

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1261 Higher Education
SPONSOR(S): Education & Employment Committee, Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 102 Y's 11 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1261 passed the House on April 21, 2021. The bill was amended in the Senate on April 27, 2021, and returned to the House. The House concurred in the Senate amendments and subsequently passed the bill as amended on April 28, 2021. Part of the bill also passed the House and Senate in CS/CS/SB 52 on April 28, 2021.

To lower the cost of attendance at a state university and increase access for students and families, the bill provides low cost tuition for in-demand science, technology, engineering, and math degree programs, through a 'Buy One, Get One' free tuition waiver program; provides one free course and a 25 percent discount on tuition and fees for remaining courses in an online baccalaureate degree program to veterans, active duty military servicemembers, active drilling members of the Florida National Guard, and nontraditional students; and waives the out-of-state fee for top-performing out-of-state students who have a grandparent that is a legal Florida resident.

The bill provides COVID-19 liability protection to public and private postsecondary institutions, the Board of Governors of the State University, and the State Board of Education for reasonably necessary actions taken in compliance with federal, state, or local guidance to diminish the impact or spread of COVID-19.

To further promote informed consumer choice and give prospective and current students better access to student outcome data, the bill requires the Board of Governors to create an online dashboard that includes student graduate data and requires each state university board of trustees to adopt procedures to connect undergraduate students to career planning, coaching, and related programs.

The bill also clarifies that postsecondary tuition and fee exemptions apply to a student who is currently in the custody of the Department of Children and Families or a specified relative or nonrelative, or who was at the time he or she reached 18 years of age; requires participants in the Last Mile College Completion program and recipients of the Florida Farmworker Students Scholarship Program to meet the general student eligibility requirements relating to Florida residency; removes obsolete provisions related to the various Florida Student Assistance Grant programs; and requires all institutions that receive state financial aid and tuition assistance programs to report identified information.

The bill will have an indeterminate fiscal impact on colleges and universities. See Fiscal Analysis section.

The bill was approved by the Governor on June 29, 2021, ch. 2021-232, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

COVID-19 Liability Protection

Present Situation

COVID-19

The COVID-19 pandemic has drastically affected the state of Florida since the outbreak began affecting the United States in early 2020. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, over 2 million positive COVID-19 cases have been diagnosed in the state, over 85,000 people have been hospitalized, and over 33,000 people have died of the virus.¹

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended seven times,² most recently by Executive Order No. 21-45, issued on February 26, 2021.

To respond to the potentially serious impacts of COVID-19 on the health and safety of state university students, faculty, and staff, the Board of Governors of the State University System (BOG) issued guidance to the state universities for the academic and operational continuity of the institutions during the virus outbreak.

On March 11, 2020,³ the BOG directed state universities to make plans to transition to remote instruction as soon as possible. Subsequently, the BOG directed that remote instruction would continue through the end of the Spring 2020 semester at each state university and students who could return home should return home. Universities were also encouraged to consider using remote instruction for the early summer terms.⁴

On June 23, 2020, the BOG approved reopening plans for the state universities that, among other items, included plans to shift back to remote instruction in case of an outbreak, and to continue to provide high-quality educational experiences while utilizing technology and flexibility and prioritizing student and faculty welfare.⁵

As universities moved classes online to curtail the spread of COVID-19, students across the country have raised concerns that they were still paying regular tuition prices for what became an online education. Students at several public and private universities in Florida have sued for tuition reimbursements. In one such case, the court explained that the:⁶

[COVID-19] pandemic has wreaked havoc on the world. In the Spring of 2020, many schools and colleges, both public and private, were forced to move their curriculum from in-person to online instruction out of concern for the health of their students, faculty, and staff, and in

¹ Florida Department of Health, Division of Disease Control and Health Protection, *available at* [Florida's COVID-19 Data and Surveillance Dashboard \(arcgis.com\)](https://www.flhhs.com/disease/covid-19/surveillance) (last visited May 4, 2021).

² A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

³ Board of Governors, *State University System Statement on COVID-19*, <https://www.flbog.edu/2020/03/11/state-university-system-statement-on-covid-19/> (last visited May 4, 2021).

⁴ Board of Governors, *State University System Extends Remote Learning* (Mar. 17, 2020) <https://www.flbog.edu/2020/03/17/state-university-system-extends-remote-learning/> (last visited April 2, 2020).

⁵ Board of Governors, *HIGHLIGHTS: Board of Governors' Meeting* (Last visited May 4, 2021).

⁶ *Salerno v. Florida S. Coll.*, 488 F. Supp. 3d 1211 (M.D. Fla. 2020).

response to government-mandated closures and social-distancing measures. This case is novel in the sense that there is no legal precedent involving a pandemic's impact on a school's promise to provide in-person learning when doing so would be unsafe and/or against government mandates. And so, like the ripple in a pond after one throws a stone, the legal system is now feeling COVID-19's havoc with the current wave of class action lawsuits that seek tuition reimbursement related to forced online tutelage.

