

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 851 Postsecondary Education Tuition and Fees

**SPONSOR(S):** Appropriations Committee, Education Appropriations Subcommittee and Higher Education & Workforce Subcommittee, Nuñez and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	12 Y, 0 N, As CS	Sherry	Sherry
2) Education Appropriations Subcommittee	13 Y, 0 N, As CS	Garner	Heflin
3) Appropriations Committee	19 Y, 7 N, As CS	Garner	Leznoff

### SUMMARY ANALYSIS

The bill revises provisions relating to the determination of resident status for tuition purposes.

The bill provides that a United States citizen who is a dependent child may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. It amends the definitions of "dependent child" and "parent" regarding establishing residency for tuition purposes.

The bill also clarifies that postsecondary institutions may satisfy the verification requirement of documents by accepting an affidavit that requires the person claiming residence to submit specific information. Furthermore, once any institution of higher education in the state classifies a student as a resident for tuition purposes or verifies that a student meets specific criteria established in law, an institution of higher education would not be required to reevaluate the classification status of a student so long as there is no inconsistent information suggesting an erroneous classification and there is no break in the student's enrollment of 12 months or longer.

The bill clarifies that a student who resides in Florida may be classified as a resident for tuition purposes if he or she marries a person who qualifies as a resident for tuition purposes. It also allows a student who has been classified as a nonresident to reclassify as a resident upon subsequently marrying a person who already qualifies as a resident for tuition purposes.

For a dependent child living with an adult relative who is a Florida resident and who is not the child's parent, the bill reduces the amount of time the child must live with the relative in order to use the relative's documentation to establish residency for tuition purposes from five years to three years.

The bill clarifies that students who are eligible for specific tuition exemptions or waivers are classified as residents for tuition purposes.

The bill exempts the following types of students from the payment of out-of-state fees:

- Veterans of the United States Armed Forces, including reserve components, who physically reside in Florida while enrolled in a Florida postsecondary institution; and
- Students who attend a Florida high school for 3 consecutive years and enroll in a postsecondary institution within 24 months after graduation, provided they submit their high school transcript as documentary evidence of attendance and graduation.

Students who are not required to pay out-of-state fees under the new provisions may be reported for purposes of state funding.

The bill clarifies that the Board of Governors must adopt regulations, instead of rules, to implement the section.

The bill eliminates the automatic annual rate of inflation increases currently authorized for state universities, Florida colleges, and workforce education programs. The bill also reduces the rate at which an institution may request to increase their tuition differential to the Board of Governors from 15 percent to 6 percent.

The fiscal impact of the bill is indeterminate at this time.

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

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

**STORAGE NAME:** h0851e.APC

**DATE:** 3/13/2014

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers, career centers operated by school districts, Florida College System institutions, and state universities. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.<sup>1</sup>

Applicants to a postsecondary institution must meet certain qualifying standards in order to be classified as a resident of Florida for tuition purposes. The applicant, or in the case of a dependent child, his or her parents,<sup>2</sup> must establish legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to the applicant's enrollment in a postsecondary institution.<sup>3</sup>

Each postsecondary institution determines the residency status of the students who apply for admission to the institution.<sup>4</sup> Each applicant must provide to the institution a statement of length of residence and establish that his or her presence in the state is for the purpose of maintaining a bona fide domicile and not as a temporary residence or residence incident to enrollment.<sup>5</sup>

#### Documentation of residency for tuition purposes

An applicant seeking an initial determination of residency must submit two or more documents evidencing residency to the institution. For students who are eligible to be claimed as a dependent under the federal income tax code (regardless of whether they are claimed or not), the applicant's parent (not the applicant) must submit documentation evidencing length of residency in Florida. No one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes.<sup>6</sup> At least one of the following must be provided by the applicant or the applicant's parent if the applicant is a dependent:

- A Florida voter's registration card;
- A Florida driver's license;
- A State of Florida identification card;
- A Florida vehicle registration;
- Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child;
- Proof of a homestead exemption in Florida;
- Transcripts from a Florida high school for multiple years if the Florida high school diploma or GED was earned within the last 12 months; or
- Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.<sup>7</sup>

One or more of the following documents may be provided by the applicant:

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<sup>1</sup> See Sections 1009.22, 1009.23, and 1009.24, F.S. Out-of-state tuition is established by each university board of trustees, subject to the approval of the BOG. Section 1009.24(4)(c), F.S.

