

**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.)

Prepared By: The Professional Staff of the Committee on Education

BILL: PCS/SB 1400 (142484)

INTRODUCER: Education

SUBJECT: Postsecondary Student Tuition

DATE: March 17, 2014      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	<b>Pre-meeting</b>
2.			JU	
3.			AED	
4.			AP	

**I. Summary:**

PCS/SB 1400 eliminates the automatic annual tuition increases at public postsecondary institutions, revises the Florida Prepaid Program contract conditions, and extends an in-state tuition benefit to students who meet certain conditions.

Specifically, the bill:

- Eliminates the automatic annual rate of inflation increase of tuition and out-of-state fee for workforce education postsecondary student fees and Florida College System (FCS) institution student fees.
- Eliminates the automatic annual rate of inflation increase of the resident undergraduate tuition for the state universities and prohibits state university boards of trustees from establishing and increasing tuition differential fee for undergraduate courses.
- 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 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.
- Extends an in-state tuition benefit to students who are undocumented aliens and clarifies that such students are not eligible for state financial aid.
- 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.

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

## II. Present Situation:

### Tuition and Fees

Under Florida law, "tuition" is defined as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in this state."<sup>1</sup> A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.<sup>2</sup>

An "out-of-state fee" is "the additional fee for instruction provided by a public postsecondary education institution in this state, which fee is charged to a student who does not qualify for the in-state tuition rate."<sup>3</sup> A "non-resident for tuition purposes" is defined as a "person who does not qualify for the in-state tuition rate,"<sup>4</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 such costs are exempted or waived.<sup>5</sup> Residents for tuition purposes also have access to need-based, merit-based, and other state financial aid upon meeting specified requirements.<sup>6</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>7</sup> The Legislature establishes the standard tuition and out-of-state fee per contact hour. Since July 1, 2011, for programs leading to a career certificate or an applied technology diploma, the standard tuition is \$2.22 per contact hour for residents and nonresidents. The out-of-state fee for such programs is \$6.66 per contact hour.<sup>8</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 such programs is \$135 per half year or \$90 per term.<sup>9</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). Current law requires the Office of Economic and Demographic Research (EDR) to

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<sup>1</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>2</sup> Section 1009.21(1)(g), F.S.

<sup>3</sup> Section 1009.01(2), F.S. Adding that "[a] charge for any other purpose shall not be included within this fee." *Id.*

<sup>4</sup> Section 1009.21(1)(e), F.S.

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

<sup>6</sup> Section 1009.40, F.S.

<sup>7</sup> Sections 1009.22(1)-(2), 1009.25, and 1009.26, F.S.

<sup>8</sup> Section 1009.22(3)(c), F.S.

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

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>10</sup> If the percentage change is negative, the tuition and out-of-state fee per credit hour must remain at the same as the prior fiscal year.<sup>11</sup>

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

A student who enrolls in a college credit course, 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>12</sup> The Legislature establishes the standard tuition and out-of-state fee per credit hour. Since July 1, 2011, the standard tuition per credit hour for residents and non-residents enrolled in advanced and professional, 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>13</sup> For baccalaureate programs, the tuition per credit hour for resident students is \$87.42 per credit hour.<sup>14</sup> The sum of tuition and out-of-state fee 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 a state university nearest to the FCS institution.<sup>15</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>16</sup> If the percentage change is negative, the tuition and out-of-state fee per credit hour must remain at the same as the prior fiscal year.<sup>17</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>18</sup> The amount of resident undergraduate tuition per credit hour is established by the Legislature. Since July 1, 2011, the

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

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

<sup>12</sup> Sections 1009.23(1)-(2)(a), 1009.25, and 1009.26, F.S.

<sup>13</sup> Section 1009.23(3)(a), F.S.

<sup>14</sup> Section 1009.23(3)(b)1., F.S.

<sup>15</sup> Section 1009.23(3)(b)2., F.S.

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

<sup>17</sup> Section 1009.23(3)(c), F.S.

