of Governors for the

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<sup>14</sup> Section 1009.23(3)(a), F.S.

<sup>15</sup> Section 1009.23(3)(b)1., F.S.

<sup>16</sup> Section 1009.23(3)(b)2., F.S.

<sup>17</sup> Section 009.23(3)(c), F.S.

<sup>18</sup> Section 1009.23(3)(c), F.S.

<sup>19</sup> Sections 1009.24(2), 1009.25, and 1009.26, F.S.

<sup>20</sup> Section 1009.24(4)(a), F.S.

<sup>21</sup> Section 1009.24(4)(b), F.S.

<sup>22</sup> Section 1009.24(4)(b), F.S.

<sup>23</sup> Section 1009.24 (7), (8), (13), and (17), F.S.

State University System of Florida (BOG), such as an activity and service fee, health fee, athletic fee, technology fee, and tuition differential fee.<sup>24</sup>

A state university board of trustees may submit for approval a proposal to the BOG to establish a tuition differential fee for undergraduate courses. The fee must promote improvements in the quality of undergraduate education and provide financial aid to undergraduate students who exhibit financial need.<sup>25</sup> The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential fee, must not exceed the national average of undergraduate tuition and fees at public postsecondary institutions that grant 4-year degrees.<sup>26</sup>

A state university board of trustees may also propose annual increases to the tuition differential fee subject to BOG approval. The tuition differential fee may increase the aggregate sum of tuition and the tuition differential fee by more than 15 percent of the total charged for these fees in the preceding fiscal year.<sup>27</sup>

### Fee Exemptions and Fee Waivers

Florida law provides fee exemptions<sup>28</sup> and fee waivers<sup>29</sup> to students who meet specified criteria. A number of fee exemptions and fee waivers are mandatory,<sup>30</sup> while others are permissive.<sup>31</sup> For example, the state of Florida extends tuition and fee exemption benefits to a student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a shelter designed to provide temporary residence<sup>32</sup> and a student who is in the custody of the Department of Children and Family Services (DCF) at the age of 18 or who after reaching 16 years of age spent at least 6 months in DCF custody and was placed in guardianship by the court.<sup>33</sup> Students who are exempted from the payment of tuition and fees are not required to establish Florida residency for tuition purposes.<sup>34</sup>

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<sup>24</sup> Tuition differential is defined as the “supplemental fee charged to a student by a public university in this state.” Section 1009.01(3), F.S. “The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential [fee at a state university], may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.” Section 1009.24(16)(b)4., F.S. Section 1009.24(4)(e), (9)-(13), and (16), F.S.; Florida Board of Governors Regulations 7.001(6) and (14) and 7.003(4), (5), (16), (17), and (23).

<sup>25</sup> Section 1009.24(16), F.S.

<sup>26</sup> Section 1009.24(16)(b)4., F.S.

<sup>27</sup> Section 1009.24(16)(b)3., F.S.; *see also* Florida Board of Governors Regulation 7.001(14).

<sup>28</sup> Section 1009.25, F.S.; *see* The Florida College System, *Exemptions and Waivers in The Florida College System*, <http://www.fldoe.org/fcs/OSAS/Evaluations/pdf/FYI2012-02Exemptions.pdf> (noting that “[a]n exemption is provided for certain students who are, by statutory definition, exempt from the payment of tuition and fees, including lab fees”).

<sup>29</sup> Section 1009.26, F.S.; *see* The Florida College System, *Exemptions and Waivers in The Florida College System*, <http://www.fldoe.org/fcs/OSAS/Evaluations/pdf/FYI2012-02Exemptions.pdf> (providing that a “waiver occurs when a student has his or her fees, which would otherwise be due, waived or forgiven by an institution”).

<sup>30</sup> Sections 1009.25(1)(a)-(g) and 1009.26(5), (7), (8), F.S.

<sup>31</sup> Section 1009.25(2), F.S. (authorizing each Florida College System institution to grant additional fee exemptions “up to 54 full-time equivalent students or 1 percent of [an] institution’s total full-time equivalent enrollment, whichever is greater at each institution”); *see also* s. 1009.26(1)-(4), (6), (9), (10), (11), F.S.

<sup>32</sup> Section 1009.25(1)(f), F.S.

<sup>33</sup> Section 1009.25(1)(c), F.S.

<sup>34</sup> Section 1009.25, F.S.