<sup>2</sup> The legal residence of a dependent child's parents is prima facie evidence of the dependent child's residence. Section 1009.21(4), F.S.

<sup>3</sup> Section 1009.21(2)(a)1., F.S. A legal resident, for purposes of tuition, is a person who has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in Florida pursuant to s. 222.17, F.S. Section 1009.21(1)(d), F.S.

<sup>4</sup> Section 1009.21(3)(c), F.S.

<sup>5</sup> Section 1009.21(2)(a)2., F.S. Each institution must also establish a residency appeal committee under s. 1009.21(12), F.S.

<sup>6</sup> Section 1009.21(3)(c), F.S.

<sup>7</sup> Section 1009.21(3)(c)1., F.S.

- A declaration of domicile in Florida;
- A Florida professional or occupational license;
- Florida incorporation;
- A document evidencing family ties in Florida;
- Proof of membership in a Florida-based charitable or professional organization; or
- Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments, a lease agreement and proof of 12 consecutive months of payments, or an official state, federal, or court document evidencing legal ties to Florida<sup>8</sup>

## Implementation of Residency Requirements

### Present Situation

The State Board of Education (SBE) and Florida Board of Governors (BOG) must adopt rules to implement the provisions of Section 1009.21, F.S.<sup>9</sup> Accordingly, the SBE has adopted Rule 6A-10.044, F.A.C., "Residency for Tuition Purposes." The BOG has adopted a similar set of provisions under Rule 72.1001, F.A.C., also entitled "Residency for Tuition Purposes."<sup>10</sup> Each rule establishes requirements for determining residency for tuition purposes.

Federal law provides that 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 benefits 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."<sup>11</sup>

### *Ruiz v. Robinson*

In 2011, a group of five dependent, U.S. citizen residents of Florida filed a lawsuit against the SBE and the BOG challenging the above-referenced rule and regulation promulgated by both boards. The plaintiffs had applied to attend various postsecondary institutions in Florida,<sup>12</sup> but were denied residency status by the institutions application of the rules because the plaintiffs' parents could not establish legal immigration status.<sup>13</sup> The plaintiffs claimed in their lawsuit that the rules are unconstitutional because they violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The court held that the State cannot deny in-state residency status to a U.S. citizen resident of Florida based upon his or her parent's inability to prove their own legal presence in the country. While the court stated the definition of "legal resident" under Section 1009.21, F.S. is facially neutral; it found that the additional criteria set forth in the challenged rules, as implemented by the institutions, denied the Plaintiffs the same benefits and opportunities as similarly situated individuals.<sup>14</sup> Therefore, the rules, insofar as they require dependent United States citizen students who are residents of Florida to establish the immigration status of their Florida resident parents, were found to violate the Equal Protection Clause of the Fourteenth Amendment. The court also enjoined the BOG and the SBE from interpreting the rules in a way that would require such students to establish the immigration status of their Florida-resident parents.<sup>15</sup>

<sup>8</sup> Section 1009.21(3)(c)2., F.S.

<sup>9</sup> Section 1009.21(13), F.S.

<sup>10</sup> The Florida Board of Governors also adopted Regulation 7.005 in 2011 with language that is identical to Rule 72.1001, F.A.C.

<sup>11</sup> 8 U.S.C. § 1623, Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

<sup>12</sup> The institutions included Florida International University, Miami-Dade College, and Palm Beach State College.

<sup>13</sup> 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

<sup>14</sup> *Ruiz v. Robinson* at 1333.

