

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 341 Student Financial Assistance
SPONSOR(S): Kravitz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>6 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill prohibits any public university or community college from providing any student holding an F-1 or M-1 visa with financial assistance in the form of: state funds appropriated directly or indirectly to the institution; or tuition or fee revenues generated by Florida residents. Financial assistance does not include paid compensation to students for assistantships or participation in work-study programs.

Such funds must be redirected to provide additional need-based financial assistance to Florida residents for tuition. After the unmet need for such residents is fully satisfied without reliance on loans, any funds remaining must be used to provide merit-based financial assistance to Florida students.

This bill also creates reporting requirements for universities and community colleges.

The Department of Education reports that an estimated \$4.5 million from state funds and tuition and fee revenues will be redirected to Florida residents enrolled in the State University System and an estimated \$2.1 million to Florida residents enrolled in the Florida Community College system. The Division of Universities reports that \$5,729,577 will be available for providing need-based financial assistance to students classified as such residents. See FISCAL COMMENTS section for further details.

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

STORAGE NAME: h0341a.sa.doc
DATE: March 29, 2004

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

This bill increases government by creating reporting requirements for universities and community colleges.

B. EFFECT OF PROPOSED CHANGES:

Background

The federal Immigration and Nationality Act (Act) governs the admission of all foreigners to the United States. The Act also provides two nonimmigrant¹ visa categories for persons wishing to pursue full-time academic or vocational studies in the United States. The "F" visa is reserved for a nonimmigrant wishing to pursue academic studies or language training, and the "M" visa is reserved for a nonimmigrant wishing to pursue nonacademic or vocational studies.

Foreign students seeking to study in the United States may enter under an F-1 or M-1 visa provided they meet the following criteria:

- The student must be enrolled in an "academic" educational program, a language-training program, or a vocational program;
- The school must be approved by United States Citizenship and Immigration Services;
- The student must be enrolled as a full-time student at the institution;
- The student must be proficient in English or be enrolled in courses leading to English proficiency;
- The student must have sufficient funds available for self-support during the entire proposed course of study; and
- The student must maintain a residence abroad which he or she has no intention of giving up.²

Effect of Bill

This bill prohibits a public postsecondary educational institution from using the following funds to provide financial assistance to any student holding an F-1 or M-1 visa:

¹ According to 8 U.S.C. § (a)(15)(F)(i), the term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens – an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study . . . at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States . . . which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student.

² <http://uscis.gov>.

- State funds appropriated directly or indirectly to the institution; or
- Tuition or fee revenues generated by Florida residents.³

Financial assistance does not include paid compensation to students for assistantships or participation in work-study programs.

Such funds must be redirected to provide additional need-based financial assistance for Florida residents for tuition purposes⁴. The redirected funds must not be used to reduce or supplant the level of funding for need-based financial assistance for such residents. After the unmet need for such residents is fully satisfied without reliance on loans, any funds remaining must be used to provide merit-based financial assistance to students classified as residents for tuition purposes.

By December 31, 2004, each state university and community college must report to the President of the Senate and the Speaker of the House of Representatives the total amount of state funds appropriated directly or indirectly to the institution and tuition and fee revenues generated by Florida residents that was used to provide:

- Financial assistance during the 2002-2003 academic school year to students holding F-1 or M-1 visas.
- Need-based financial assistance during the 2002-2003 academic school year to students classified as residents for tuition purposes.

By July 1, 2006, and annually thereafter, the universities and community colleges must also report to the President and the Speaker on the number of Florida residents benefiting from financial assistance as a result of the redirected funds.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section to provide legislative intent; create reporting requirements for state universities and community colleges; prohibit use of certain funds to provide financial assistance to certain foreign students; and provide for redirection of such funds.

Section 2 provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

³ Such funds include moneys from general revenue, the lottery, and financial aid fees.

⁴ Section 1009.21(2), F.S., to qualify as a "resident for tuition purposes" a person must establish and maintain legal residence in this state for at least 12 months prior to qualification, make a statement as to his or her length of residence in the state, and further establish that such residence is not temporary but rather for the purpose of maintaining a "bona fide domicile".

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will provide Florida residents previously unable to afford a higher education the opportunity to receive such education as a result of the redirected funds.

D. FISCAL COMMENTS:

Department of Education

The Department of Education reports that an estimated \$4.5 million from state funds and tuition and fee revenues will be redirected to Florida residents enrolled in the State University System and that an estimated \$2.1 million from state funds and tuition and fee revenues will be redirected to Florida residents enrolled in the Florida Community College system.⁵

Division of Universities

In November 2003, the Division of Universities (division) provided the bill sponsor and legislative staff with a spreadsheet showing that 4,803 students⁶ with an F-1 visa and enrolled in a state university, during the 2002-2003 academic school year, received state moneys to attend school. That same spreadsheet noted that if certain state funds were redirected, as required in the bill, that \$54,241,705⁷ would be available for providing need-based financial assistance to students classified as Florida residents for tuition purposes.

In February 2004, the division provided another "updated" spreadsheet showing that only 1,657 such students⁸ received state funding, and if funds were redirected, only \$5,729,577⁹ would be available for providing need-based financial assistance to students classified as such residents.

When asked to explain the significant change in the figures, the universities stated they had originally included work-related stipends, tuition waivers having a work requirement, and non-state funds. Some universities also claimed calculation errors.¹⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

⁵ Florida Department of Education 2004 Legislative Bill Analysis, HB 341, February 2, 2004, at 3.

⁶ Undergraduate students – 846; Graduate students – 3,954; Other – 3

⁷ General Revenue (GR) - \$38,071,001; Lottery (L) - \$1,271,193; Financial Aid Fees (FAF) - \$440,366; Other (O) - \$14,459,144

⁸ Undergraduate students – 664; Graduate students – 988; Other – 5

⁹ GR - \$4,254,713; L – \$53,956; FAF - \$453,934; O - \$966,974

¹⁰ Memorandum, Florida Board of Governors, March 22, 2004.

2. Other:

Equal Protection

Both the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Florida Constitution guarantee equal protection of the laws to “persons,” not only to citizens. This bill may raise constitutional concerns under these provisions.

While Congress may, in light of its plenary power over immigration,¹¹ generally make classifications based on citizenship as long as they are not arbitrary and unreasonable,¹² state or local laws which do so are subject to strict scrutiny. Such laws must seek to advance a compelling governmental interest and must be narrowly tailored to advancing that interest.¹³

It could be argued that the bill meets strict scrutiny requirements because the bill determines that it is a compelling governmental interest to use a portion of the state’s resources to expand access to postsecondary education and to reduce student indebtedness. Expanding access and increasing financial assistance not only will encourage Florida residents to pursue postsecondary education, but also will produce economic benefits for the state by increasing the levels of higher educational attainment and earning potential of Florida’s citizenry. In addition, it appears to be narrowly tailored to advance the interest of the state in that it only prohibits use of state funds to provide financial assistance to students with an F-1 or M-1 visa, and does not include those students receiving paid compensation for assistantships or participation in work-study programs. Such students also may still receive financial assistance via federal and private moneys.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

¹¹ See Art. I, s. 8, U.S. Const. (“Congress shall have Power To . . . establish an uniform Rule of Naturalization[.]”)

¹² See *Mathews v. Diaz*, 426 U.S. 67 (1976).

¹³ See *Bernal v. Fainter*, 467 U.S. 216 (1984).