Breach of Contract

"For a breach of contract claim, Florida law requires the plaintiff to plead and establish: (1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach."⁷ A student and a private university have an "implied-in-fact contract", the terms and conditions of which are found in the publications such as the university catalogs, student manuals, student handbooks, and other university policies and procedures.⁸

Effect of the Bill

The bill provides liability protections for educational institutions for actions related to the COVID-19 pandemic. Specifically, the bill:

- Defines an educational institution as "any postsecondary institution, whether public or nonpublic."
- Extends the protections to an educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 and provides immunity from any civil damages, equitable relief, or other remedies relating to such actions.
- Adds the BOG and the State Board of Education (SBE) as entities to which COVID-19 liability protections is granted.
- Defines reasonably necessary actions taken while a state of emergency was declared for this state for the COVID-19 pandemic to include, but not limited to, any of the following:
 - Shifting in-person instruction to online or remote instruction for any period of time.
 - Closing or modifying the provision of facilities, other than housing or dining facilities, on the campus of the educational institution.
 - Pausing or modifying ancillary student activities and services available through the educational institution.
- Deems the provision of in-person or on-campus education and related services to have been impossible for educational institutions during any period of time in which such institutions took reasonably necessary actions described to protect students, staff, and educators in response to the COVID-19 public health emergency.
- Deems the reasonably necessary actions as justified as a result of the various governmental orders and the need for educational institutions to protect their communities.
- Excludes invoices, catalogs, and general publications of an educational institution as evidence of an express or implied contract to provide in-person or on-campus education and related services or access to facilities during the COVID-19 public health emergency in any action against an educational institution.

The COVID-19 liability protections do not apply to losses or damages that:

- Resulted solely from a breach of an express contractual provision allocating liability, or
- Caused by an act or omission of a college or university which was in bad faith or malicious.

If any aspect of the immunity relating to the reasonably necessary actions taken by an educational institutions due to COVID-19 is limited by a court or by operation of law from applying to certain types of claims or causes of action, the immunity must still be provided to the fullest extent authorized by law to any other types of claims or causes of action.

⁷ *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009).

⁸ *Salerno v. Florida Southern College*, 488 F. Supp. 33 1211 (M.D. Fla. 2020)

A plaintiff bringing an action against an educational institution for compliance with a federal, state, or local order or direction of the BOG or SBE issued in response to the COVID-19 public health emergency to alter the mode of delivery of instruction and related services or access to facilities must meet a clear and convincing standard of proof.

Career Planning and Information

Present Situation

Florida Economic Security Report

The Florida Economic Security Report details the economic outcomes of recent completers from Florida's public postsecondary education institutions. Data from the District Technical Centers (DTCs), the Florida College System (FCS), and the State University System of Florida (SUS) are included in this report. The report documents the variation in first and fifth-year earnings among completers who earned certificates, diplomas, or degrees from Florida's three public postsecondary educational systems. The report also presents data on the percentage of completers from various institutions who received public assistance, as well as the percentage of completers that are enrolled in continuing education programs. The average federal debt acquired by all students (not just graduates) is also reported.

Florida Education & Training Placement Information Program

The Florida Education and Training Placement Information Program (FETPIP) is a data collection and consumer reporting system established to provide follow-up data on former students and program participants who have graduated, exited or completed a public education or training program within the state of Florida. A major goal of Florida's K-20 Education system is to improve employment and earnings outcomes for all students. This information is part of the performance accountability processes for all parts of the K-20 system and serves as an indicator of student achievement and program needs. The reports provided by FETPIP may assist educators and parents to better prepare and counsel students for success in their future education or career choices.

Board of Governors – Baccalaureate Follow-up Study

The BOG currently conducts a 1, 5, and 10 year employment and continuing education outcomes study of state university baccalaureate graduates. The study is designed to better understand the employment and education outcomes of graduates over time and provides critical information to students, parents, educators, and policy-makers about the experiences of graduates after completing a baccalaureate degree from the state university system. The BOG uses the results of the study to monitor the progress toward meeting the goals and objectives of the BOG's 2025 System Strategic Plan.

The results of BOG's study found that the majority of graduates were employed 1, 5, and 10 years after graduation, with earnings that increase over time. A significant number of graduates continued to pursue additional education, with many completing at least one additional credential.

State University System Career Centers

All of the state universities offer career services to students and alumni. Career services have evolved over time and continue to change to meet the needs of today's students, technological advancements, workforce demands, and campus culture. The directors of the SUS career centers form the Florida Career Centers Consortium and exchange best practices to enhance career readiness for students and alumni. The SUS Career Centers:

- Engage with students early on and frequently to develop career plans;
- Collaborate with faculty to embed career frameworks in curricular offerings;

- Support students with degree and career choices by sharing salary and potential employment options;
- Prepare students for professional work environment by providing soft skill training assistance with professional attire and internship opportunities;
- Connect and partner with employers to ensure graduates are prepared to meet workforce needs; and
- Assist students in securing employment after graduation through online platforms, connecting students with mentors, and career fairs.