<sup>15</sup> Final Judgment in *Ruiz v. Robinson*. Docket Document 109, 1:11-cv-23776-KMM, Federal District Court, Southern District of Florida.

The court clarified that the order would not preclude the State from requiring proof of Florida residency from a student and the student's parents in order to classify the student as a resident for tuition purposes.<sup>16</sup>

The court also noted that the SBE or BOG could not use the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PROWRA) as justification for requiring proof of a parent's legal presence in the country because that law merely precludes unlawful *aliens*, not U.S. citizens, from receiving tuition benefits. Since the children in this case were U.S. citizens and the tuition benefit accrues to the child and not the parent, PROWRA was inapplicable.<sup>17</sup>

### Effect of Proposed Changes

The bill provides that a United States citizen, who is a dependent child, may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. This, in effect, codifies the holding in *Ruiz v. Robinson*.<sup>18</sup>

## **Definitions**

### Present Situation

A "dependent child" is defined as any person, whether or not living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code.<sup>19</sup> A "parent," in the context of establishing residency for tuition purposes, is defined as the natural or adoptive parents or legal guardian of a dependent child.<sup>20</sup> However, the federal income tax code allows a stepparent to claim a stepson or stepdaughter as a dependent.<sup>21</sup>

For purposes of determining eligibility for federal financial aid, an independent student is one of the following: at least 24 years old, married, a graduate or professional student, a veteran, a member of the armed forces, an orphan, a ward of the court, someone with legal dependents other than a spouse, an emancipated minor, or someone who is homeless or at risk of becoming homeless.<sup>22</sup>

### Effect of Proposed Changes

The bill amends the definition of "dependent child" to include any person who is not deemed an independent for purposes of federal financial aid. This would help to promote consistency and avoid discrepancy between the determination of dependent or independent status for residency purposes and the determination of such status for federal financial aid purposes. It also amends the definition of "parent" to include stepparents to align with the federal income tax code definition.

## **Verification of documents by postsecondary institutions**

### Present Situation

Public postsecondary institutions must affirmatively determine that an applicant granted admission to that institution meets the residency requirements.<sup>23</sup> Residency determination must be documented by the submission of written or electronic verification that includes two or more documents including either a Florida voter registration card, a Florida driver's license, a State of Florida identification card, a Florida vehicle registration, proof of a permanent home in Florida occupied as a primary residence,

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<sup>16</sup> *Id.* at 8-9.

<sup>17</sup> *Id.* at 9.

<sup>18</sup> 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

<sup>19</sup> Section 1009.21(1)(a), F.S.

<sup>20</sup> Section 1009.21(1)(f), F.S.

<sup>21</sup> 26 U.S.C. s. 152.

<sup>22</sup> U.S. Department of Education, *Federal Student Aid Glossary*, available at <http://studentaid.ed.gov/glossary> (last visited Feb. 27, 2014)

<sup>23</sup> Section 1009.21(3)(c), F.S.

proof of a homestead exemption, a Florida high school transcript, or proof of permanent full-time employment in Florida.<sup>24</sup>

Currently, the residency affidavit submitted by applicants provides for the person claiming residency to verify his or her voter registration card, driver's license, identification card, or vehicle registration by the state of issuance, number, original issue date and current issue date. In lieu of requiring the claimant to produce verified documents from the various state agencies responsible for issuing the documents, which could result in great expense and delay to the student and the claimant, postsecondary institutions have been using the residency affidavit to satisfy the electronic verification requirement in the statute.<sup>25</sup> There have been differing interpretations by some state auditors as to what constitutes "electronic verification" of this information.

### Effect of Proposed Changes

The bill clarifies that postsecondary institutions may satisfy the verification requirement for documents by accepting an affidavit that requires the person claiming residence to submit specific information.

