

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1728

INTRODUCER: Education Committee and Senator Baxley and others

SUBJECT: Out-of-state Fee Waiver for Nonresident Students

DATE: April 14, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Westmark</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1728 establishes an interstate compact and provides an out-of-state fee waiver, applicable for up to 110 percent of the number of required credit hours of the enrolled degree program, for a nonresident student who:

- Is a United States citizen;
- Has a grandparent who is a legal resident;
- Earns the equivalent of a standard Florida high school diploma;
- Achieves an SAT combined score no lower than the 89th national percentile or appropriate concordant score on the ACT or the Classic Learning Test; and
- Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation.

The interstate compact is intended to increase access to postsecondary education to students with families split across states, and to increase postsecondary educational choice, by providing a reciprocity agreement between states. The interstate compact fee waiver may be applied when the compact is enacted into law by two states. The bill also provides for state oversight of, withdrawal from, and amendment to the compact.

The bill does not require a state appropriation. However, state universities will have reduced revenues from out-of-state fees for each eligible student that enrolls at a Florida state university. See Section V.

The bill has an indeterminate fiscal impact.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Tuition and Out-of-State Fees

Tuition is the basic fee a student is charged for instruction provided by a public postsecondary educational institution in Florida. An out-of-state fee is charged as an additional fee for a student who does not qualify for the in-state tuition rate.<sup>1</sup>

### *Residency for Tuition Purposes*

A legal resident of Florida for tuition purposes means one who has maintained his or her residence in this state for the preceding year, has purchased and occupies a home as primary residence, or has established a domicile in this state.<sup>2</sup> For tuition purposes, a person who does not qualify for the in-state tuition rate is considered a nonresident.<sup>3</sup> Grandparents are unable to serve as family members who are able to provide residency documentation for residency for tuition purposes unless the grandparents are currently the student's legal guardian or have had daily supervision of the dependent student for the past three years.<sup>4</sup>

Unless costs are exempted or waived, residents for tuition purposes are charged the in-state rate for tuition while nonresident students pay the out-of-state fees in addition to tuition.<sup>5</sup> The in-state tuition rate for Florida residents for the State University System (SUS) is currently set at \$105.07 per credit hour.<sup>6</sup> The average cost of resident and nonresident tuition and fees per credit is shown in the table below.<sup>7</sup>

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<sup>1</sup> Section 1009.01(1) and (2), F.S. The in-state tuition rate is defined in s. 1009.21(1)(g), F.S.

<sup>2</sup> Section. 1009.21(1)(d), F.S. To qualify as a resident for tuition purposes, a person or, if that person is a dependent child, his or her parent or parents, must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.

<sup>3</sup> Section 1009.21(1)(e), F.S. In general, nonresidents are ineligible for state merit- and need-based financial aid and tuition assistance. Section 1009.40(1)(a)2., F.S. However, specified nonresident students may be eligible for a Benacquisto Scholarship. Section 1009.893(4)(b), F.S.

<sup>4</sup> Board of Governors, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

<sup>5</sup> Section 1009.24(2), F.S.

<sup>6</sup> Section 1009.24(4)(a), F.S.

<sup>7</sup> State University System of Florida, *Tuition and Required Fees, 2020-2021*, available at <https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf>, at 4.

State University Tuition & Fees				
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
Nonresident <sup>8</sup>	\$105.07	\$690.63	\$3,152.10	\$20,719.07
Difference	-	\$490.91	-	\$14,727.28

The Board of Governors (BOG) of the SUS currently limits the systemwide enrollment of out-of-state students to ten percent.<sup>9</sup>

### Fee Waivers

Florida law provides for waivers from specified fees to certain students who meet identified criteria.<sup>10</sup> Some waivers are mandatory,<sup>11</sup> while others are permissive.<sup>12</sup> Each university board of trustees is authorized to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university. All fees waived must be based on policies that are adopted by the university board of trustees pursuant to BOG regulations.<sup>13</sup> Each state university is required to report the purpose, number, authority, and value of all fee waivers and exemptions granted annually in a format prescribed by the BOG.<sup>14</sup>

### Interstate Compacts

An interstate compact is an agreement between or among two or more states of the United States. To become effective, it must be approved by those states' respective legislatures and, depending on the subject matter of the compact, consented to by Congress.<sup>15</sup>

Florida currently partners in a number of interstate compacts, including the Interstate Compact on Mental Health,<sup>16</sup> the Southeastern Interstate Forest Fire Protection Compact,<sup>17</sup> the Interstate

<sup>8</sup> The BOG may establish out-of-state fees. Section 1009.24(4)(b), F.S.

<sup>9</sup> BOG Regulation 7.006. The total systemwide nonresident enrollment is currently at nine percent. Board of Governors, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

<sup>10</sup> Section 1009.26, F.S.