Effect of the Bill

The bill requires the BOG to create an online dashboard by January 1, 2022, which must include data, by academic discipline, of state university graduates, including at least the following information:

- Median student loan debt;
- Debt-to-income ratio;
- Estimated monthly loan payment as a percentage of gross monthly income; and
- The percentage of graduates who have continued their education beyond the baccalaureate level.

A link to the dashboard must be prominently displayed on each state university's office of admission website.

Each state university board of trustees must adopt procedures to connect undergraduate students to career planning, coaching, and related programs during the student's first academic year of enrollment. The BOG must approve the procedures by March 1, 2022, which include placing a hold on student registration before the end of each student's first year until the student:

- Registers with the university's career center;
- Completes a career center readiness training module provided by the career center;
- Is directed toward the online dashboard;
- Acknowledges that he or she has been provided information about career planning and is aware of the employment and wage prospects for his or her declared.

Postsecondary Tuition Exemptions

Present Situation

Certain persons are statutorily exempt from the payment of tuition and fees for postsecondary courses at school district technical centers, FCS institutions, and state universities. Section 1009.25, F.S., currently exempts students who are: participating in dual enrollment or an early admission program; in apprenticeship programs; in the Road to Independence program;⁹ in the custody of a relative caregiver at the time they reached 18 years of age;¹⁰ were adopted from the Department of Children and Family Services (DCF) after May 5, 1997; or are homeless. Other statutory exemptions include persons wrongfully incarcerated,¹¹ spouses and children of law enforcement officers¹² and firefighters¹³ killed in the line of duty.¹⁴

Section 1009.25(2), F.S., provides FCS institutions fee exemption authority for up to 54 full-time equivalent students, or 1 percent of the institutions full-time equivalent enrollments, whichever is greater, at each institution.¹⁵

⁹ As defined under s. 409.1451, F.S.

¹⁰ As defined under s. 39.5085, F.S.

¹¹ Section 961.06(1)(b), F.S.

¹² Section 112.19(3), F.S.

¹³ Section 112.191(3), F.S.

¹⁴ Section 1009.25(1), F.S.

¹⁵ Section 1009.26(2), F.S.

Effect of the Bill

The bill clarifies that the FCS exemptions apply to individuals currently in the custody of DCF or a relative caregiver or who were in such custody when they turned 18. The change should resolve any confusion regarding the fee waiver for eligible individuals who enter a postsecondary institution prior to turning 18.

State University Tuition & Fee Waivers

Present Situation

Tuition and Out-of-State 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 the state.¹⁶ A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.¹⁷

An 'out-of-state fee' is the additional fee for instruction provided by a public postsecondary education institution in the state, and is charged to a student who does not qualify for the in-state tuition rate.¹⁸

Residents for tuition purposes are charged in-state rates for tuition while non-residents pay out-of-state fees in addition to tuition, unless these costs are exempted or waived.¹⁹

The resident undergraduate tuition rate for the SUS is currently set in statute at \$105.07 per credit hour.²⁰ The average cost of resident and nonresident tuition and fees per credit hour is shown below²¹:

State University Tuition & Fees²²				
Undergraduate Baccalaureate	Standard Tuition (Per Credit Hour)	Average Tuition & Fees (Per Credit Hour)	Standard Tuition (Per 30 Credit Hours)	Average Tuition & Fees (Per 30 Credit Hours)
Resident	\$105.07	\$199.72	\$3,152.10	\$5,991.79
Non-Resident	\$105.07	\$690.63	\$3,152.10	\$20,719.07
Difference	-	\$490.91	-	\$14,727.28

Legal Residency in Florida

With respect to tuition and fees at postsecondary institutions, a legal Florida resident is someone who has maintained his or her residence in this state 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 this state.²³

State University System Out-of-State Student Enrollment

¹⁶ s. 1009.01(1), F.S. Additionally, the definition states that "[a] charge for any other purpose shall not be included within this fee."

¹⁷ s. 1009.21(1)(g), F.S.

¹⁸ s. 1009.01(2), F.S. Adding that "[a] charge for any other purpose shall not be included within this fee."

¹⁹ s. 1009.24(2), F.S.

²⁰ s. 1009.24(4)(a), F.S.

²¹ See State University System of Florida, Tuition and Required Fees, 2020-21.

²² *Id.*

²³ s. 1009.21(1)(d), F.S.

By regulation, the BOG limits the system-wide enrollment of out-of-state students at ten percent.²⁴ The ten percent limit on out-of-state student enrollment applies system-wide and not at each individual institution.