Florida law also grants tuition and fee waivers to students who meet certain conditions.<sup>35</sup> For example, a state university or FCS institution may waive tuition and fees for a classroom teacher who is employed full-time by a school district and who meets the academic requirements of the university or institution, as applicable.<sup>36</sup> Additionally, each university board of trustees is authorized to “waive tuition and out-of-state fees for purposes that support and enhance the mission of the university.”<sup>37</sup> Students who are otherwise eligible for fee waivers qualify regardless of whether they are Florida residents for tuition purposes.<sup>38</sup>

Regarding military personnel, Florida law provides a mandatory undergraduate fee waiver for “each recipient of a Purple Heart or another combat decoration superior in precedence” at a state university or FCS institution.<sup>39</sup> The statute requires the recipient to:<sup>40</sup>

- Be enrolled in an undergraduate program that results in a degree or certificate;
- Be a state resident when applying for the waiver and at the time of military action that resulted in the awarding of the qualifying combat decoration; and
- Submit to the institution a specified form documenting the award issued at the time of separation from service or another document recognized by the United States Department of Defense or the United States Department of Veterans Affairs.

The fee waiver for Purple Heart recipients and recipients of superior combat decorations covers 110 percent of the credit hours the recipient needs to complete the applicable degree or certificate program.<sup>41</sup> In 2011-2012, 168 students at FCS institutions received a fee waiver as the result of receiving a Purple Heart totaling \$269,580.<sup>42</sup> At state universities, 46 students received fee waivers as the result of receiving a Purple Heart totaling \$151,896 during 2012-2013.<sup>43</sup>

In 2011-2012, FCS institutions provided exemptions and fee waivers for 71,719 students, which totaled \$93,689,726.<sup>44</sup> Fee exemptions and fee waivers, respectively, totaled \$83,926,832 and \$9,762,894 at FCS institutions.<sup>45</sup> State universities provided a total of \$205,824,039 in fee exemptions and fee waivers in 2012-2013.<sup>46</sup> In 2012-2013, Career Centers and Charter Technical Career Centers provided approximately \$671,000 in fee exemptions.<sup>47</sup>

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<sup>35</sup> Section 1009.26, F.S.

<sup>36</sup> Section 1009.26(10), F.S.

<sup>37</sup> Section 1009.26(9), F.S.

<sup>38</sup> Section 1009.26, F.S.

<sup>39</sup> Section 1009.26(8), F.S.

<sup>40</sup> Section 1009.26(8)(a)-(c), F.S.

<sup>41</sup> Section 1009.26(8), F.S.

<sup>42</sup> Email, Florida Department of Education (December 11, 2013), on file with the Committee on Education.

<sup>43</sup> Email, Florida Board of Governors (December 11, 2013), on file with the Committee on Education.

<sup>44</sup> Email, Florida Department of Education (December 11, 2013), on file with the Committee on Education.

<sup>45</sup> *Id.* The calculation of fee exemptions the exemptions provided under s. 1009.25(2), F.S., which totaled \$7,912,717 for 2,691 students and the exemptions under s. 1009.25(1), F.S. *Id.*

<sup>46</sup> Email, Florida Board of Governors (December 11, 2013), on file with the Committee on Education.

<sup>47</sup> Email, Florida Department of Education (January 17, 2014), on file with the Committee on Education. Career Centers and charter technical career centers provided 671 non-dual enrollment fee exemptions. The calculation of fee exemptions provided under s. 1009.25 (1), F.S., is based on the average student enrollment in 423 clock hours. Phone call with staff, FDOE (January 17, 2014).

## **Tuition Assistance for Undocumented Aliens**

### ***Federal Law***

Federal law authorizes states to enact laws that expressly make undocumented aliens eligible for any state or local public benefit for which they would not otherwise be eligible.<sup>48</sup> However, federal law prohibits preferential treatment of aliens not lawfully present on the basis of residence for higher education benefits.<sup>49</sup> Specifically, federal law<sup>50</sup> provides:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a state (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

An alien is “an individual who is not a U.S. citizen or U.S. national.”<sup>51</sup> An illegal alien, also known as an undocumented alien, is an alien who has entered the United States illegally and is deportable if apprehended, or an alien who entered the United States legally but who has fallen “out of status” and is deportable.<sup>52</sup>

On June 15, 2012, the Secretary of Homeland Security announced that “certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action does not provide an individual with lawful status.”<sup>53</sup> Individuals must meet certain requirements including an age requirement to be considered for temporary status under the deferred action for childhood arrivals (DACA) memorandum.<sup>54</sup>

## **State Law on the Extension of In-state Tuition to Undocumented Students or Dependent Children of Undocumented Parents**

### ***States Other Than Florida***

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<sup>48</sup> 8 U.S.C. s. 1621(d).

<sup>49</sup> 8 U.S.C. s. 1623.

<sup>50</sup> 8 U.S.C. s. 1623.