## **Children who reside with an adult (non-parent) relative**

### Present Situation

A dependent child living with an adult relative, who is not the child's parent, may be classified as a resident for tuition purposes if the child has lived with the adult relative for five consecutive years immediately prior to initial enrollment at an institution of higher education and the adult relative must have maintained legal residence in Florida for at least 12 months prior to the child's enrollment.<sup>26</sup>

### Effect of Proposed Changes

For a dependent child living with an adult relative who is not the child's parent, the bill reduces from five years to three years the amount of time the child must live with the relative in order to use the adult relative's documentation to qualify as a resident for tuition purposes. The three year requirement aligns with other time periods established in the bill.

## **Effect of marital status on residency for tuition purposes**

### Present Situation

A student may not be denied legal resident status solely by reason of marriage to a person domiciled in another state, so long as the student remains a legal resident of Florida.<sup>27</sup> Conversely, a student cannot establish legal residence in this state solely by reason of marriage to a person domiciled in this state.<sup>28</sup> Florida law also provides that, upon becoming a legal resident, a student may reclassify as a resident for tuition purposes if his or her spouse is already a legal resident.<sup>29</sup>

### Effect of Proposed Changes

The bill clarifies when a person may be classified or reclassified, due to marriage, as a resident for tuition purposes. A person residing in Florida may be classified as a resident for tuition purposes if he or she marries a person who meets the 12-month residency requirement and otherwise qualifies as a resident for tuition purposes. A person may be reclassified as a resident for tuition purposes if the

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<sup>24</sup> *Id.*

<sup>25</sup> Email, State University System of Florida, Board of Governors (Feb. 5, 2014).

<sup>26</sup> Section 1009.21(2)(b), F.S.

<sup>27</sup> Section 1009.21(5)(a), and (6)(d), F.S.

<sup>28</sup> Section 1009.21(5)(b), F.S.

<sup>29</sup> Section 1009.21,(6)(d), F.S. The student must submit evidence of his or her own residency in this state, evidence of his marriage to the spouse, and evidence of the spouse's legal residency in the state for at least 12 consecutive months immediately preceding the application for reclassification.

person submits evidence of: his or her own physical residence in the state and marriage to a person who qualifies as a resident for tuition purposes.

## **Reevaluation of residency status**

### Present Situation

Currently, if the parents of a dependent student establish a domicile in another state after the student has been classified as a Florida resident for tuition purposes, the student loses his or her resident status. However, the student is provided a one-year grace period, measured from the date the circumstances resulting in the loss of residency status arose, during which the student continues to maintain in-state tuition rates.<sup>30</sup>

### Effect of Proposed Changes

The bill provides that once any institution of higher education in the state classifies a student as a resident for tuition purposes or verifies that a student meets specific criteria established in law, an institution of higher education would not be required to reevaluate the classification status of a student so long as there is no inconsistent information suggesting an erroneous classification and there is no break in the student's enrollment of 12 months or longer.

## **Residency of individuals eligible for tuition exemptions and waivers**

### Present Situation

Under current law, certain persons are eligible for tuition exemptions and waivers, including:

- Individuals who are homeless;<sup>31</sup>
- Individuals who were in the custody of the Department of Children and Families at the time they reached 18 years of age;<sup>32</sup>
- Individuals who were in the custody of a relative under s. 39.5085, F.S., at the time they reached 18 years of age or who were adopted from the Department of Children and families after May 5, 1997;<sup>33</sup>
- Individuals who have been wrongfully incarcerated;<sup>34</sup>
- Dependents or spouses of firefighters killed in the line of duty;<sup>35</sup> and
- Dependents or spouses of law enforcement, correctional, or correctional probation officers killed in the line of duty.<sup>36</sup>

Although these individuals are legal residents of Florida, it can be difficult, or even impossible, for them to compile and provide documentation establishing their residence in Florida for tuition purposes. Consequently, institutions may grant the exemption or waiver to the student as a non-resident student. Currently, there are no provisions under Florida law automatically classifying persons eligible for these tuition exemptions and waivers as residents for tuition purposes.

### Effect of Proposed Changes

Under the bill, individuals who receive a tuition exemption or waiver are classified as residents for tuition purposes. This would eliminate the burden borne by students and institutions regarding

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<sup>30</sup> Section 1009.21(8), F.S.