State University System – Programs of Strategic Emphasis

As part of its duties to operate the SUS, the BOG²⁵ develops a strategic plan which specifies the goals and objectives for each university and the SUS.²⁶ Part of the strategic plan includes criteria for designating baccalaureate degree and master’s degree high-demand programs of emphasis.²⁷ The criteria for designating high-demand programs of emphasis include the following:

BOG High-Demand Programs of Emphasis Criteria	
Criteria Percentage	Criteria Metrics
50 Percent	Achievement of performance outcome thresholds determined by the Board of Governors. ²⁸
50 Percent	Achievement of performance outcomes linked to: <ol style="list-style-type: none"> 1. Job placement in employment of 36 hours or more per week and average full-time wages of graduates of the degree program 1 year and 5 years after graduation. 2. BOG data-driven gap analysis of the state’s job market demands and the outlook for jobs that require a baccalaureate degree or higher, with a growth rate of at least 10.1 percent, and a median Florida wage of at least \$45,000 per year. ²⁹

The BOG periodically updates the list of identified programs of strategic emphasis (PSE), and most recently updated the list in September 2020³⁰ identifying 868 PSE.³¹ Prior to the 2020 update, the previous updates were effective in 2014 and 2008.³² The BOG categorizes PSEs into five areas:

1. Critical Workforce - Education: comprised of the SBE critical teacher shortage areas.³³
2. Critical Workforce - Health: comprised of workforce projections by the Florida Department of Economic Opportunity (DEO).³⁴
3. Critical Workforce - Gap Analysis: programs leading to occupations projected to be critically under-supplied in the BOG analysis of labor market projections and related degree production.³⁵
4. Economic Development - Global Competitiveness: programs that assist in making the SUS globally competitive.³⁶

²⁴ BOG Regulation 7.006

²⁵ Art. IX., s. 7, Fla. Const.

²⁶ Section 1001.706(5)(b), F.S.

²⁷ Section 1001.706(5)(b)4., F.S.

²⁸ *Id.*

²⁹ Section 1001.706(5)(b)4.a.-b., F.S. *See also* Florida Board of Governors, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (February 10, 2021), at 6, *available at*

<https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pe1%202-10-21.pdf>.

³⁰ Florida Board of Governors, *Programs of Strategic Emphasis*, <https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/> (last visited May 4, 2021).

³¹ Florida Board of Governors, *Approved PSE List 2020-2021* (September 2020), *available at* <https://www.flbog.edu/wp-content/uploads/Current-PSE-list-approved-by-the-BOG-at-its-September-2020-meeting-XLSX.xlsx>.

³² Florida Board of Governors, *Programs of Strategic Emphasis*, *available at* <https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/>.

³³ Florida Board of Governors, *Current CIP 2020 Programs of Strategic Emphasis methodology* (September 2020), at 3, *available at* https://www.flbog.edu/wp-content/uploads/CIP_2020_PSE_Methodology_CE_FINAL.pdf.

³⁴ *Id.* at 4.

³⁵ *Id.* at 10.

³⁶ *Id.* at 5.

5. Economic Development - Science Technology Engineering and Math (STEM): programs identified with national usage.³⁷

The PSE are used by the BOG to develop annual accountability plans, coordinate academic programs, and approve new academic programs.³⁸ PSEs are also a component of State University System performance based funding.³⁹ For the 2019-2020 academic year, 54 percent of bachelor's degrees awarded by the SUS and 63 percent of graduate degrees awarded by the SUS were in PSE.⁴⁰

State-Funded Scholarship Programs for High-Academic Achievers

The Florida Bright Futures Scholarship Program rewards Florida high school graduates who merit recognition for high academic achievement and who enroll in a degree program, certificate program, or applied technology program at an eligible Florida public or private postsecondary education institution.⁴¹

The Bright Futures Scholarship Program consists of four awards: the Florida Academic Scholarship (FAS)⁴², the Florida Medallion Scholarship (FMS)⁴³, the Florida Gold Seal Career and Professional Education (CAPE) Scholarship, and the Florida Gold Seal Vocational Scholarship.⁴⁴

The minimum required SAT score for the FAS award is no lower than the 89th national percentile on the SAT.⁴⁵ For the FMS award, the minimum required SAT score is no lower than the 75th national percentile on the SAT.⁴⁶ The required ACT scores for each must be made concordant to the required SAT scores, using the latest published national concordance table developed jointly by the College Board and ACT, Inc.⁴⁷

Florida high school students who wish to qualify for the FAS awards or the FMS awards must graduate from a Florida public high school with a standard high school diploma, graduate from a registered Florida Department of Education private high school, earn a general education diploma (GED), complete a home education program, or graduate from a non-Florida high school as an eligible student.⁴⁸

Online Education at State University System Institutions

Online education allows individuals with family or work obligations to complete their education and on-campus students to accelerate the completion of their degrees and/or engage in co-curricular activities.⁴⁹

³⁷ *Id.* at 6.

³⁸ Florida Board of Governors, *Programs of Strategic Emphasis*, <https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/> (last visited May 4, 2021).

³⁹ Florida Board of Governors, *Performance Funding Model Overview* (Nov. 2019), at 1, available at <https://www.flbog.edu/wp-content/uploads/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-1.pdf>. Metric 6 includes bachelor's degrees award in areas of strategic emphasis and Metric 8a. includes graduates degrees awarded in areas of strategic emphasis. See also s. 1001.92, F.S.

⁴⁰ Florida Board of Governors, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (February 10, 2021), at 11, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pe1%202-10-21.pdf>.

⁴¹ s. 1009.53(1), F.S.

⁴² The award amount is 100 percent of tuition and applicable fees and \$300 for both fall and spring semesters for additional educational expenses.