<sup>18</sup> Sections 1009.24(1)-(2), 1009.25, and 1009.26, F.S.

resident undergraduate tuition is \$103.32 per credit hour for lower-level and upper-level coursework at a state university.<sup>19</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. 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 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>20</sup> If the percentage change is negative, the resident undergraduate tuition must remain at the same as the prior fiscal year.<sup>21</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>22</sup> Additionally, the board of trustees for each state university may establish the following fees subject to the approval of the Board of Governors for the State University System of Florida (BOG): activity and service fee, health fee, athletic fee, and tuition differential fee.<sup>23 24</sup>

A state university board of trustees may establish a tuition differential fee for undergraduate courses upon receipt of approval from the BOG. 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 4-year degree-granting public postsecondary educational institutions.<sup>26</sup>

Increases to the tuition differential fee may be proposed by the state university board of trustees once each year. Such increases must be approved by the BOG. The tuition differential fee must not result in increasing the aggregate sum of tuition and the tuition differential fee by more than 15 percent of the total charged for such fees in the preceding fiscal year.<sup>27</sup>

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<sup>19</sup> Section 1009.24(4)(a), F.S.

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

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

<sup>22</sup> Section 1009.24 (7), (8), (13), and (17), F.S.

<sup>23</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.

<sup>24</sup> Section 1009.24(4), (9)-(12), 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).

## 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 benefit 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 or was at the time he or she reached the age of 18 in the custody of Children and Family Services or who was placed in a guardianship by the court.<sup>33</sup> Current law regarding fee exemptions<sup>34</sup> does not require students who are exempted from the payment of tuition and fees to establish Florida residency for tuition purposes.

Florida law also grants tuition and fee waivers for specific students.<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> Current law regarding fee waivers<sup>38</sup> does not require student recipients of fee waivers to establish Florida residency for tuition purposes.

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 that the recipient:<sup>40</sup>

- Be enrolled in an undergraduate program that results in a degree or certificate;
- Currently be a resident of this state and was a resident of this state at the time of military action that resulted in the awarding of the applicable combat decoration; and
- Submit to the institution DD-214 form 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, documenting the award.

<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 section 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.

<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.

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> During 2011-2012, 168 students at FCS institutions received Purple Heart fee waivers totaling \$269,580.<sup>42</sup> At state universities, 46 students received Purple Heart fee waivers 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 within FCS institutions.<sup>45</sup> A total of \$205,824,039 in fee exemptions and fee waivers were provided by state universities during 2012-2013.<sup>46</sup> In 2012-2013, Career Centers and Charter Technical Career Centers provided approximately \$661.00 in fee exemptions.<sup>47</sup>

### *Tuition Assistance for Undocumented Aliens*

#### **Federal Law**

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

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 “undocumented alien,” is an alien who has entered the United States illegally and is

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

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

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

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

<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 (Dec. 11, 2013), on file with the Committee on Education staff.

<sup>47</sup> Email, Florida Department of Education (Jan. 17, 2014), on file with the Committee on Education staff. 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.

<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 15, 2014).

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, but not limited, age requirement, to be considered for deferred action for childhood arrival (DACA) temporary status.<sup>54</sup>

### **State Law**

States vary regarding approaches to extend 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, who meet specific requirements, through state legislation.<sup>55</sup> Wisconsin revoked nonresident tuition and fee exemptions for undocumented persons in 2011.<sup>56</sup>

Two states – Oklahoma and Rhode Island – allow in-state tuition rates to such 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 access in-state tuition at those institutions.<sup>57</sup>

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

<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 15, 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 15, 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 15, 2014).

<sup>55</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Feb. 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 15, 2014).

<sup>56</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Feb. 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 15, 2014); see also Department of Administration, State of Wisconsin, *State of Wisconsin 2011-13 Executive budget: Budget in Brief* (2011), available at [http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/Biennial%20Budget%20Archives/2011-13%20Biennial%20Budget/2011-13\\_BIB.pdf](http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/Biennial%20Budget%20Archives/2011-13%20Biennial%20Budget/2011-13_BIB.pdf), at 14 of 92.

<sup>57</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Feb. 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 15, 2014).

<sup>58</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Feb. 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 15, 2014).