<sup>31</sup> Section 961.06(1)(b), F.S.

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

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

<sup>34</sup> Section 1009.25(1)(f), F.S.

<sup>35</sup> Section 112.191(3), F.S.

<sup>36</sup> Section 112.19(3), F.S.

classification of residency based on the submission of various documents to which these individuals may not have access.

## Veterans in Florida

### Present Situation

Florida law also classifies certain individuals as Florida residents for tuition purposes without requiring the individuals to submit the above-described documentation under Section 1009.21(3)(c), F.S. Such individuals include:

- Active duty members of the Armed Services of the United States residing or stationed in this state, their spouses, and dependent children, and active drilling members of the Florida National Guard.
- Active duty members of the Armed Services of the United States and their spouses and dependents attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed, if such military establishment is within a county contiguous to Florida.
- United States citizens living on the Isthmus of Panama, who have completed 12 consecutive months of college work at the Florida State University Panama Canal Branch, and their spouses and dependent children.
- Full-time instructional and administrative personnel employed by state public schools and institutions of higher education and their spouses and dependent children.
- Students from Latin America and the Caribbean who receive scholarships from the federal or state government. Any student classified pursuant to this paragraph shall attend, on a full-time basis, a Florida institution of higher education.
- Southern Regional Education Board's Academic Common Market graduate students attending Florida's state universities.
- Full-time employees of state agencies or political subdivisions of the state when the student fees are paid by the state agency or political subdivision for the purpose of job-related law enforcement or corrections training.
- McKnight Doctoral Fellows and Finalists who are United States citizens.
- United States citizens living outside the United States who are teaching at a Department of Defense Dependent School or in an American International School and who enroll in a graduate level education program which leads to a Florida teaching certificate.
- Active duty members of the Canadian military residing or stationed in this state under the North American Air Defense (NORAD) agreement, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed.
- Active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where the foreign liaison officer is stationed.<sup>37</sup>

Under current law, however, veterans must meet the residency requirements set forth under s. 1009.21(2), F.S., in order to be eligible for in-state tuition rates.<sup>38</sup>

Section 1.01(14), F.S., defines the term veteran as:

a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the

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<sup>37</sup> Section 1009.21(10), F.S.

<sup>38</sup> To establish residency for tuition purposes, a person, or if that person is a dependent child, his or her parent, to establish legal residence in Florida and maintain legal residence in Florida for at least 12 consecutive months immediately prior to initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.

United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

Florida is tied with Texas for the second largest population of veterans in the nation at 1.6 million. Only California has a larger population of veterans, at 2 million.<sup>39</sup>

### Effect of Proposed Changes

Under the bill, veterans of the Armed Services of the United States, including reserves, who physically reside in Florida while enrolled in a Florida institution of higher education, are not required to pay the out-of-state fees ordinarily charged to non-resident students. Consequently, veterans would not have to maintain legal residence for 12 months prior to enrollment in order to qualify for in-state tuition.

## **Florida High School Graduates**

### Present Situation

Currently, transcripts from a Florida high school for multiple years may be used as one piece of documentation for students trying to establish residency for tuition purposes.<sup>40</sup> However, in addition to the high school transcripts, students who are dependents must provide a second piece of documentation that attests to the residency of their parents or legal guardians. This may be difficult for students whose parents are estranged, unwilling to provide documentation, or are undocumented immigrants. Since no one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes,<sup>41</sup> many Florida high school graduates who have lived in Florida for multiple years cannot provide the required documentation and are classified as out-of-state students. This has been a particularly difficult problem for students who are undocumented immigrants that were brought to the United States by their parents as a child.