⁴³ The award amount is 75 percent of tuition and applicable fees.

⁴⁴ s. 1009.53(2), F.S.

⁴⁵ s. 1009.531(6)(c), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ s. 1009.531(1), F.S.

⁴⁹ See The State University System 2019 Annual Report for Online Education, pg. 5.

Nationally, Florida ranks second in the number and percentage of students enrolled in distance learning courses.⁵⁰

During 2018-19 (most recent data available), 75 percent of undergraduate students at Florida's state universities took at least one distance learning course.⁵¹ At four institutions, University of Central Florida, University of Florida, University of South Florida, and University of West Florida, at least 80 percent of undergraduate students take one or more distance learning courses.⁵² Across the State University System (SUS), eleven percent (36,648) of undergraduate students took distance learning courses exclusively, and a majority (63 percent) of undergraduate students (202,895) in the SUS took both distance learning, classroom, and/or hybrid courses.⁵³ System-wide, 30 percent of the total undergraduate credit hours were taken in distance learning courses.⁵⁴

During the Fall 2019 term, SUS institutions offered 164 online bachelor's degree programs.⁵⁵ Additionally, SUS institutions converted almost 50,000 courses from primarily classroom, hybrid, and primarily distance learning, to courses that could be completed fully at a distance during the Spring 2020 term.⁵⁶

University of Florida Online (UF Online) was created by the 2013 Legislature as an institute for online learning at a preeminent state research university to provide for high quality, fully online baccalaureate degree programs at an affordable cost.⁵⁷ By 2018-19, strategic development and expansion efforts allowed the program to offer 21 fully online majors and seven minors.⁵⁸ More than 2,000 students have graduated from UF Online.⁵⁹

Since launching, UF Online has been nationally recognized as a leader in online education. In 2020, *U.S. News & World Report* ranked UF Online as one of the top five best online bachelor's degree programs in the nation.⁶⁰

Other SUS institutions have received national recognition for their online bachelor's degree programs as well. According to *U.S. News & World Report*, University of Central Florida ranked in the top-15, while Florida Atlantic University, Florida International University, and University of West Florida all ranked in the top-100.⁶¹

According to *U.S. News & World Report*, two of Florida's state universities were also ranked in the top-20 for best online bachelor's degree programs for veterans, with University of Florida ranking number 2, and University of Central Florida ranking number 12.⁶²

⁵⁰ *Id.* at pg. 9. Referencing United States Department of Education's National Center for Education Statistics (NCES), Integrated Postsecondary Education Data System.

⁵¹ *Id.* at pgs. 4, 10.

⁵² *Id.* at pg. 10.

⁵³ *Id.* at pg. 10.

⁵⁴ *Id.* at pg. 13.

⁵⁵ *Id.* at pg. 24.

⁵⁶ *Id.* at pgs. 4-6.

⁵⁷ Section 1001.7065(4), F.S., permits the university to establish a tuition structure for its online institute, not to exceed 75 percent of the tuition rate established by the Legislature.

⁵⁸ See *The State University System 2019 Annual Report for Online Education*, pg. 24.

⁵⁹ *Id.* at 24.

⁶⁰ *Id.* at 24, showing UF Online ranked at number 4 in 2020 and number 5 in 2019. See also, *U.S. News and World Report* 'Ranking of Best Online Bachelor's Programs', ranking University of Florida at number 3. The link may be viewed at: <https://www.usnews.com/education/online-education/bachelors/rankings>. (last visited May 4, 2021).

⁶¹ See *U.S. News and World Report* 'Ranking of Best Online Bachelor's Programs', ranking University of Florida at number 3. The link may be viewed at: <https://www.usnews.com/education/online-education/bachelors/rankings>. (last visited May 4, 2021).

⁶² See *The State University System 2019 Annual Report for Online Education*, pg. 25.

Florida's state universities offer a variety of support and other resources for students. For example, Florida Agricultural and Mechanical University's (FAMU) library provides 24-hour online service, real-time online chat, and other services for students, including distance learning students. FAMU's distance learning students also have reciprocal borrowing privileges with other SUS and Florida College System institutions. Additionally, University of South Florida provides online academic support services, while Florida International University student success coaches assist online students with their online education, including how to access various resources and engage with the wider Florida International University community.

SUS institutions offer various mental health services for students, including distance learning students as well. For example, Florida State University's Counseling Center offers tele-health and other services and workshops that focus on depression, anxiety, and self-help.

Effect of the Bill

Buy One, Get One Free Tuition & Fee Waiver

Beginning with the 2021-2022 academic year, the bill provides a 'buy one, get one free' tuition and fee waiver on upper-level courses in one of eight science, technology, engineering, or math (STEM) programs of strategic emphasis. Specifically, the bill requires that for every course in a qualifying program of strategic emphasis in which a student is enrolled, a state university must waive 100 percent of the tuition and fees for an equivalent course in such program. To be eligible, a student must be an in-state resident, earn at least 60 semester credit hours towards a baccalaureate degree within two academic years after initial enrollment at a Florida public postsecondary institution, and be enrolled in one of eight STEM programs of strategic emphasis selected by the BOG.