Three states – Arizona, Georgia, and Indiana – specifically prohibit students who are undocumented aliens from receiving in-state tuition rates.<sup>59</sup>

Two states – Alabama and South Carolina – prohibit students who are undocumented aliens from enrolling in any public postsecondary institution within the state.<sup>60</sup>

Florida does not affirmatively extend in-state tuition and state financial aid benefits to students who are undocumented aliens. However, Florida law authorizes “each university board of trustees to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university. All fees waived must be based on policies that are adopted by the university boards of trustees pursuant to regulations adopted by the Board of Governors.”<sup>61</sup> Similarly, school districts and FCS institutions may waive fees for any fee-nonexempt student.<sup>62</sup> FCS institutions are also authorized to grant students fee exemptions from all fees.<sup>63</sup>

Students who are U.S. citizens but whose parents are undocumented for federal immigration purposes are eligible to receive in-state tuition and state financial aid benefits. In 2012, the United States District Court for the Southern District of Florida ruled 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.<sup>64</sup>

### **Relevant Case Law**

Pursuant to the United States Supreme Court ruling in 1982, states must provide all students with K-12 public education, regardless of students’ immigration status. The Court ruled that although education is not a fundamental right, “[p]ublic education has a pivotal role in maintaining the fabric of our society and in sustaining our political and cultural heritage: the deprivation of education takes an inestimable toll on the social, economic, intellectual, and psychological well-being of the individual, and poses an obstacle to individual achievement.”<sup>65</sup> The 1982 United States 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>66</sup> The benefit is provided through an exemption from payment of nonresident tuition<sup>67</sup> and has been upheld under federal law<sup>68</sup> because the benefit is

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<sup>59</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Feb. 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 15, 2014).

<sup>60</sup> National Conference of State Legislatures, *Undocumented Student Tuition: Overview* (Feb. 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited March 15, 2014).

<sup>61</sup> Section 1009.26(9), F.S.

<sup>62</sup> Section 1009.26(1), F.S.

<sup>63</sup> Section 1009.25(2), F.S.

<sup>64</sup> *Ruiz v. Robinson*, 892 F. Supp. 2d 1321, 1331-1333 (S.D. Fla. 2012).

<sup>65</sup> *Plyler v. Doe*, 457 U.S. 202, 203 (1982).

<sup>66</sup> Cal. Educ. Code § 68130.5.

<sup>67</sup> *Id.*

<sup>68</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



not based upon residence within the state.<sup>69</sup> The requirements to receive the exemption from payment of nonresident tuition are: attendance at a California high school for three or more years; graduation from a California high school or “attainment of the equivalent thereof”; registration as an entering, or currently enrolled, student at an accredited institution of higher education in California; and if “without lawful immigration status, the filing of 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 an application as soon as he or she is eligible to do so.”<sup>70</sup>

In 2005, a federal district court in Kansas dismissed a lawsuit that challenged the state law regarding in-state tuition benefit 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>71</sup> In 2007, the Tenth Circuit Court of Appeals affirmed the federal district court’s decision.<sup>72</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>73</sup> to provide Florida’s families, affordable means to plan and save for their children’s college education.<sup>74</sup> The Prepaid Program is administered by the Florida Prepaid College Board (Prepaid Board).<sup>75</sup> Florida’s families have purchased more than 1.5 million Prepaid Program contracts.<sup>76</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>77</sup> lock-in many of the costs associated with enrollment in state universities and Florida College System (FCS) institutions (e.g., registration fees, tuition differential fees, local fees, and dormitory fees) at the time such contracts are purchased.<sup>78</sup> Families may choose from the following Prepaid Program options:<sup>79</sup>

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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>69</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 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>70</sup> Cal. Educ. Code § 68130.5.

<sup>71</sup> *Day v. Sebelius*, 376 F. Supp. 2d 1022, 1040 (D. Kan. 2005) *aff’d sub nom. Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007).

<sup>72</sup> *Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007) *cert. denied* 554 U.S. 918 (2008).

<sup>73</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 Feb. 15, 2014).

<sup>74</sup> Section 1009.98(1), F.S.

<sup>75</sup> Section 1009.971(1), F.S.

