

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Education Committee

BILL: CS/SB 2264

SPONSOR: Education Committee and Senator Atwater

SUBJECT: Instructional costs for students

DATE: March 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>EA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) revises the determination of residency for tuition purposes at the state universities and community colleges by requiring a student, or his or her parent if the student is a dependent child, to establish and maintain legal residency for at least 12 months immediately before the student's initial enrollment at a public postsecondary institution. The CS could reduce the state's cost for postsecondary institutions.

The CS revises the definition of the term "dependent child" for purposes of establishing residency for tuition purposes to provide that a dependent child is a student who is eligible to be claimed by his or her parent as a dependent under the federal income tax code and who receives at least 51 percent of true cost-of-living expenses from his or her parent.

Additionally, the CS establishes reclassification requirements for those students who want to change their classification from nonresident to resident for tuition purposes. To meet reclassification requirements, a student, or his or her parent if the student is a dependent child, must provide documentation of non-temporary, full-time employment and domicile in the state for 12 months while not enrolled at an institution of higher education.

The CS also provides that private postsecondary institutions that admit students under the Florida Resident Access Grants (FRAG) and the Access to Better Learning and Education Grant (ABLE) must comply with the residency determination as provided in s. 1009.21, F.S., and the rules implementing that section.

Finally, the CS prohibits a student enrolled at a private postsecondary institution from receiving more than one state tuition assistance grant.

This CS substantially amends the following sections of the Florida Statutes: 1009.21 and 1009.40.

II. Present Situation:

DETERMINING RESIDENCY FOR TUITION PURPOSES AT THE STATE UNIVERSITIES AND COMMUNITY COLLEGES

Legal framework

Section 1009.21, F.S., prescribes the manner in which students are determined to be residents or nonresidents for tuition purposes at the state's universities and community colleges. Students who are residents for tuition purposes qualify for the in-state tuition rate. Traditionally, the Legislature subsidizes 75 percent of the in-state tuition rate. Generally, to qualify as a resident for tuition purposes, a student, or the student's parent if the student is a dependent child, must have established legal residence in this state and maintained that legal residence for at least 12 months immediately prior to the student's qualification for residency. A dependent child is defined to mean any person, living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code. Each student applicant for admission to a state university or college is required to make a statement that includes that the purpose of the student's presence, or his or her parents if the student is a dependent child, in the state during the qualifying period has been to establish and maintain a bona fide domicile rather than for the purpose of enrolling in a postsecondary institution. Additionally, the law sets out certain other avenues for establishing legal residency for tuition purposes including active military duty, employment at certain educational institutions, or participation in certain designated scholarship or exchange programs.

The State Board of Education requires consistent policies and practices for the classification of students as residents for tuition purposes.¹ Additionally, the Board of Regents² mandated that universities must require evidence such as voter registration, driver's license, automobile registration, the location of a bank account, rent receipts or any other relevant materials as evidence that the applicant has maintained 12 months residence immediately before qualification as a bona fide domicile.³ To determine if a student is a dependent child, a university must require evidence such as copies of the above listed documents.⁴ Additionally, the university may require a notarized copy of the parent's IRS return.⁵ A student classified as a nonresident for purposes of tuition may petition for reclassification.⁶

In addition, the Articulation Coordinating Committee adopted postsecondary residency guidelines that specify the type of documentation necessary to prove state residency such as declaration of domicile, voter registration, driver's license, vehicle registration, and permanent

¹ Rule 6A-10.044, F.A.W.

² The Board of Regents no longer exists pursuant to s. 3, ch. 2001-170, L.O.F.

³ Rule 6C-7.005, F.A.W.

⁴ Id.

⁵ Id.

⁶ Id.

employment in the state.⁷ No single document may be conclusive; rather, institutions should use a preponderance of the evidence standard to determine if the student has supplied sufficient documentation to establish eligibility for residency for tuition purposes.⁸ Finally, any documents should be dated at least 12 months before the first day of classes of the term for which residency is sought.⁹

Office of Program Policy Analysis and Government Accountability (OPPAGA) Report¹⁰

In response to a legislative request, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed the process used by the state universities and community colleges to determine whether students qualify for in-state tuition rates. Upon review, OPPAGA made the following principal findings:

- Residency criteria and documentation requirements are unclear and inconsistently applied;
- Dependency status criteria and documentation requirements provide insufficient guidance and are inconsistently applied; and
- Postsecondary institutions frequently misclassify nonresidents as residents.

OPPAGA estimates that if reclassifications for purposes of in-state tuition were eliminated, the state would save an additional \$28.2 million in tuition revenues if the reclassified individuals remained enrolled.