The eight STEM programs selected by the BOG must reflect the priorities of the state and be offered at a majority of state universities.

The tuition and fee waiver is applicable only for upper-level courses and for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled. This means that for a 120-credit hour state university baccalaureate degree program, the waiver is applicable unless the student has earned an excess of 132 credit hours.

A student receiving Bright Futures will receive a disbursement for the tuition and fees waived that is equal to his or her award amount. A FAS will receive 100 percent of the amount of the tuition and course fees waived. A FMS will receive 75 percent.

Each state university must annually report to the BOG the number and value of tuition and fee waivers granted.

In addition to the Performance-based Funding Incentive, a state university is eligible to earn incentive funding, subject to appropriation, based on the number and value of waivers it grants.

The BOG must adopt regulations to administer the granting of the buy one, get one free tuition and fee waiver.

State University Free Seat Program

The bill creates the 'State University Free Seat Program' to encourage nontraditional students, veterans, active duty members of the United States Armed Forces, and active drilling members of the Florida National Guard, to enroll in and attend one of Florida's state universities.

To be eligible for the State University Free Seat Program, a student may not have previously received a bachelor's degree, must be a resident for tuition purposes, enrolled in an online baccalaureate degree program, and meet one of the following additional eligibility requirements:

- Be a veteran;
- Be an active duty member of the United States Armed Forces;
- Be an active drilling member of the Florida National Guard; or
- Have not been enrolled in a postsecondary institution for more than five years.

An eligible student is exempt from the payment of tuition and fees for one 'free' online course in an online baccalaureate degree program at a state university. For all other program courses, the student is provided a 25 percent discount on tuition, including any tuition differential fee, provided the student remains enrolled at least part-time in the online baccalaureate degree program during each academic year.

The tuition discount is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

Each state university must annually report to the BOG the number and value of waivers granted pursuant to the bill's provisions.

The BOG must adopt regulations to administer the granting of the waiver.

Grandparent Tuition Waiver

Beginning with the 2022-2023 academic year, the bill requires a state university to waive the out-of-state fee for an out-of-state student who has a grandparent who is a legal Florida resident and who meets the following criteria:

- Earns a high school diploma that is comparable to a standard Florida high school diploma, or its equivalency, or completes a home education program;
- Achieves an SAT combined score no lower than the 89th national percentile, an equivalent ACT score, or, if the university accepts it for admission purposes, an equivalent score on the Classic Learning Test (CLT) exam, if a state university accepts the CLT for admission purposes⁶³; and
- Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation.

A "grandparent" is "a person who has a legal relationship to a student's parent as the natural or adoptive parent or legal guardian of the student's parent."

The student or the student's parent, if the student is a dependent child, must provide a written declaration attesting to the student's familial relationship to a grandparent who is a legal resident and any other corroborating documentation that is required by regulation of the BOG. While a state university is not required to independently verify the statements contained in each declaration, the state university may refer any signed declaration suspected of containing fraudulent representations to law enforcement.

The waiver is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled. A state university must also prioritize the enrollment of students eligible for the waiver over that of other non-resident applicants who are not eligible for an out-of-state fee waiver when the students have substantially similar academic and other credentials used in determining admission to the state university.

The number of fee waivers granted may not exceed 350 students systemwide each academic year.

⁶³ According to information posted on the Classic Learning Initiatives website, the CLT is not currently accepted by any of Florida's state universities. See <https://www.cltxam.com/colleges> (last visited May 4, 2021).

Each state university must annually report to the BOG the number and value of waivers granted pursuant to the bill's provisions.

The BOG must adopt regulations to administer the granting of the waiver.

State Financial Aid and Tuition Assistance Eligibility

Present Situation

The general student eligibility requirements for state financial aid awards and tuition assistance grants consist of the following:

- Achievement of the academic requirements of and acceptance at a state university or FCS institution; a nursing diploma school approved by the Florida Board of Nursing; a Florida college or university which is accredited by an accrediting agency recognized by the SBE; a Florida institution the credits of which are acceptable for transfer to state universities; a career center; or a private career institution accredited by an accrediting agency recognized by the SBE.
- Residency in Florida for no less than one year preceding the award of aid or a tuition assistance grant.
- Submission of certification attesting to the accuracy, completeness, and correctness of information provided to demonstrate a student's eligibility to receive state financial aid awards or tuition assistance grants.

The Last Mile College Completion Program awards the cost of in-state tuition and required fees to resident students who are in good standing at a Florida College System institution or state university and who are within 12 or fewer credit hours of completing their first associate or baccalaureate degree.⁶⁴

The Florida Farmworker Student Scholarship Program provides scholarships for farmworkers and the children of farmworkers. A recipient of the Florida Farmworker Student Scholarship must be a state resident.⁶⁵

Effect of the Bill

The bill amends Florida law setting out the general student financial aid and tuition assistance eligibility requirements by requiring students in the Last Mile College Completion Program and students receiving the Florida Farmworker Student Scholarship to meet the general requirements relating to Florida residency.