<sup>51</sup> Internal Revenue Service, *Immigration Terms and Definitions Involving Aliens*, <http://www.irs.gov/Individuals/International-Taxpayers/Immigration-Terms-and-Definitions-Involving-Aliens> (last visited March 26, 2014).

<sup>52</sup> Internal Revenue Service, *Immigration Terms and Definitions Involving Aliens*, <http://www.irs.gov/Individuals/International-Taxpayers/Immigration-Terms-and-Definitions-Involving-Aliens> (last visited March 26, 2014).

<sup>53</sup> U.S. Citizenship and Immigration Services, *Consideration of Deferred Action for Childhood Arrivals Process*, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process> (last visited March 26, 2014).

<sup>54</sup> U.S. Citizenship and Immigration Services, *Consideration of Deferred Action for Childhood Arrivals Process*, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process> (last visited March 26, 2014).

States vary regarding extending in-state tuition and state financial aid benefits to students who are undocumented aliens.

Fifteen states, California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington extend in-state tuition rates to students who are undocumented aliens and who meet specific requirements.<sup>55</sup> However, Wisconsin revoked nonresident tuition and fee exemptions for undocumented aliens in 2011.<sup>56</sup>

Oklahoma and Rhode Island provide in-state tuition rates to undocumented students through Board of Regents decisions. In 2013, the University of Hawaii's Board of Regents and the University of Michigan's Board of Regents adopted similar policies for students who are undocumented aliens to get in-state tuition at their institutions.<sup>57</sup>

California, New Mexico, Texas, and Washington allow undocumented aliens to receive state financial aid. Students without legal immigrant status are ineligible for federal financial aid.<sup>58</sup>

Arizona, Georgia, and Indiana specifically prohibit undocumented aliens from getting in-state tuition rates.<sup>59</sup>

Alabama and South Carolina prohibit students who are undocumented aliens from enrolling in public postsecondary institutions.<sup>60</sup>

### **Florida**

Section 1009.21(3)(a), F.S., excludes students from classification as residents for tuition purposes if the student is a dependent child based on the federal income tax code and the student cannot establish his or her parent's legal residency in Florida. The determination of legal residency is not based on a parent's legal presence in the United States but on their duration of residency in the state for a minimum of 12 consecutive months.<sup>61</sup> Therefore, Florida law appears silent regarding whether in-state tuition and state financial aid benefits extend to dependent children of parents who are undocumented aliens.

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<sup>55</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (February 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 26, 2014).

<sup>56</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (February 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 26, 2014).

<sup>57</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (February 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 26, 2014).

<sup>58</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (February 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 26, 2014).

<sup>59</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (February 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 26, 2014).

<sup>60</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (February 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 26, 2014).

<sup>61</sup> Section 1009.21(3)(b), F.S. Section 1009.21(1)(d), F.S., defines a legal resident as someone who maintained a Florida residence for the preceding year, purchased a home occupied by him or her as a residence, or established domicile, which requires a person to submit to the clerk a sworn statement that the person is a bona fide resident either residing and maintaining a place of abode in the county in which the person intends to maintain as his or her permanent home or that the place of abode is his or her predominant and principal home. Section 222.17(1), (2), and (3), F.S.



Florida law authorizes university boards of trustees to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university.<sup>62</sup> Similarly, school districts and FCS institutions may waive fees for any fee-nonexempt student.<sup>63</sup> FCS institutions are also authorized to grant fee exemptions to students.<sup>64</sup>

In 2012, the United States District Court for the Southern District of Florida in *Ruiz v. Robinson* ruled that U.S. citizens who otherwise meet Florida's residency requirements for tuition purposes may not be denied in-state tuition based on their parent's undocumented status for federal immigration purposes.<sup>65</sup> All of the plaintiffs in the case were United States citizens by virtue of birthright, meaning that they were born in the U.S.<sup>66</sup> The plaintiffs did not challenge Florida law. Instead, the plaintiffs challenged rules and regulations of the State Board of Education and the Board of Governors which denied in-state tuition to plaintiffs who were financial dependents of undocumented aliens, as the parents could not establish a legal presence in the U.S.<sup>67</sup> The Court specifically struck down these rules and regulations for violating the Equal Protection Clause of the U.S. Constitution.<sup>68</sup>

### ***Case Law***

The U.S. Supreme Court definitively ruled in 1982 that states must provide all students with K-12 public education, regardless of immigration status. The Court ruled that "If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here."<sup>69</sup> The 1982 U.S. Supreme Court ruling did not extend to postsecondary education.