<sup>11</sup> Section 1009.26 (5), (7)-(8), (12)-(14), F.S.

<sup>12</sup> Section 1009.26 (1)-(4), (6), (9)-(11), (15)-(16), F.S.

<sup>13</sup> Section 1009.26(9), F.S.

<sup>14</sup> Board of Governors Regulation 7.008(5).

<sup>15</sup> Library of Congress, *Interstate Compacts: United States* (June 2018), available at <https://www.loc.gov/law/help/interstate-compacts/us-interstate-compacts.pdf>, at 1. Although the U.S. Constitution contains an express requirement for approval by Congress of compacts between states, the U.S. Supreme Court has held that some agreements between states do not require such congressional consent. *Id.* at 2. The Court in 1893 stated in *Virginia v. Tennessee* that congressional consent is required only for a compact if it is "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893).

<sup>16</sup> See s. 394.479, F.S.

<sup>17</sup> See s. 590.31, F.S.

Insurance Product Regulation Compact,<sup>18</sup> the Interstate Corrections Compact,<sup>19</sup> The Regional Compact for Southern States,<sup>20</sup> and the Interstate Compact on Educational Opportunity for Military Children.<sup>21</sup>

In addition, Florida also participates in a reciprocity agreement with other states for the delivery of postsecondary distance education. Each member state or institution participating in a reciprocity agreement must accept each other's authorization of accredited institutions to operate in their state to offer distance educational services beyond state boundaries.<sup>22</sup>

## **High School Graduation and College Entrance Requirements**

### ***High School Diploma Requirements***

Receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum. In order to graduate from a Florida high school with a standard high school diploma under a 24-credit option, a student must complete:

- Four credits in English Language Arts;
- Four credits in mathematics, including one credit in Algebra I and one credit in Geometry;
- Three credits in science, of which two credits must have a laboratory component;
- Three credits in social studies, comprised of one credit in United States History, one credit in World History, one-half credit in economics, and one-half credit in United States Government;
- One credit in fine or performing arts, speech and debate, or practical arts;
- One credit in physical education; and
- Eight credits in electives.<sup>23</sup>

### ***Home Education Program***

A home education program in Florida means the sequentially progressive instruction of a student directed by his or her parent in order to satisfy attendance requirements specified in law.<sup>24</sup> Students completing a home education program satisfy the state university admissions requirement that a student earn a high school diploma or equivalent, but each university may require additional documentation to verify eligibility.<sup>25</sup>

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<sup>18</sup> See s. 626.9932, F.S.

<sup>19</sup> See s. 941.56, F.S.

<sup>20</sup> Sections 1000.31 and 1000.32, F.S. The Regional Compact created the Southern Regional Education Board.

<sup>21</sup> Section 100.39, F.S. The Interstate Compact on Educational Opportunity for Military Children is scheduled for repeal on July 1, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. Section 1000.40, F.S.

<sup>22</sup> Section 1000.35, F.S.

<sup>23</sup> Section 1003.4282(1)(a) and (3), F.S. A student who completes the Career and Technical Education Pathway is not required to complete one credit in fine or performing arts, speech and debate, or practical arts; one credit in physical education, and eight credits in electives. Section 1002.4282(11), F.S. A student who completes the 18-credit Academically Challenging Curriculum to Enhance Learning (ACCEL) option under s. 1002.3105, F.S., is not required to complete the physical education or elective requirements. A student with a disability may satisfy standard high school diploma options as specified in the student's individual education plan. Section 1003.4282(10), F.S.

<sup>24</sup> Section 1002.01(1), F.S.

<sup>25</sup> Board of Governors Regulation 6.002(1)(d).

### *College Entrance Exams*

College entrance exams accepted by institutions of higher education in Florida include the SAT, the ACT, and the Classic Learning Test (CLT).<sup>26</sup>

The SAT is comprised of sections that assess skills in reading, writing and language, math, and analysis in science.<sup>27</sup> Income-eligible SAT takers receive college application fee waivers and all students can select to receive free information about admission and financial aid from colleges, universities, and scholarship programs.<sup>28</sup> Nationally, close to 2.2 million students in the class of 2020 took the SAT.<sup>29</sup>

The ACT contains multiple-choice tests in four areas: English, mathematics, reading, and science.<sup>30</sup> Nearly 1.8 million graduates in the United States took the ACT during high school.<sup>31</sup>

The CLT is an online college entrance exam that assesses English, mathematical, and critical reasoning skills.<sup>32</sup> The CLT is taken online and offers scoring within 24 hours.<sup>33</sup> As of 2019, about 21,000 students took the CLT.<sup>34</sup>

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

The bill modifies s. 1009.26, F.S., to specify that a state university must waive the out-of-state fee for a nonresident student who meets all of the following criteria:

- Is a United States citizen.
- Has a grandparent who is a legal resident.
- Earns a high school diploma 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 on the SAT; achieves an ACT score concordant to the required SAT score as specified, using the latest published national concordance table developed jointly by the College Board and ACT, Inc.; or if a state university accepts the Classic Learning Test (CLT) for admission purposes, achieves a CLT score concordant to the required SAT score as specified, using the latest published scoring comparison developed by Classic Learning Initiatives.<sup>35</sup>

<sup>26</sup> Board of Governors Regulation 6.002 requires first-time, degree-seeking students to provide an ACT, Inc. or SAT score for admission purposes.