State Financial Aid and Tuition Assistance Reporting Requirements

Present Situation

By rule, the SBE requires institutions enrolling students who receive state financial aid and tuition assistance to meet specified administrative responsibilities, relating to applications for and disbursement of funds, student eligibility and notifications, reporting, and fund remittance.⁶⁶

Effect of the Bill

The bill codifies existing administrative responsibilities required by rule and requires each postsecondary educational institution that receives state financial and tuition assistance to:

⁶⁴ Section 1009.75, F.S.

⁶⁵ Section 1009.984, F.S.

⁶⁶ Rule 6A-20.002, F.A.C.

- Complete and return the annual application for state aid funds in the format and by the date established by the DOE;
- Maintain complete, accurate, and auditable student records documenting the institution's administration of state financial aid and tuition assistance funds;
- Verify eligibility of enrolled students with the DOE each academic term;
- Report each student's program of study to the DOE using the most recent classification of instructional programs taxonomy for the certificate or degree level as developed by the United States Department of Education's National Center for Education Statistics;
- Disburse state financial aid and tuition assistance to eligible students;
- Notify students annually regarding the renewal requirements for each state-funded award for which they are eligible;
- Complete and return to the DOE all reports for the administration of state funds in the format and by the date established by the DOE;
- Complete and return to the DOE all legislatively required reports in the format and by the date established by the DOE;
- Retain required records for the later of 5 years or until such records are audited and any audit exceptions are resolved; and
- Refund to the DOE any undisbursed advances within 60 days after the end of the regular registration period each fall and spring term, within 30 days after the end of the summer term, or within 60 days after the date a student's ineligibility is determined.

The DOE must place a postsecondary educational institution that fails to perform its duties in administering state financial aid or tuition assistance on probation. The DOE may also suspend or revoke a postsecondary institution's eligibility to participate in state-funded programs if the institution fails to provide the required audits, fails to resolve audit findings, or fails to timely provide the statutorily required reports by established deadlines.

Florida Student Assistance Grant

Present Situation

The Florida Student Assistance Grant (FSAG) Program, created in 1972, is Florida's largest need-based grant program, consisting of FSAG Public, FSAG Career Education (FSAG-CE), FSAG Private, and FSAG Postsecondary.⁶⁷ The FSAG Program provides state need-based assistance grants to students who meet general eligibility requirements,⁶⁸ demonstrate financial need, and meet enrollment requirements as specified by each program. The FSAG Program is administered by participating institutions in accordance with SBE rule.⁶⁹

The funds appropriated for the FSAG Program must be distributed to eligible institutions in accordance with a formula approved by the SBE. The formula must consider at least the prior year's distribution of funds, the number of eligible applicants who did not receive awards, the standardization of the EFC, and provisions for unused funds. The formula must account for changes in the number of eligible students across all student assistance grant programs.⁷⁰

In 2019-2020, the FSAG programs disbursed approximately \$270 million to nearly 175,000 students.⁷¹

⁶⁷ DOE, Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19* (2019), at 11, available at <https://www.floridastudentfinancialaids.org/pdf/annualreportcurrent.pdf>.

⁶⁸ Section 1009.40, F.S.

⁶⁹ Sections 1009.50(6), 1009.505(5), 1009.51(6), and 1009.52(7), F.S. See also Rule 6A-20.031, F.A.C. Postsecondary educational institution administrative responsibilities for state student aid and tuition assistance programs are outlined in Rule 6A-20.002, F.A.C.

⁷⁰ Sections 1009.50(4)(a), 1009.51(4)(a), and 1009.52(4)(a), F.S.

⁷¹ DOE, Office of Student Financial Assistance, *2019-20 End of Year Reports*, <https://www.floridastudentfinancialaids.org/SAPSPEOYR/SAPSPEOYR> (last visited Mar. 6, 2021).

In addition, the FSAG Public, FSAG Private, and FSAG Postsecondary programs provide for deposit of funds appropriated by the Legislature for grants through the FSAG program into the State Student Financial Assistance Trust Fund.⁷² The FSAG-CE program does not have this provision.

Effect of the Bill

The bill removes obsolete provisions within the various FSAG programs regarding standardization of the EFC and unused funds in the distribution formula and removes unnecessary requirements related to the State Student Financial Assistance Trust Fund for FSAG programs.

Benacquisto Scholarship Program

Present Situation

The Benacquisto Scholarship Program (scholarship)⁷³ was created in 2014 to reward a Florida high school graduate who achieves recognition as a National Merit Scholar (NMS)⁷⁴ and enrolls in a baccalaureate degree program at an eligible Florida public or independent postsecondary educational institution.⁷⁵

The scholarship is available to both resident and non-resident students. Resident student scholarship recipients who attend a public postsecondary institution receive an award equal to the institutional cost of attendance minus the sum of the student's Florida Bright Futures Scholarship (if receiving Bright Futures) and their NMS award. Non-resident scholarship recipients attending a public postsecondary institution receive an award equal to the institutional cost of attendance for a Florida resident minus the student's NMS award. Nonresident student scholarship recipients are also exempt from the payment of out-of-state fees. Resident and non-resident scholarship recipients that attend an independent postsecondary educational institution receive an award equal to the highest cost of attendance for a state resident enrolled at a Florida public university, as reported by the BOG, minus the sum of the student's Florida Bright Futures Scholarship and NMS award.