California provides in-state tuition benefits to students, including undocumented aliens, who meet certain statutory requirements.<sup>70</sup> The benefit is provided through an exemption from payment of nonresident tuition<sup>71</sup> and has been upheld under federal law<sup>72</sup> because the benefit is not based upon residence within the state.<sup>73</sup> The requirements to receive the exemption from payment of nonresident tuition are:

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<sup>62</sup> Section 1009.26(9), F.S.

<sup>63</sup> Section 1009.26(1), F.S.

<sup>64</sup> Section 1009.25(2), F.S.

<sup>65</sup> *Ruiz v. Robinson*, 892 F. Supp. 2d 1321, 1331-1333 (S.D. Fla. 2012).

<sup>66</sup> *Id.* at 1323-1324.

<sup>67</sup> FAC 72-1.001(5)(a)3. and 6A-10.044(4).

<sup>68</sup> *Ruiz*, 892 F.Supp.2d at 1331-1333.

<sup>69</sup> *Plyler v. Doe*, 457 U.S. 202, 230 (1982) [citation omitted].

<sup>70</sup> Cal. Educ. Code § 68130.5.

<sup>71</sup> *Id.*

<sup>72</sup> *Martinez v. The Regents of the Univ. of California*, 241 P.3d 855, 860 (Cal. 2010), cert. denied, 131 S. Ct. 2961 (2011); see also 8 U.S.C. §1623. Federal law states that "[n]otwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible *on the basis of residence within a State* (or political subdivision) for any postsecondary education benefit unless a citizen or nation of the United States is eligible for such a benefit (in no less amount, duration, and scope) without regard to whether the citizen or national is such a resident." 8 U.S.C. §1623 (italics added).

<sup>73</sup> *Martinez*, 241 P.3d at 860. The California Supreme Court stated that exemption is not based on residence "[b]ecause the exemption is given to all who have attended high school in California for at least three years (and meet other requirements), and not all who have done so qualify as California residents for purposes of in-state tuition, and further because not all

- Attendance at a California high school for 3 or more years;
- Graduation from a California high school or attainment of a graduation equivalent;
- Registration as an entering, or currently enrolled, student at an accredited institution of higher education in California; and
- If the student is not a lawful immigrant, the filing of an affidavit with the institution of higher education which states that the student has applied to legalize his or her immigration status, or will apply as soon as he or she is eligible.<sup>74</sup>

In 2005, a federal district court in Kansas dismissed a lawsuit that challenged the state law regarding in-state tuition benefits for students who are undocumented aliens based on procedural grounds of the plaintiffs' lack of standing and lack of a private right of action.<sup>75</sup> In 2007, the Tenth Circuit Court of Appeals affirmed the federal district court's decision.<sup>76</sup>

### **Stanley G. Tate Florida Prepaid College Program (Prepaid Program)**

The Legislature created the Stanley G. Tate Florida Prepaid College Program (Prepaid Program) in 1987<sup>77</sup> to provide Florida families affordable means to plan and save for their children's college education.<sup>78</sup> The Prepaid Program is administered by the Florida Prepaid College Board (Prepaid Board).<sup>79</sup> Florida's families have purchased more than 1.5 million Prepaid Program contracts.<sup>80</sup>

The Prepaid Program provides for the purchase of advance payment contracts for postsecondary education. The contracts, which are financially guaranteed by the State of Florida,<sup>81</sup> lock-in many of the costs associated with enrollment in state universities and Florida College System (FCS) institutions (registration fees, tuition differential fees, local fees, and dormitory fees) at the time such contracts are purchased.<sup>82</sup> Families may choose from the following:<sup>83</sup>

- 2-Year Florida College Plan
- 4-Year Florida College Plan
- 2+2 Florida Plan
- 4-Year Florida University Plan

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unlawful aliens who would qualify as residents but for their unlawful status are eligible for the exemption, we conclude the exemption is not based on residence in California. Rather, it is based on other criteria. Accordingly, section 68130.5 does not violate section 1623." *Id.*

<sup>74</sup> Cal. Educ. Code § 68130.5.

<sup>75</sup> *Day v. Sebelius*, 376 F. Supp. 2d 1022, 1040 (D. Kan. 2005).

<sup>76</sup> *Day v. Bond*, 500 F.3d 1127, 1140 (10th Cir. 2007).

<sup>77</sup> Section 1, ch. 1987-132, L.O.F.; see also Florida Prepaid College Board, *Our History*, <http://www.myfloridaprepaid.com/who-we-are/> (last visited March 26, 2014).

<sup>78</sup> Section 1009.98(1), F.S.

<sup>79</sup> Section 1009.971(1), F.S.