Residency criteria and documentation requirements are unclear and inconsistently applied

OPPAGA found that between 1998-1999 and 2000-2001, 28 percent of students in the community college system and 25 percent of the students in the state university system were reclassified from nonresident to resident for tuition purposes. Moreover, of those students who were reclassified as residents, 72 percent and 60 percent of the students in the community college system and state university system respectively were reclassified after they had lived in the state for 12 months. Because the law, rules, and guidelines are unclear as to whether students can gain in-state residency if they claim that they moved to the state for reasons other than to attend school, the postsecondary institutions face a difficult challenge of determining a student's intent for moving to the state. In the absence of clear criteria, postsecondary institutions have developed varying standards for deciding when to reclassify students as state residents. As a result, students with similar circumstances may receive different residency classifications depending on what institution they attend. For example, some postsecondary institutions have a practice of reclassifying students as residents if they submit one or two basic state documents such as a driver's license or voter registration. In contrast, other postsecondary institutions require additional proof such as employment records, the purchase of a home in the state, or proof of a homestead exemption.

⁷ *Florida Residency Guidelines for Tuition Purposes*, Articulation Coordinating Committee, May 19, 2000.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*, Office of Program Policy Analysis and Government Accountability, Report No. 03-29, April 2003.

OPPAGA found that several states define the 12-month eligibility period based on the time spent in the state before enrollment or registration and not prior to qualification. Students enrolling in these states are, in general, not eligible for reclassification during their continuous enrollment. For example, Texas provides that students who are gainfully employed for 12 months before enrollment are eligible for residency if other evidence indicates establishment of domicile in the state.

Dependency status criteria and documentation requirements provide insufficient guidance and are inconsistently applied

Although the law defines dependency based on whether parents may claim the student as a dependent under the federal income tax code, the legal framework does not require institutions to consistently verify dependency status by examining income tax records or other indicators of financial status. In practice, postsecondary institutions use very different criteria and standards when deciding whether or not to verify a student's independent status. OPPAGA found that some officials of several institutions said they considered all students who are 18 years or older as independent regardless of whether they are financially dependent on their parents. Other institutions indicated that their practice was to routinely verify the independence of the students, especially students under the age of 24. Postsecondary institutions also varied in the minimum income level they required to classify a student as financially independent, ranging from \$5,000 to \$10,000 annually.

Other states have established more explicit criteria regarding independence determinations. California, for example, requires that a student be entirely self-supporting and present in the state for more than one year immediately preceding the residency determination date to be entitled to resident classification.

Postsecondary institutions frequently misclassify nonresidents as residents

OPPAGA found that postsecondary institutions frequently misclassify certain students even when criteria are clearly delineated in law and rule. The most significant problems in misclassifications occurred for transfer students and those students who changed their residency status from nonresident to resident after living in the state for at least 12 months. According to OPPAGA, misclassifications occurred largely due to three (3) errors:

- Some postsecondary institutions failed to require at least one (1) legal document for students who did not graduate from a high school in this state and whose addresses were not in this state;
- Some postsecondary institutions did not require copies of documentation for statutory exemptions to residency requirements as instructed in the residency guidelines; and
- Some postsecondary institutions accepted documents that did not meet the 12-month residency requirement.

Recommendations

OPPAGA recommended the following major changes to the law, rules, and guidelines:

- Amend state law to require that students, or their parents if the students are dependents, must maintain legal residence in the state for at least 12 months immediately prior to their initial enrollment or registration at a state postsecondary institution to be eligible for classification for in-state residency;
- Amend state law to require that a nonresident student may be reclassified as a resident if the individual can provide evidence of having established a permanent domicile in the state for a 12-month period during which the individual was not enrolled in an educational institution. Evidence of domicile should include the purchase of a home, gainful employment in the state, or financial independence supporting 51 percent of the true cost of living expenses;
- Amend state law to require that students under the age of 25 claiming to be independent should be required to provide copies of tax returns showing that they have not been claimed as dependents by their parents or others for income and employment records showing that they are financially self-supporting;
- Amend rules to require postsecondary institutions to establish internal reviews;
- Amend rules to establish minimum documentation standards for residency applications;
- Modify the Postsecondary Residency Guidelines to clarify the minimum documentation requirements;
- Modify the standard residency application form to include questions about filed taxes or earned wages;
- Develop standards to evaluate students' independent status; and
- Compile results from internal reviews by postsecondary institutions of residency determinations to identify problem areas needing correction as well as best practices.

Florida Resident Access Grants and the Access to Better Learning and Education Grant Program

The Florida Resident Access Grants (FRAG)¹¹ and the Access to Better Learning and Education Grant (ABLE)¹² are state programs that provide financial assistance to students to attend certain private postsecondary institutions in the state. In 2003, OPPAGA reviewed the FRAG program and found, in pertinent part, that FRAG institutions are not required to follow the same residency determination process as public institutions and they use less stringent requirements.¹³

Accordingly, there is an increased potential for state financial aid to be awarded to non-resident students. In particular, OPPAGA reviewed a random sample of files used by private postsecondary institutions to determine state financial aid eligibility and identified students who were incorrectly classified as state residents and received FRAG awards. The files contained no documentation that would justify the institution's decision to classify the students as state

¹¹ Section 1009.89, F.S.

¹² Section 1009.891, F.S.