Several states currently have laws, referred to as tuition equity, that permit certain undocumented students who have attended and graduated from their primary and secondary schools to pay the same tuition as their classmates at public institutions of higher education. A majority of America's undocumented immigrants live in these states, and several other states are considering similar policies.<sup>42</sup>

Tuition equity laws generally allow students who attend and graduate from a high school in a state, and who meet other specified criteria, to pay in-state tuition rates, regardless of their immigration status. Currently, **17 states** have provisions allowing for in-state tuition rates for undocumented students. 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 undocumented students through state legislation. Two states—Oklahoma and Rhode Island— allow in-state tuition rates to undocumented students through Board of Regents decisions.<sup>43</sup>

The states that have passed laws to allow undocumented students to receive in-state tuition delineate requirements for eligibility. In general, students must live in state and attend high school for a specified period (1-4 years), and graduate or receive their GED. Students must be accepted to a public college or university, and must sign an affidavit stating their intention to file for legal immigration status. Only 3

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<sup>39</sup> United States Census Bureau, *A Snapshot of Our Nation's Veterans*, available at: <http://www.census.gov/how/infographics/veterans.html> (Last visited Feb. 14, 2014)

<sup>40</sup> Section 1009.21(3)(c), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> National Immigration Law Center, *Facts About In-state Tuition*, available at: <http://www.nilc.org/fsinstat.html> (Last visited Feb. 7, 2014)

<sup>43</sup> National Council of State Legislatures, *Undocumented Student Tuition: Overview*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (Last visited Feb. 7, 2014)



states—California, New Mexico and Texas—currently allow undocumented students to receive state financial aid. Students without legal immigrant status are ineligible for federal financial aid.<sup>44</sup>

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) states, "...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."<sup>45</sup>

The states that have enacted laws granting in-state tuition rates to undocumented students have worded the legislation so that it is contingent on high school attendance and graduation, and not based on residency within the state. Since legal United States residents are also entitled to in-state tuition rates based on the same criteria, the states claim that their laws do not violate the IIRIRA. The California Supreme Court upheld California's law that grants in-state tuition rates to eligible undocumented students.<sup>46</sup>

### Effect of Proposed Changes

The bill provides that students, regardless of immigration status, who attend a Florida high school for 3 consecutive years and enroll in an institution of higher education within 24 months after graduation are not required to pay out-of-state fees, provided they submit their high school transcript as documentary evidence of attendance and graduation. While these students are not classified as residents for tuition purposes, they may be reported for purposes of state funding.

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<sup>44</sup> National Council of State Legislatures, *Undocumented Student Tuition: State Action*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx> (Last visited Feb. 7, 2014)

<sup>45</sup> Pub. L. No. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996).

<sup>46</sup> National Council of State Legislatures, *Undocumented Student Tuition: Federal Action*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-federal-action.aspx> (Last visited Feb. 7, 2014)

## Higher Education Automatic Rate of Inflation Increase

### Current Situation

The standard rates of tuition for the State University System, Florida College System, and Workforce Education programs established by the Legislature for Fiscal Year 2013-2014 are as follows:

#### Postsecondary Tuition Rates - Fiscal Year 2013-2014

Institution	Rate Per	Resident/ Non-Resident Tuition	Out-of State Fee (Is Paid in Addition to Tuition)
<b>School District Career Centers</b>			
Workforce Programs (non-college credit) Applied Technology Diploma Career Certificate	Contact Hour	\$2.33	\$6.99
<b>Florida College System</b>			
Workforce Programs (non-college credit) Applied Technology Diploma Career Certificate	Contact Hour	\$2.33	\$6.99
Undergraduate Advanced and Professional Postsecondary Vocational Developmental Education Educator Preparation Institute Programs	Credit Hour	\$71.98	\$215.94
Baccalaureate	Credit Hour	\$91.79	Determined by Institution
<b>State University System</b>			
Undergraduate	Credit Hour	\$105.07	Determined by Institution
Graduate Programs	Determined by Institution		

Current law specifies that the resident undergraduate tuition per credit hour must increase at the beginning of each fall semester at a rate equal to inflation unless otherwise provided in the General Appropriations Act. Automatic tuition increases are also applicable for Florida College System institutions, and School District Career Centers, except that the inflationary increase is authorized for both tuition and out-of-state fees. 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.” Prior to March 1 of each year, the Office of Economic and Demographic Research 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 (BOG) of the State University System (SUS) of Florida. If the percentage change is negative or the Legislature does not establish the tuition in the GAA, the tuition remains the same as the prior fiscal year.