<sup>27</sup> CollegeBoard, *SAT Test Description*, <https://collegereadiness.collegeboard.org/sat/inside-the-test/sat-test-description> (last visited March 10, 2021).

<sup>28</sup> CollegeBoard, *Benefits*, <https://collegereadiness.collegeboard.org/about/benefits> (last visited March 10, 2021).

<sup>29</sup> CollegeBoard *SAT Suite of Assessments Annual Report* (2020), available at <https://reports.collegeboard.org/pdf/2020-total-group-sat-suite-assessments-annual-report.pdf>, at 3.

<sup>30</sup> ACT, *The ACT Test*, <http://www.act.org/content/act/en/products-and-services/the-act.html> (last visited March 10, 2021).

<sup>31</sup> ACT, *About ACT*, <https://www.act.org/content/act/en/about-act.html> (last visited March 10, 2021).

<sup>32</sup> CLT, *Products*, <https://www.cltextam.com/products> (last visited March 10, 2021).

<sup>33</sup> CLT, *CLT vs. SAT vs. ACT*, <https://www.cltextam.com/comparison> (last visited March 19, 2021).

<sup>34</sup> Scott Jaschik, *The Classical Alternative to the SAT*, Inside Higher Ed, Oct. 21, 2019, available at <https://www.insidehighered.com/admissions/article/2019/10/21/classic-learning-test-aims-challenge-sat#:~:text=The%20test%20had%20more%20than,the%20same%20took%20the%20ACT.>

<sup>35</sup> The 89<sup>th</sup> percentile for the SAT is 1330. CollegeBoard, *SAT: Understanding Scores* (2020), available at <https://collegereadiness.collegeboard.org/pdf/understanding-sat-scores.pdf>, at 5. This could be compared with the grade of 85 on the CLT. CLT, *CLT vs. SAT vs. ACT*, <https://www.cltextam.com/comparison> (last visited March 19, 2021). The ACT

- Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation.<sup>36</sup>

For the fee waiver, the bill specifies that:

- This 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.<sup>37</sup> Most SUS baccalaureate degree programs are set at 120 credit hours, which would authorize the tuition discount for up to 132 credit hours.
- Prior to waiving the out-of-state fee, the state university must require the student, or the student's parent if the student is a dependent child, to provide a written declaration pursuant to law<sup>38</sup> verifying the student's familial relationship to a grandparent who is a legal resident.<sup>39</sup>
- Each state university must report to the Board of Governors (BOG) the number and value of all fee waivers granted annually.
- A nonresident student granted an out-of-state fee waiver under this subsection must be excluded from the limitation on systemwide total enrollment of nonresident students established by regulation of the BOG, currently set at 10 percent.<sup>40</sup>
- The BOG adopt regulations to administer the fee waiver.

The bill creates s. 1009.261, F.S., to establish an interstate compact specifying the purposes of the grandchild out-of-state fees waiver compact are to:

- Increase access to postsecondary education to students whose families are split between two or more states by reducing costs associated with out-of-state fees.
- Encourage students to exercise their rights to travel and to choose the postsecondary education that best suits their needs.
- Increase postsecondary educational choices.
- Decrease the economic burden posed by postsecondary out-of-state fees.

The interstate compact applies the criteria from the fee waiver, with a modification to the assessment provision, to authorize postsecondary educational institutions located within each member state to waive out-of-state fees for a nonresident student who:

- Is a United States citizen;
- Has a grandparent who is a legal resident under the applicable laws of the member state;

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concordant score to an SAT score of 1330 is 29. CollegeBoard, ACT, *Guide to the 2018 ACT/SAT Concordance*, available at <https://collegereadiness.collegeboard.org/pdf/guide-2018-act-sat-concordance.pdf>.

<sup>36</sup> The BOG has noted that the bill does not specify whether students currently enrolled might qualify for the waiver if they meet the specified qualifications. BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

<sup>37</sup> The BOG has noted that the bill should clarify that the waiver applies only to the initial undergraduate degree in which the student enrolls, and is not applicable to subsequent baccalaureate or graduate or professional degrees. BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

<sup>38</sup> A written declaration is a statement declaring, under penalty of perjury, that one has read and verifies the specified document, followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law. Section 92.525(2), F.S.