<sup>80</sup> Florida Prepaid College Board, *Annual Report* (2012), available at <http://www.myfloridaprepaid.com/wp-content/uploads/2012-annual-report.pdf>, at 1.

<sup>81</sup> Section 1009.98(7), F.S.

<sup>82</sup> Section 1009.98(2), F.S.

<sup>83</sup> Florida Prepaid College Board, *Explore Your Options*, <http://www.myfloridaprepaid.com/what-we-offer/> (last visited March 26, 2014).

A qualified beneficiary<sup>84</sup> with a Prepaid Plan choosing to attend an out-of-state or private institution may have the full value of the Plan, which would have been paid to a Florida state university or a Florida college for that beneficiary, transferred semester by semester to the private or out-of-state institution.<sup>85</sup>

Each year, the Prepaid Board analyzes the actuarial adequacy of the Prepaid Trust Fund. In order to conduct this analysis, a series of assumptions are made regarding investment yield, tuition increases, tuition differential fee increases, local fee increases, and dormitory fee increases. The result of the analysis is a determination of the actuarial reserve, which means the amount by which the expected value of the assets in the Prepaid Trust Fund exceeds the value of the expected liabilities. The table below shows a recent history of the actuarial reserve.<sup>86</sup>

<b>Actuarial Information</b>				
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Actuarial Reserve</b>	\$482,626,581	\$589,408,656	\$569,458,560	\$834,449,416
As Percentage of Expected Liabilities	5.1%	6.0%	4.9%	7.6%

The Prepaid Plan payment methodology (tuition and fee caps) established for advance payment contracts purchased before July 1, 2009, specifies the amount the Prepaid Board will pay universities for registration and tuition differential increases within a reasonable range based on fund reserve. The table below shows the methodology.<sup>87</sup>

<b>Registration &amp; Tuition Differential Fee Payment Scenarios</b>				
<b>Actuarial Reserve, as a Percentage of Expected Liabilities</b>	<b>&lt;5%</b>	<b>5% - 6%</b>	<b>6% - 7%</b>	<b>≥7.5%</b>
Prepaid Board Payment to Universities above Fee Assessed Previous Year	5.5%	6.0%	6.5%	7.0%

The Prepaid Board pays state universities 5 percent above the amount assessed in the previous fiscal year for local fees and 6 percent above the amount assessed in the previous fiscal year for dormitory fees.<sup>88</sup>

For advance payment contracts purchased on or after July 1, 2009, for registration, tuition differential, local, and dormitory fees, the Prepaid Board must pay the university the actual

<sup>84</sup> A qualified beneficiary is a Florida resident at the time a purchaser enters into an advance payment contract on behalf of the resident; a nonresident who is the child of a noncustodial parent who is a Florida resident at the time the parent enters into an advance payment contract for the child; or a graduate of an accredited high school in Florida who is a Florida resident at the time he or she is designated to receive benefits from the advance payment contract. Section 1009.97(3)(f), F.S.

<sup>85</sup> Florida Prepaid College Board, *Annual Report* (2012), available at <http://www.myfloridaprepaid.com/wp-content/uploads/2012-annual-report.pdf>, at 10.

<sup>86</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (February 5, 2013), at 1-2, on file with the Senate Judiciary Committee.

<sup>87</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (February 5, 2013), at 2, on file with the Senate Judiciary Committee.

<sup>88</sup> *Id.*

amount charged for these fees.<sup>89</sup> For actuarial planning purposes, the Prepaid Board must price the Plan with the assumption that universities will assess maximum allowable fees each year.

### **III. Effect of Proposed Changes:**

CS/SB 1400 eliminates the automatic annual tuition increases at public postsecondary institutions when the tuition and the out-of-state fee are not otherwise provided in the General Appropriations Act (GAA), reduces the costs of prepaid contracts from the Florida Prepaid Program by reducing the amounts the program will pay to public postsecondary institutions, clarifies the cap on certain state university fees, prohibits state university boards of trustees from establishing or increasing a tuition differential fee, and extends an in-state tuition benefit to students who meet certain conditions. As a result, the bill makes postsecondary education less costly providing tuition and fee benefits.

#### **Tuition and Fees**

The bill codifies the public postsecondary tuition and out-of-state fee levels for the 2014-2015 academic year and eliminates the automatic annual increase in tuition and fees based on the rate of inflation.

#### ***Workforce Education Postsecondary Fees***

For programs leading to a career certificate or applied technology diploma, the bill updates the standard tuition for residents and nonresidents from \$2.22 to \$2.33 per contact hour, and the out-of-state fee from \$6.66 to \$6.99 per contact hour. The bill establishes the tuition and out-of-state fee amounts effective July 1, 2014 and eliminates statutory provisions annually increasing these amounts by the rate of inflation when not otherwise provided in the GAA.