For the 2019-2020 fiscal year, \$21.6 million in scholarship funds were distributed to 1,377 students, of which 202 were non-Florida residents.⁷⁶ The average award was \$15,650.⁷⁷

Effect of the Bill

The bill provides that the 2021-2022 academic year is the final year for out-of-state students to receive initial Benacquisto Scholarship awards. However, such students would remain eligible to have their scholarship awards renewed.

⁷² Sections 1009.50(5), 1009.51(5), and 1009.52(6), F.S.

⁷³ The scholarship was renamed in 2016 from the Florida National Merit Scholar Incentive Program to the Benacquisto Scholarship Program. Chapter 2016-237, s. 26, Laws of Fla.

⁷⁴ DOE, Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19 (2019)* available at <https://www.floridastudentfinancialaids.org/pdf/annualreportcurrent.pdf>. The National Merit Scholarship Corporation (NMSC) is a private, not-for-profit organization that operates without government assistance to recognize and honor academically talented students. National Merit Scholarship Corporation, *Mission*, <https://www.nationalmerit.org/s/1758/interior.aspx?sid=1758&gid=2&pgid=395> (last visited April 19, 2021). NMSC organizes the National Merit Scholarship Program, which began in 1955 as an academic competition for recognition and scholarship. High school students enter the National Merit Program by taking the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), which serves as an initial screen of approximately 1.5 million entrants each year, and meeting the program participation requirements. National Merit Scholarship Corporation, *National Merit Scholarship Program*, <https://www.nationalmerit.org/s/1758/interior.aspx?sid=1758&gid=2&pgid=424> (last visited April 19, 2021).

⁷⁵ Section 1009.893(2), F.S.

⁷⁶ DOE, Office of Student Financial Assistance, *End-of-Year Report, 2019-2020*, https://www.floridastudentfinancialaids.org/PDF/PSI/FIS_2019_2020.pdf (last visited April 19, 2021).

⁷⁷ DOE, Office of Student Financial Assistance, *End-of-Year Report, 2019-2020*, https://www.floridastudentfinancialaids.org/PDF/PSI/FIS_2019_2020.pdf (last visited April 19, 2021).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have an indeterminate fiscal impact on colleges and universities. See Fiscal Analysis section.

2. Expenditures:

The bill provides educational institutions with liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill provides educational institutions with liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill establishes three tuition & fee waivers to lower the cost of attendance at a state university and increase access for students and families.

D. FISCAL COMMENTS:

The bill provides educational institutions with liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

The bill provides a 'Buy One, Get One' tuition waiver on upper-level courses in certain programs of strategic emphasis. For a typical degree program of 120 credit hours, an eligible student would save an average of \$5,991.79. The General Appropriations Act (GAA) appropriates \$25 million to the State University System to implement the provisions relating to buy one, get one tuition & fee waiver.

The bill creates the 'State University Free Seat Program' for nontraditional students, veterans, active duty members of the United States Armed Forces, and active drilling members of the Florida National Guard, to enroll in and attend one of Florida's state universities. For each student that participates in the program, a state university will not receive the tuition and fees for one online course, plus up to \$36.99 per credit hour, which represents 25 percent of the SUS resident undergraduate tuition rate of \$105.07 per credit hour, plus up to 25 percent of the tuition differential fee per credit hour, with the system-wide average being \$42.88 per credit hour. The fiscal impact would be recurring while the student participates in the program, up to 110 percent of the number of required credit hours of the

degree program for which the student is enrolled. The fee waiver is capped at 1,000 students systemwide per academic year.

Beginning with the 2022-2023 academic year, the bill may have an indeterminate fiscal impact due to the unknown number of students that will qualify for, and take advantage of, the out-of-state fee waiver. University systemwide non-resident enrollment has increased steadily from 6.6% in 2015 to 9.0% in 2020.⁷⁸

For each student that receives the out-of-state fee waiver, a state university would receive the in-state tuition amount, which is \$105.07 per credit hour, in lieu of the in-state tuition amount, plus the out-of-state fee. The fiscal impact would be recurring while the student is receiving the waiver, up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

Inclusion of students eligible for a waiver under this program within the 10% systemwide cap reduces the potential fiscal impact. Additionally, the bill provides the number of fee waivers granted may not exceed 350 students systemwide each academic year, further limiting the potential fiscal impact.

The bill's fiscal impact will be further limited by the provision providing the 2021-2022 academic year is the final year for out-of-state students to receive initial Benacquisto Scholarship awards. For the 2021-2022 academic year, the Revenue Estimating Conference has estimated 237 non-resident students will be eligible for an initial Benacquisto Scholarship award, with the average award amount estimated to be \$21,828, and a total estimated cost of \$5.2M.

⁷⁸ Email from BOG Office of Data & Analytics, received 2/4/2021.