<sup>76</sup> Florida Prepaid College Board, *Annual Report* (2012), available at <http://www.myfloridaprepaid.com/wp-content/uploads/2012-annual-report.pdf>, at 1.

<sup>77</sup> Section 1009.98(7), F.S.

<sup>78</sup> Section 1009.98(2), F.S.

<sup>79</sup> Florida Prepaid College Board, *Explore Your Options*, <http://www.myfloridaprepaid.com/what-we-offer/> (last visited Feb. 15, 2014).

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

A qualified beneficiary<sup>80</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>81</sup>

Each year, the Prepaid Board conducts an analysis of 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>82</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 level 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>83</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%

<sup>80</sup> A qualified beneficiary is “a resident of [Florida] 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 resident of [Florida] at the time that such parent enters into an advance payment contract on behalf of the child;” or “a graduate of an accredited high school in [Florida] who is a resident of [Florida] at the time he or she is designated to receive benefits of the advance payment contract.” Section 1009.97(3)(f), F.S.

<sup>81</sup> Florida Prepaid College Board, *Annual Report* (2012), available at <http://www.myfloridaprepaid.com/wp-content/uploads/2012-annual-report.pdf>, at 10.

<sup>82</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2013), at 1-2, on file with the Committee on Education staff.

<sup>83</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2013), at 2, on file with the Committee on Education staff.

The Prepaid Board pays state universities five percent above the amount assessed in the previous fiscal year for local fees and six percent above the amount assessed in the previous fiscal year for dormitory fees.<sup>84</sup>

For advance payment contracts purchased on or after July 1, 2009, with regards to registration, tuition differential, local, and dormitory fees, the Prepaid Board must pay the university the actual amount charged for these fees.<sup>85</sup> For actuarial planning purposes, the Prepaid Board must price the Prepaid Plan with the assumption that universities will assess the maximum allowable fees each year.

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

PCS/SB 1400 eliminates the automatic annual tuition increases at public postsecondary institutions, revises the Florida Prepaid Program contract conditions, and extends an in-state tuition benefit to students who meet certain conditions. As a result, the bill makes postsecondary education more accessible and affordable by providing tuition and fee benefits to Florida's families.

#### **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 rate of inflation increase of tuition and fees.

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

For programs leading to a career certificate or applied technology diploma, the bill changes 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 locks-in the current tuition and out-of-state fee levels for the 2014-2015 academic year and each year thereafter by eliminating the automatic annual rate of inflation increase of the tuition and out-of-state fee per contact hour.

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

For advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the bill changes 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 the tuition from \$87.42 to \$91.79 per credit hour for residents. The bill locks-in the current tuition and out-of-state fee levels for the 2014-2015 academic year and each year thereafter by eliminating the automatic annual rate of inflation increase of the tuition and out-of-state fee.

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<sup>84</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2013), at 2, on file with the Committee on Education staff.

<sup>85</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2013), at 2, on file with the Committee on Education staff.

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

For resident undergraduate tuition at state universities, the bill maintains \$103.32 as tuition per credit hour which effectively reduces the current tuition from \$105.07 to \$103.32 per credit hour because in 2013, the state universities implemented the automatic annual rate of inflation increase of resident undergraduate tuition per credit hour, which resulted in increasing the resident undergraduate tuition from \$103.32 to \$105.07 per credit hour.<sup>86</sup> The bill locks-in the 2011 tuition level for the 2014-2015 academic year and each year thereafter by eliminating the automatic annual rate of inflation increase of the resident undergraduate tuition per credit hour. As a result, fees which are indexed to tuition will also be restricted from automatically increasing annually, making university education more affordable and accessible to Florida's families.

The bill also prohibits state university boards of trustees from establishing and increasing tuition differential fee for undergraduate courses effective July 1, 2014. However, current law does not authorize state university boards of trustees to establish or increase the tuition differential fee. The authority to approve or deny tuition differential proposals rests with the Board of Governors for the State University System of Florida (BOG).<sup>87</sup> Specifically, current law requires the BOG to "review each [tuition differential] proposal and advise the university board of trustees of approval of the proposal, the need for additional information or revision to the proposal, or denial of the proposal."<sup>88</sup>

### **Tuition Assistance**

The bill codifies a 2012 court ruling regarding residency classification of students who are U.S. citizens but whose parents are undocumented aliens. The bill also extends an in-state tuition benefit to students who are undocumented aliens and waives tuition for Purple Heart and other combat decoration recipients enrolled at technical centers.