#### ***Florida College System Institution Student Fees***

For advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the bill updates the standard tuition from \$68.56 to \$71.98 per credit hour for residents and nonresidents, and the out-of-state fee from \$205.82 to \$215.94 per credit hour. For baccalaureate degree programs, the bill changes tuition from \$87.42 to \$91.79 per credit hour for residents. The bill establishes the tuition and out-of-state fee amounts effective July 1, 2014 and eliminates statutory provisions annually increasing these amounts by the rate of inflation when not otherwise provided in the GAA.

#### ***State University Student Fees***

For resident undergraduate tuition at state universities, the bill reduces tuition to \$103.32 from \$105.07 per credit hour by eliminating an increase caused by statutes that indexed the tuition amount set in law to inflation.<sup>90</sup> The bill adopts the 2011 tuition levels effective July 1, 2014, eliminates the automatic annual increases in tuition based on inflation when not otherwise provided in the GAA, and, and effective July 1, 2014, prohibits state university boards of trustees

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<sup>89</sup> *Id.*

<sup>90</sup> Florida Board of Governors, *2013-2014 Fees*, <http://flbog.edu/about/budget/current.php> (last visited April 4, 2014).

from establishing or increasing tuition differential fees for undergraduate courses.<sup>91</sup> Current tuition differential fees will remain in place.

### **Tuition Assistance**

#### ***In-State Tuition for U.S. Citizens Whose Parents Are Undocumented Aliens***

The bill codifies a 2012 court ruling regarding residency classification of students who are U.S. citizens but whose parents are undocumented aliens by extending an in-state tuition benefit to these students. Again, this change may be clarifying in nature, as the BOG has already changed the challenged regulations that prohibited these students from getting the status of in-state residents for tuition purposes. Still, the change makes the statute consistent with the *Ruiz* holding and current BOG regulations.<sup>92</sup>

#### ***In-State Tuition for Students Who Are Undocumented Aliens***

The bill creates an in-state tuition benefit for students who are undocumented aliens and who meet certain conditions by waiving the out-of-state fees. This means that undocumented aliens who otherwise qualify will essentially pay the same in-state tuition and fees as qualifying students who are not undocumented aliens. Eligible undocumented aliens may use this benefit at public state universities, Florida College System institutions, career centers, and charter technical career centers.

To receive an out-of-state tuition and fee waiver, students who are undocumented aliens must:

- Attend a secondary school in Florida for 3 consecutive years immediately before graduating from a high school in Florida,
- Enroll in an institution of higher education within 24 months after high school graduation, and
- Submit an official Florida high school transcript as evidence of attendance and graduation.

State universities, FCS institutions, career centers and charter technical career centers must report the number and value of all fee waivers granted annually to the BOG and the SBE.

The bill also clarifies that students who are undocumented for federal immigration purposes are ineligible for state financial aid.

Currently, the BOG requires that the nonresident student enrollment not exceed 10 percent of the total state university systemwide student enrollment.<sup>93</sup> The bill requires the BOG and the SBE to annually certify in their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as 2013-2014 resident student enrollment systemwide. In Fall 2012, nonresident student enrollment ranged from 18 percent at the University of Florida to three percent at the University of North Florida and University of South Florida Sarasota-Manatee and St. Petersburg campuses. Systemwide, 91 percent of students enrolled in state universities in Fall 2012 were residents while the remaining 9 percent of enrolled students were

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<sup>91</sup> Section 1009.24(16)(d), F.S.

<sup>92</sup> *Ruiz v. Robinson*, 892 F. Supp. 2d 1321, 1331-1333 (S.D. Fla. 2012).

<sup>93</sup> Florida Board of Governors Regulation 7.006.

nonresidents.<sup>94</sup> By preventing an increase in the proportion of state residents, this requirement is expected to keep costs stable for the state and the higher education institutions.

***Combat-decorated Recipients***

Current law waives tuition at state universities or Florida College System institutions for Purple Heart and other qualifying combat-decorated veterans. The bill extends the tuition waiver by making it applicable to career centers operated by a school district and charter technical career centers.

**Stanley G. Tate Florida Prepaid College Program (Prepaid Program)**

The bill specifies that for an advance payment contract purchased before July 1, 2024, the amount assessed and paid by the Florida Prepaid College Board (Prepaid Board) to the state universities will follow the methodology previously utilized by the Prepaid Board for contracts purchased prior to July 1, 2009.