### Effect of Changes

The bill eliminates the automatic annual rate of inflation increases currently authorized for state universities, Florida colleges, and workforce education programs. In doing so the bill also deletes the requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, the Board of Governors, and the State Board of Education and deletes the definition of the term “rate of inflation”. The bill specifies that if the tuition rate is not provided in the General Appropriations Act, the tuition and out-of-state fee shall remain at the same level as the prior fiscal year.

## State University System Limitation Tuition Differential Increase

### Current Situation

The University Boards of Trustees of each university are authorized by the Board of Governors to charge a tuition differential which may be assessed on all undergraduate courses at a state university. Revenue generated by the tuition differential must be spent solely for improving the quality of direct undergraduate instruction and support services. Seventy percent of the revenues from the tuition differential shall be expended for purposes of undergraduate education, the remaining 30 percent of the revenues from the tuition differential, or the equivalent amount of revenue from private sources, shall be expended to provide financial aid to undergraduate students who exhibit financial need. If the entire tuition and fee costs of resident students who have applied for and received Pell Grant funds have been met and the university has excess funds remaining from the 30 percent of the revenues from the tuition differential required to be used to assist students who exhibit financial need, the university may expend the excess portion in the same manner as required for the other 70 percent of the tuition differential revenues.

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. Each state university may not increase the aggregate sum of tuition and the tuition differential by more than 15 percent of the total charged for the aggregate sum of these fees in the preceding fiscal year. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

The Board of Governors convenes in June of each year to discuss the tuition differential proposals submitted by the university boards of trustees. In FY 2012-2013, all eleven state universities were approved by the Board for a tuition differential increase. The tuition differential by university ranges from \$35.14 to \$52.29 per student credit hour – the System average is \$41.30. The System estimates \$240 million in tuition differential revenue for 2012-2013 – with \$168 million geared towards undergraduate educational services and \$72 million for institutional need-based financial aid.

### Effect of Changes

The bill reduces the rate at which an institution may request to increase their tuition differential to the Board of Governors from 15 percent to 6 percent. Lowering the annual percentage increase for the aggregate sum of tuition and the tuition differential reduces the ability to increase fees which are indexed to tuition.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 1009.21, F.S., revising provisions relating to the establishment of residency for tuition purposes; reducing the five-year requirement for children living with resident, non-parent relatives; allowing students to maintain established resident status; amending the definition of “dependent child”; amending the definition of “parent”; providing that the state may not deny a U.S. citizen resident of Florida residency status for tuition purposes based solely on the immigration status of his or her parent; permitting institutions to satisfy document verification requirement based on submission of affidavit by person claiming residency; clarifying provisions on residency for tuition purposes pertaining to marital status; granting residency status to individuals eligible for certain tuition waivers and exemptions under Florida law; granting an exemption from the payment of out-of-state fees to veterans of the U.S. Armed Forces who physically reside in Florida while enrolled in a Florida institution of higher learning; granting an exemption from the payment of out-of-state fees for students who meet certain graduation, enrollment, and residency documentation requirements; requiring the Board of Governors to adopt regulations implementing the section.

Section 2. The bill eliminates the automatic annual rate of inflation increases currently authorized for workforce education programs.

Section 3. The bill eliminates the automatic annual rate of inflation increases currently authorized for Florida colleges.

Section 4. The bill eliminates the automatic annual rate of inflation increases currently authorized for state universities. The bill reduces the rate at which an institution may request to increase their tuition differential to the Board of Governors from 15 percent to 6 percent.

Section 2. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The fiscal impact is indeterminate as it is difficult to identify the number of students who meet the criteria outlined in the bill, but are not currently enrolled in or who would be reclassified at an institution of higher education.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

##### **Student Veterans of State Universities**

The State University System reported 353 non-resident or unclassified undergraduate veteran students and 195 non-resident graduate level veteran students in 2013-2014.<sup>47</sup> Thus, universities would experience an estimated loss of \$8,294,307 in revenues from out-of-state tuition and fees.