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

The bill codifies the 2012 the 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.<sup>89</sup>

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

The bill extends an in-state tuition benefit to students who are undocumented aliens and who meet certain conditions by waiving the out-of-state fee. The bill does not change the ability of a student, who may be an undocumented alien or a student from another state, to meet the requirements for residency classification for tuition purposes,<sup>90</sup> as a dependent or independent

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<sup>86</sup> Florida Board of Governors, *2013-2014 Fees*, <http://flbog.edu/about/budget/current.php> (last visited March 15, 2014).

<sup>87</sup> Section 1009.24(16)(d), F.S.

<sup>88</sup> Section 1009.24(16)(d), F.S.

<sup>89</sup> *Ruiz v. Robinson*, 892 F. Supp. 2d 1321, 1331-1333 (S.D. Fla. 2012).

<sup>90</sup> Section 1009.21, F.S.

student under the federal income tax code, to qualify for the in-state tuition benefit. Currently, students who are undocumented aliens, must meet the requirements of Florida residency for tuition purposes to pay in-state tuition<sup>91</sup> at a state university, Florida College System (FCS) institution, or technical center, unless the postsecondary institution grants a fee exemption<sup>92</sup> or a fee waiver<sup>93</sup>.

Because federal law<sup>94</sup> requires state laws that extend benefits to undocumented aliens to affirmatively state that undocumented aliens are eligible for the benefits, the bill affirmatively provides an out-of-state fee waiver to students who are undocumented for federal immigration purposes. The out-of-state fee waiver will allow such students to pay in-state tuition at Florida's public postsecondary institutions.

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

- Attend a secondary school in Florida for three 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.

Based on current law regarding undergraduate tuition waiver for recipients of Purple Heart and other combat decoration, the bill requires the out-of-state fee waiver for students who are undocumented aliens to cover 110 percent of the credit hours needed to complete the degree or certificate program in which the student is enrolled. State universities must report to the BOG and FCS institutions, career centers operated by school districts, and charter technical career centers must report to the SBE, the number and value of all fee waivers granted annually. The bill also clarifies that students who are undocumented for federal immigration purposes are not eligible for state financial aid.

The bill maintains access to higher education for Florida residents by requiring the BOG, for the state universities, and the SBE for the colleges and technical centers, to annually certify within the legislative budget request that the percentage of resident students enrolled systemwide is the same as the 2013-2014 resident student enrollment systemwide. Currently, the BOG requires that the nonresident student enrollment must not exceed 10 percent of the total state university systemwide student enrollment.<sup>95</sup> In Fall 2012, the nonresident student enrollment ranged from 18 percent at the University of Florida to 3 percent at the University of North Florida and University of South Florida Sarasota-Manatee and St. Petersburg campuses. Systemwide, 91 percent of the students enrolled in state universities in Fall 2012, were residents while the remaining 9 percent of the enrolled students were nonresidents.<sup>96</sup>

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<sup>91</sup> Section 1009.21, F.S.

<sup>92</sup> Section 1009.25(2), F.S.

<sup>93</sup> Section 1009.26(9), F.S.

<sup>94</sup> 8 U.S.C. s. 1621(d).

<sup>95</sup> Florida Board of Governors Regulation 7.006.

<sup>96</sup> Email, Board of Governors of the State University System of Florida (Feb. 13, 2014), on file with the Committee on Education staff.

***Tuition Waiver for Recipients of Purple Heart or Other Combat Decoration***

Currently, undergraduate tuition is waived for recipients of Purple Heart or other combat decoration superior in precedence who enroll at a state university or FCS institution in an undergraduate program that terminates in a degree or certificate.<sup>97</sup> The bill expands the mandatory 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.

**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 creates a cap on the aggregate sum the Prepaid Program pays state universities for registration, tuition differential, and local fees, equal to the actual amounts charged for those fees as well as a cap on dormitory fees equal 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>97</sup> Section 1009.26(8), F.S.