<b>Registration &amp; Tuition Differential Fee Payment Scenarios</b>				
<b>Actuarial Reserve, as a Percentage of Expected Liabilities</b>	<b>&lt;5%</b>	<b>5% - 6%</b>	<b>6% - 7%</b>	<b>≥7.5%</b>
Prepaid Board Payment to Universities above Fee Assessed Previous Year	5.5%	6.0%	6.5%	7.0%

The bill also limits the amount that the Prepaid Program pays state universities for registration, tuition differential, and local fees to 100 percent of the aggregate sum of the amount charged for those fees and limits dormitory fees paid by the Prepaid Program to the actual amount charged for that fee.

The bill provides an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>94</sup> Email, Board of Governors of the State University System of Florida (February 13, 2014), on file with the Committee on Education.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:****Tuition and Fees**

CS/SB 1400 eliminates the automatic annual increases in tuition and fees when not otherwise provided in the GAA based on the rate of inflation for workforce education programs, baccalaureate degree programs offered by the Florida College System (FCS) institutions, and resident undergraduate tuition per credit hour at state universities which will result in cost savings to students. Still, the Legislature may consider inflation rates in setting tuition in the future.

**Tuition Assistance**

The bill provides an in-state tuition benefit to Florida's students who are undocumented aliens resulting in significant cost savings for these students and their families. Under the bill, students who are undocumented aliens will pay in-state tuition and fees.

For the 2013-2014 academic year, the average State University System undergraduate cost for tuition and fees for two semesters is \$6,155 for residents and \$21,434 for non-residents.<sup>95</sup> Therefore, this out-of-state fee waiver could save an eligible, undocumented immigrant student at a state university approximately \$14,876 per academic year.

For the same period, the Florida College System reports the average cost for two semesters is approximately \$3,124 for residents enrolled in lower-level credit programs and \$11,531 for non-residents. For residents enrolled in the upper-level credit programs the cost for two semesters is \$3,585 and \$15,400 for non-residents.<sup>96</sup> Therefore, this out-of-state fee waiver could save an eligible, undocumented immigrant student at a Florida College System institution approximately \$8,407 per academic year for lower-level credit programs and \$11,815 per academic year for upper-level credit programs.

For the 2013-2014 academic year, the average district technical center cost for tuition and fees for a full-time equivalent student<sup>97</sup> is \$2,443 for residents, and \$9,710 for non-residents.<sup>98</sup> Under this bill, eligible undocumented immigrant students could save approximately \$7,267 per academic year at district technical centers.

<sup>95</sup> Board of Governors of the State University System of Florida, *Public Colleges and Universities of Florida, Tuition and Required Fees, 2013-14 for New Students in Main Campus*, <http://www.flbog.edu/about/budget/current.php> (select the Excel link for "2013-2014 Fees") (last visited March 26, 2014) (noting that the calculation is for students who are full-time taking 30 credit hours).

<sup>96</sup> Data provided by the Division of Florida Colleges (on file with Senate Appropriations Subcommittee on Education).

<sup>97</sup> Full-time equivalent is defined as 900 instructional hours in a certificate program.

<sup>98</sup> Data provided by the Division of Career and Adult Education (on file with the Senate Appropriations Subcommittee on Education).

Additionally, resident recipients of a Purple Heart and other combat decorations enrolled at a technical centers will not have to pay tuition, ultimately saving them approximately \$2,443 per academic year at district technical centers.

### **Stanley G. Tate Florida Prepaid College Program**

The Florida Prepaid College Board (Prepaid Board) estimates that the bill will reduce the cost for individuals to purchase Florida Prepaid College Program (Prepaid Program) contracts. The new lump-sum price for the 4-Year Florida University Plan would be reduced by approximately \$10,000,<sup>99</sup> from \$53,729 to less than \$43,000.<sup>100</sup> Over 26,000 Florida families who purchased plans at higher prices in recent years would be entitled to refunds of approximately \$50 million. In addition, future monthly payments would be reduced for those purchasing a Prepaid Program contract and paying on a monthly basis. For example, a Florida family that enrolled a newborn during the 2012-2013 open enrollment for the Prepaid Program in a 4-Year Florida University Plan is currently paying \$332 per month under the monthly payment option.<sup>101</sup> These monthly payments are estimated to drop to \$255 per payment, a savings of over \$75 per month for 223 months<sup>102</sup> totaling approximately \$17,000 over the life of the contract.