##### **Student Veterans of Florida College System Institutions**

The Florida College System reported that there were 449 veteran students who were classified as non-residents in 2012-13.<sup>48</sup> Thus, the colleges would experience an estimated loss of approximately \$5 million in revenues from out-of-state tuition and fees.

##### **Higher Education Automatic Rate of Inflation Increase**

The reported rate of inflation for FY 2014-15 is 1.5% which would have the potential of increasing revenues for state universities by \$9.3 million, \$13.2 million for Florida Colleges, and \$575,000 for workforce programs.

##### **State University System Limitation Tuition Differential Increase**

Reducing the rate at which an institution is able to increase their tuition differential from 15 percent to 6 percent decreases the potential revenue increase by \$107 million for FY 2014-2015 and compounds over time.

#### 2. Expenditures:

None.

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<sup>47</sup> State University System of Florida Board of Governors, *Legislative Bill Analysis for HB 851* (2014).

<sup>48</sup> Email, Florida College System, Division of Florida Colleges (Feb. 12, 2014). Only GI Bill recipients are included in count.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would allow veterans and specified Florida high school graduates, who would otherwise be unable to establish Florida residency for tuition purposes, to pay lower, in-state tuition rates at state universities and Florida College System institutions.

#### **Student Veterans of State Universities**

For the 2013-2014 academic year, the average cost of SUS undergraduate tuition and fees for two semesters (30 credit hours) is \$6,155 for residents and \$21,434 for non-residents. For graduate students, the average cost of tuition and fees for two semesters (24 hours) is \$10,262 for residents and \$25,138 for non-residents. Thus, student veterans could expect savings in the amount of \$15,279 at the undergraduate level and \$14,876 at the graduate level for the 2013-2014 academic year.<sup>49</sup>

#### **Student Veterans of Florida College System Institutions**

For 2013-14, the Florida College System reports the average cost for two semesters is \$3,124 for residents enrolled in non-baccalaureate degree programs and \$11,531 for non-residents. For students enrolled in the baccalaureate degree programs, the cost for two semesters is \$3,585 for residents and \$15,400 for non-residents. Thus, student veterans could expect savings in the amount of \$8,407 in non-baccalaureate degree programs and \$11,815 in baccalaureate degree programs for the 2013-14 academic year.<sup>50</sup>

#### **Higher Education Automatic Rate of Inflation Increase**

Eliminating the automatic annual rate of inflation increases maintains tuition rates at the same amount which reduces the potential impact of a tuition increase for students. The impact to the student for FY 2013-14 is \$1.58 per credit hour or \$47.28 annual cost at universities; \$1.08 per credit hour or \$32.39 annual cost at colleges for residents (\$3.24 per credit hour or \$97.17 for non-residents); and \$0.03 per contact hour or \$20.97 for a 600 contact hour program at school district career centers for residents, (\$0.10 per contact hour or \$62.91 for non-residents).

#### **State University System Limitation Tuition Differential Increase**

Reducing the rate at which an institution is able to increase their tuition differential which reduces the potential impact of a tuition increase for students. The impact to the student for FY 2013-14 is an average of \$23 per credit hour or \$682 annual cost at state universities.

### D. FISCAL COMMENTS:

None.

## **III. COMMENTS**

### A. CONSTITUTIONAL ISSUES:

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

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

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<sup>49</sup> State University System of Florida Board of Governors, *Tuition & Fees*, available at <http://www.flbog.edu/about/budget/tuition.php>. (last visited Feb. 11, 2014).

<sup>50</sup> Email, Florida College System, Division of Florida Colleges (Feb. 12, 2014).

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill requires the Board of Governors to adopt regulations to implement the provisions of the section. The SBE and BOG may need to amend any rules or regulations inconsistent with the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**