

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 119 w/CS Determination of resident status for tuition purposes
SPONSOR(S): Zapata, Arza and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2344, SB 1852

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-----------------------------------|----------------|----------|----------------|
| 1) Higher Education (Sub) | 6 Y, 0 N | Tilton | Bohannon |
| 2) Education K-20 | 24 Y, 0 N w/CS | Tilton | Bohannon |
| 3) Judiciary | 11 Y, 0 N | Jaroslav | Havlicak |
| 4) Education Appropriations (Sub) | | | |
| 5) Appropriations | | | |

SUMMARY ANALYSIS

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities. Classification as a resident for tuition purposes is also an eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant Program, and the Florida Resident Access Grant Program.

This bill amends current statutory provisions relating to determination of residency for tuition purposes to provide an exemption from paying nonresident tuition at public postsecondary institutions to any student, other than a nonimmigrant alien within the meaning of federal law, who meet the following requirements:

1. The student has resided in Florida for at least three consecutive years immediately preceding the date the student received a high school diploma or its equivalent and has attended a Florida high school for at least three consecutive school years during such time.
2. The student has provided the community college or state university an affidavit stating that the student will file an application to become a permanent resident of the United States at the earliest opportunity the student is eligible to do so.

Federal law currently prohibits undocumented immigrants from receiving, on the basis of their residence within a state, "any postsecondary 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." Other states have, however, drafted or enacted policies similar to those proposed in this bill.

The fiscal impact of the bill is indeterminate, in part because public schools in Florida are specifically prohibited from collecting information on the immigration status of foreign-born students. There is also no estimate of the number of students who have graduated from Florida high schools in the past and would now meet the requirements of this bill. Consequently, complete information on the number of individuals who may be covered by the provisions of this bill is not available.

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

STORAGE NAME: h0119e.ju.doc
DATE: April 9, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

Increased administrative costs may be incurred in determining whether or not a student meets the criteria and is eligible to receive the exemption provided by the bill.

B. EFFECT OF PROPOSED CHANGES:

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities.¹ Classification as a resident for tuition purposes is also an eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant (FSAG) program, and the Florida Resident Access Grant (FRAG) Program.

This bill amends s. 1009.21, F.S., to provide an exemption from paying nonresident tuition at public postsecondary institutions to any student, other than a nonimmigrant alien within the meaning of Title 8 U.S.C. § 1101(a)(15), who meets the following requirements:

1. The student has resided in Florida for at least three consecutive years immediately preceding the date the student received a high school diploma or its equivalent and has attended a Florida high school for at least three consecutive school years during such time.
2. The student has provided the community college or state university an affidavit stating that the student will file an application to become a permanent resident of the United States at the earliest opportunity the student is eligible to do so.

Section 1101 of Title 8 U.S. Code provides definitions for terms relating to aliens and nationality and defines the term "immigrant" to mean every alien except an alien who falls into one of a series of classes described as nonimmigrant aliens.²

Pursuant to a 1990 consent decree, public schools in Florida are specifically prohibited from inquiring, recording, and maintaining information on the immigration status of foreign-born students. There is also no estimate of the number of students who have graduated from Florida high schools in the past and would now meet the requirements of this bill. Consequently, complete information on the number of individuals who may be covered by the provisions of this bill is not available.

¹ See s. 1009.21, F.S.

² These classes include, for instance, foreign diplomats and their dependents, temporary business or tourist visitors, crew of merchant vessels and civil aircraft, and foreign students having *bona fide* residences abroad that they do not intend to abandon, among others. See 8 U.S.C. § 1101(a)(15).

C. SECTION DIRECTORY:

Section 1. Amends s. 1009.21, F.S., to provide certain students an exemption from paying nonresident tuition.

Section 2. Reenacts paragraph (a) of subsection (1) of s. 1009.40, F.S., regarding general requirements for student eligibility for state financial aid, for the purposes of incorporating the amendment to s. 1009.21, F.S., in a reference thereto.

Section 3. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent that new students enroll in state universities and public community colleges because of the reduced cost to such students, public institutions may experience an increase in fee revenues.

2. Expenditures:

The extent to which new students who choose to enroll represent a workload increase for public postsecondary institutions is indeterminate. The impact of such students on funding required or award amount for programs such as Bright Futures, FSAG, and FRAG is also indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Students who, in the past, may have been unable to afford a postsecondary education will have expanded educational opportunities.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The Legislature may not proactively adopt in advance or otherwise attempt to incorporate federal law that is not yet enacted, because this would be an unlawful delegation of its legislative power to the federal government.³ Therefore, this bill's reference to the definition of "nonimmigrant alien" in Title 8 U.S.C. § 1101(a)(15) is to that definition as of this bill's effective date, and will not change automatically upon any future amendment or repeal of that federal statute by Congress.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Title 8 U.S.C. § 1623 prohibits undocumented immigrants from receiving, on the basis of their residence within a state, "any postsecondary 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." Because this bill may extend to some undocumented immigrants a benefit based on residence that would not be extended to all U.S. citizens regardless of residence, it is arguable that it may possibly conflict with this provision of federal law. However, other states have adopted or are examining policies similar to that proposed in this bill: Texas defines such individuals as "Texas residents;"⁴ California and Utah exempt students who meet criteria similar to those in this bill from having to pay out-of-state fees;⁵ and additional states have similar legislation pending.⁶ Student eligibility to participate in state financial aid programs under such legislation varies.

It is also worth mentioning that this bill would have the effect of discriminating against a category of U.S. citizens (namely, those not resident in Florida) in favor of a category of non-U.S. citizens.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 24, 2003, the House Subcommittee on Higher Education recommended a strike-all amendment that narrows the group of students that would be covered by the provisions this bill and provides these students an exemption from paying nonresident tuition at public postsecondary institutions rather than expanding the categories of students classified as residents for tuition purposes to include such students. The bill as amended was then recommended favorably by the subcommittee.

On April 7, 2003, the House Committee on Education K-20 adopted the amendment recommended by the subcommittee. The committee then reported the bill favorably with a committee substitute.

On April 9, 2003, the House Committee on Judiciary reported this bill favorably without amendment.

³ See *State v. Welch*, 279 So.2d 11 (Fla. 1973); *Brazil v. Division of Administration*, 347 So.2d 755 (Fla. 1st DCA 1977).

⁴ See Tx. Educ. Code § 54.052(j).

⁵ See, e.g., Cal. Educ. Code § 68130.5; Utah Stat. § 53B-8-106. Utah's provision may be of particular note, since it essentially mirrors the language of this bill but is expressly made operative only contingent on its being consistent with federal law.

⁶ For an overview of pending legislation on this subject, see generally Beth Peters and Marshall Fitz, *To Repeal or Not to Repeal: The Federal Prohibition on In-State Tuition for Undocumented Immigrants Revisited*, 168 ED. L. REP. 2 (October 2002).