#### **C. Government Sector Impact:**

##### **Tuition and Fees**

With the elimination of automatic annual increases in tuition and out-of-state fees based on inflation, Florida's public postsecondary institutions will not receive an automatic annual increase in revenue from tuition and fees. Additionally, because the bill reduces base tuition at state universities from \$105.07 to \$103.32 as the resident undergraduate tuition per credit hour and eliminates the automatic annual increases in tuition, the state universities may likely experience reduction in tuition and fee revenues relative to the fiscal year 2013-2014 tuition and fee revenues. In 2013, the state universities raised the resident undergraduate tuition to 105.07 per credit hour<sup>103</sup> based on the annual rate of inflation increase. The Board of Governors anticipates a potential negative fiscal impact of \$10.4 million from reducing the undergraduate base tuition rate per credit hour under this provision.<sup>104</sup>

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<sup>99</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (February 5, 2013), at 3, on file with the Committee on Education staff.

<sup>100</sup> Email, Florida Prepaid College Board (January 15, 2014), on file with Committee on Education.

<sup>101</sup> Email, Florida Prepaid College Board (January 15, 2014), on file with Committee on Education.

<sup>102</sup> Email, Florida Prepaid College Board (January 15, 2014), on file with Committee on Education.

<sup>103</sup> Florida Board of Governors, *2013-2014 Fees*, <http://flbog.edu/about/budget/current.php> (last visited March 26, 2014).

<sup>104</sup> Board of Governors, State University System of Florida, *2014 Legislative Bill Analysis*, CS/SB 1400, pg. 9 (March 27, 2014).



### **Tuition Assistance**

The bill clarifies that U.S. citizens who are dependent children of parents who are undocumented aliens will be classified as in-state residents for tuition and fee purposes, if that was the sole reason they may have been denied in-state tuition rates. This language is not expected to have a fiscal impact on public postsecondary institutions and career centers, as these students already have been extended this benefit because of the 2012 *Ruiz* ruling.

The bill makes students who are undocumented immigrants eligible for out-of-state fee waivers, provided that they meet certain, specified requirements. The fiscal impact of this bill on state universities<sup>105</sup>, FCS institutions, and technical centers is negative, but the amount is unknown and indeterminate.

Resident Purple Heart recipients and other qualifying combat-decorated veterans will not have to pay tuition at technical centers. The fiscal impact is estimated at \$2,443 per academic year per recipient.

### **Stanley G. Tate Florida Prepaid College Program**

For advance payment contracts purchased on or after July 1, 2009, with regard to tuition and tuition differential fees, the Prepaid Board must pay a state university the actual amount charged for these fees. For actuarial planning purposes, the Prepaid Board must price the Prepaid Plan with the assumption that universities will assess the maximum allowable fee increase of 15 percent each year. This has led to higher costs for the 4-Year Florida University Plan and 2+2 Florida Plan.<sup>106</sup> Because this bill limits the amount the Prepaid Board must pay state universities, the Prepaid Board will be able to reduce the prices for the 4-Year Florida University Plan and 2+2 Florida Plan.

The fiscal impact of the bill on state universities is indeterminate; it may reduce tuition fees, tuition differential fees, local fees, and dormitory fees that will be paid by the Prepaid Board to the state universities on behalf of qualified beneficiaries of Prepaid Program plans purchased prior to July 1, 2024.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

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<sup>105</sup> Board of Governors, State University System of Florida, *2014 Legislative Bill Analysis*, CS/SB 1400, pg. 6 (April 7, 2014).

<sup>106</sup> Email, Florida Prepaid College Board (February 5, 2014), on file with Committee on Education.

**VIII. Statutes Affected:**

This bill substantially amends the following section of the Florida Statutes: 1009.22, 1009.23, 1009.24, 1009.26, and 1009.98.

This bill creates an undesignated section of Florida law.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education on March 18, 2014:**

The committee substitute maintains the original substance of SB 1400, regarding public postsecondary tuition and fee provisions, with the following modifications:

- Extends an in-state tuition benefit to students who are undocumented aliens through an out-of-state fee waiver approach rather than a residency classification for tuition purposes approach, and clarifies that such students are not eligible for state financial aid.
- Expands tuition waiver benefit for Purple Heart and other combat decoration recipients enrolled at a state university or a FCS institution to also apply to Purple Heart and other combat decoration recipients enrolled at a career center operated by a school district or charter technical career center.
- Clarifies that the cap on the aggregate sum the Prepaid Program pays state universities for registration, tuition differential, local fees, and dormitory fees, under the bill, apply to advance payment contracts purchased before July 1, 2024.
- Codifies the 2012 United States District Court for the Southern District of Florida ruling that U.S. citizens, who would otherwise meet Florida's residency requirements for tuition purposes but for their status as dependents and their parents' undocumented immigration status, may not be denied in-state tuition benefits based upon their parents' undocumented immigration status.

- B. **Amendments:**

None.