<sup>39</sup> The bill does not stipulate the documentation required to verify residency beyond the student's written declaration, or, if the student is a dependent, that of the parent. BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

<sup>40</sup> Board of Governors Regulation 7.006.

- Achieves an SAT combined score no lower than the 89th national percentile on the SAT, or a concordant ACT score or concordant CLT score, as designated in the latest published national concordance table developed jointly by the College Board and ACT, Inc. or designated in the latest published scoring comparison developed by Classic Learning Initiatives, but only if the member state postsecondary institution accepts the CLT for admission purposes; and
- Enrolls as a full-time undergraduate student at a member state postsecondary institution in the fall academic term immediately following high school graduation.

In addition, in an identical manner to the fee waiver, the interstate compact waiver is applicable for up to 110 percent of the number of required credit hours of the degree program in which the student is enrolled, and prior to waiving any out-of-state fees, a member state postsecondary educational institution must require the student, or the student's parent if the student is a dependent child, to provide a written declaration verifying the student's familial relationship to a grandparent who is a legal resident of the member state.

For the interstate compact, the bill further specifies that:

- The executive, legislative, and judicial branches of state government in each member state are to enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact have standing as statutory law.
- The compact takes effect on the date on which it is enacted into law by two states. Thereafter, it is effective as to any state upon its enactment by that state.
- A member state may withdraw from this compact by repealing the statute in which it is enacted. A member state's withdrawal may not take effect until 6 months after enactment of the repeal.
- This compact may not be construed to invalidate or prohibit any law of a member state that does not conflict with the provisions of this compact.
- This compact may be amended by the member states. An amendment to this compact is effective and binding after it is enacted into the laws of all member states.
- The provisions of this compact are severable, and if any phrase, clause, sentence, or provision thereof is declared to be contrary to the constitution of any state or to the Constitution of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby.

For the interstate compact, the bill includes the following definitions:

- "Grandparent" means a person who has a legal relationship to a student's parent as the natural or adopted parent or legal guardian of the student's parent.
- "Member state" means a state that has enacted this compact.
- "Out-of-state fees" means any additional fee for instruction, which is charged to a student who does not qualify for the in-state tuition rate pursuant to the laws of a member state, imposed by a public postsecondary educational institution located within the member state. A charge for any other purpose may not be included within this fee.
- "Postsecondary educational institution" means a public university or college located within a member state.

- “State” includes the District of Columbia and any state, territory, or possession of the United States that oversees one or more public postsecondary educational institutions.

The bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providing in-state tuition for out-of-state high-school graduates who meet specified criteria, including having a grandparent who is a Florida resident, may increase the number of students residing and enrolled in postsecondary institutions in Florida. Ensuring interstate compacts exists between states regarding which students qualify for fee waivers may enable Florida students to enroll in out-of-state postsecondary institutions in member states at reduced cost.

C. Government Sector Impact:

The bill does not require a state appropriation. However, state universities will have reduced revenues from out-of-state fees for each eligible student. The number of students who will qualify for and make use of the out-of-state fee waiver is unknown. For each student who participates in the waiver, a state university would collect only the resident undergraduate tuition and fees, which systemwide averages \$199.72 per credit hour,



instead of nonresident undergraduate tuition and fees, which systemwide averages \$690.63 per credit hour.<sup>41</sup> The Board of Governors (BOG) estimates that there could be a \$1.7 million fiscal impact to the State University System.<sup>42</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1009.26 of the Florida Statutes.

This bill creates section 1009.261 of the Florida Statutes.

**IX. Additional Information:**

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

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

**CS by Education on March 23, 2021:**

The committee substitute creates a new section of law, in addition to the waiver program created by the original bill, to establish a new interstate compact. Specifically, the committee substitute declares the purposes of the grandchild out-of-state fees waiver compact to:

- Increase access to postsecondary education to students whose families are split between two or more states by reducing costs associated with out-of-state fees.
- Encourage students to exercise their rights to travel and to choose the postsecondary education that best suits their needs.
- Increase postsecondary educational choices.
- Decrease the economic burden posed by postsecondary out-of-state fees.

Additionally, the committee substitute specifies that:

- The executive, legislative, and judicial branches of state government in each member state are to enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent.
- The compact takes effect on the date on which it is enacted into law by two states. Thereafter it is effective as to any state upon its enactment by that state.
- A member state may withdraw from this compact by repealing the statute in which it is enacted. A member state's withdrawal may not take effect until 6 months after enactment of the repeal.

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<sup>41</sup> State University System of Florida, *Tuition and Required Fees, 2020-2021*, available at <https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf>, at 1.

<sup>42</sup> BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

- This compact may not be construed to invalidate or prohibit any law of a member state that does not conflict with the provisions of this compact.
- This compact may be amended by the member states. An amendment to this compact is effective and binding after it is enacted into the laws of all member states.

B. Amendments:

None.

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

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