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

None.

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

The bill locks-in tuition and fee levels by eliminating the automatic annual rate of inflation increase of tuition and out-of-state fees for workforce education programs and 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 significant cost savings for Florida's families.

**Tuition Assistance**

The bill provides an in-state tuition benefit to Florida's students who are undocumented aliens resulting in significant cost savings for such students and their families. Under the bill, students who are undocumented aliens will pay in-state tuition and fees. Additionally, Purple Heart and other combat decoration recipients enrolled at a technical centers will not have to pay tuition.

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>98</sup> At the graduate level, the average cost for two semesters is \$10,262 for residents and \$25,138 for non-residents.<sup>99</sup> Therefore, this out-of-state fee waiver could save an eligible, full-time veteran graduate student<sup>100</sup> 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>101</sup>

For the 2013-2014 academic year, the average district technical center cost for tuition and fees for a full-time equivalent student<sup>102</sup> is \$2,443 for residents, and \$9,710 for non-residents.

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<sup>98</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 Dec. 8, 2013) (noting that the calculation is for students who are full-time taking 30 credit hours).

<sup>99</sup> *Id.* (providing that the calculation is for full-time graduate students taking 24 credit hours).

<sup>100</sup> Full-time status for graduate students is 24 hours.

<sup>101</sup> Data provided by the Division of Florida Colleges (on file with Senate Appropriations Subcommittee on Education).

<sup>102</sup> Full-time equivalent is defined as 900 instructional hours in a certificate program.

### **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 Prepaid Program contracts. The new lump-sum price for the 4-Year Florida University Plan would be reduced by approximately \$10,000,<sup>103</sup> from \$53,729 to less than \$43,000<sup>104</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. A Florida family enrolling a newborn during 2012-13 in a 4-Year Florida University Plan is currently paying \$332 per month under the monthly payment option.<sup>105</sup> These monthly payments are estimated to drop to \$255 per payment – a savings of over \$75 per month for 223 months<sup>106</sup> totaling approximately \$17,000 over the life of the contract.

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

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

With the elimination of automatic annual rate of inflation increase of tuition and out-of-state fees Florida's public postsecondary institutions will not be able receive an automatic annual increase in revenues from tuition and fees. Additionally, because the bill maintains \$103.32 as the resident undergraduate tuition per credit hour and eliminates the automatic annual rate of inflation increase, the state universities may likely experience a dip 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>107</sup> based on the annual rate of inflation increase.

##### **Tuition Assistance**

The fiscal impact of this bill on the state universities, FCS institutions, and technical centers is indeterminate because the number of undocumented aliens who may enroll in the state's public postsecondary institutions is indeterminate.

### **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, the Prepaid Board must pay the 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 a higher cost for the 4-Year Florida

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<sup>103</sup> State Board of Administration, *2014 Agency Legislative Bill Analysis for SB 732* (Feb. 5, 2013), at 3, on file with the Committee on Education staff.

<sup>104</sup> Email, Florida Prepaid College Board (Jan. 15, 2014), on file with Committee on Education staff.

<sup>105</sup> Email, Florida Prepaid College Board (Jan. 15, 2014), on file with Committee on Education staff.

<sup>106</sup> Email, Florida Prepaid College Board (Jan. 15, 2014), on file with Committee on Education staff.

<sup>107</sup> Florida Board of Governors, *2013-2014 Fees*, <http://flbog.edu/about/budget/current.php> (last visited March 15, 2014).



University Plan and 2+2 Florida Plan.<sup>108</sup> This bill provides an improved forecast methodology allowing the Prepaid Board to more accurately price the 4-Year Florida University Plan and 2+2 Florida Plan.

The fiscal impact of the bill on the state universities is indeterminate, but may reduce the 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.

**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.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**PCS by Education:**

The proposed 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

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<sup>108</sup> Email, Florida Prepaid College Board (Feb.25, 2014), on file with Committee on Education staff.

and their parents' undocumented immigration status, may not be denied in-state tuition benefits based upon their parents' undocumented immigration status.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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