¹³ *Justification Review, Private Colleges and Universities Program*, Office of Program Policy Analysis and Government Accountability, Report No. 03-70, December 2003.

residents. Moreover, OPPAGA found that private postsecondary institutions frequently collected insufficient documentation for student dependency status and proof of 12-month residency. Accordingly, OPPAGA recommended that FRAG recipients undergo the same residency determination criteria as students who enter public postsecondary institutions to include s. 1009.21, F.S., and the rules implementing s. 1009.21, F.S. The precise cost to the state for improper classifications is indeterminate at this time.

III. Effect of Proposed Changes:

RESIDENCY FOR TUITION PURPOSES AT THE STATE UNIVERSITIES AND COMMUNITY COLLEGES

The CS substantially implements OPPAGA's recommendations with respect to revising the criteria for determining residency for tuition purposes at the state universities and community colleges.

Section 1.

The CS revises the definition of "dependent child" to mean any person, whether living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code and who receives at least 51 percent of the true cost-of-living expenses from his or her parent. Additionally, the CS requires each postsecondary institution to determine whether an applicant who has been granted admission to that institution is a dependent child. This provision implements OPPAGA's recommendation to revise the dependency status criteria for determining residency. However, further clarification may be needed to ensure that postsecondary institutions use a common framework for establishing the true cost-of-living expenses. Otherwise, institutions may vary on the amount of income level that satisfies the 51 percent threshold. Finally, the CS is silent on the manner in which postsecondary institutions verify dependent status by examining income tax records or other indicators of financial status. These documentary requirements should be addressed in law or rule.

The CS revises the residency determination procedure to require a person, or that person's parent if the person is a dependent child, to establish and maintain legal residence in this state for at least 12 months immediately before his or her initial undergraduate enrollment at an institution of higher education. This provision implements OPPAGA's recommendation to eliminate the common misperception that out-of-state students automatically qualify for lower in-state tuition after attending school for a year. The CS makes it clear that the 12-month period for establishing residency begins 12 months immediately before the student initially enrolls at a state university or community college.

The CS defines the term "initial undergraduate enrollment" as the first day of class at an institution of higher education. This may indicate that graduate students are not subject to the same residency criteria as undergraduate students. Universities have previously indicated that revision of the residency criteria with respect to graduate students may adversely impact their ability to field appropriate graduate students. However, the provision could lead to potential abuse by the state universities in classifying graduate students for residency purposes to the

detriment of the state. If the use of the term is not intentional, however, the CS could create an ambiguity regarding the determination of residency for graduate students.

Each postsecondary institution must also determine that an applicant who has been granted admission to that institution as a Florida resident meets the residency requirements at the time of initial enrollment.

The CS also provides that a student is not eligible for classification as a resident for tuition purposes until he or she has provided the evidence related to legal residence and its duration as well as documentation confirming his or her status as a dependent child as required by law and by officials of the admitting postsecondary institution.

The CS establishes reclassification requirements to require that a student, or his or her parent if the student is a dependent child, may only be reclassified if he or she presents documentation of non-temporary, full-time employment and domicile in the state for 12 months while not enrolled at a postsecondary institution. This provision implements OPPAGA's recommendation to tighten the reclassification requirements. However, the provision may be further strengthened by requiring the documentation of employment and domicile in the state for 12 consecutive months immediately preceding the residency determination date while not enrolled at a postsecondary institution. Otherwise, a student may be reclassified by simply providing proof of full-time employment and domicile by documenting such evidence for one (1) month in 1995, eight (8) months in 2000, and (3) months in 2004, and still meet the reclassification requirements.

Section 2.

The CS revises the general requirements for student eligibility for financial aid to require that students under tuition assistance grants such as the Florida Resident Access Grant and the Access to Better Learning and Education Grants must meet the residency guidelines as established in s. 1009.21, F.S., and the rules implementing s. 1009.21, F.S., even though the students are attending private postsecondary institutions. This provision implements OPPAGA's recommendations to require that certain private postsecondary institutions that admit students who receive state tuition assistance grants are appropriately classifying and ensuring that the students are eligible for the grants. However, the CS does not require these private postsecondary institutions to comply with the Florida Residency Guidelines for Tuition Purposes. The guidelines provide more guidance for public postsecondary institutions in assisting administrators to properly request and review the documentation necessary to establish residency for tuition purposes.

Finally, the CS prohibits a student who is attending a private postsecondary institution from receiving more than one state tuition assistance grant. This provision is designed to prohibit "double-dipping" whereby a student receives several tuition assistance grants at the same time. The CS may prohibit a student from receiving a tuition assistance award to attend a FRAG eligible school and later transfer to an ABLE eligible school and receive the ABLE grant.

EFFECTIVE DATE

The CS takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Board of Governors; Art. IX, Section 7 of the State Constitution

Article IX, Section 7 of the State Constitution provides that the Board of Governors shall operate, regulate, control, and be fully responsible for the management of the whole university system. The courts have not interpreted this provision with respect to the extent of the powers and duties of the Board of Governors. A lawsuit was filed on December 21, 2004, against the Board of Governors and the State Board of Education seeking a declaratory action, among other things, regarding the Board of Governor's powers and duties with respect to the state university system. The results of this lawsuit may have an impact on the CS with respect to the state universities.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Residency for Tuition Purposes at the State Universities and Community Colleges

Students who were improperly classified as state residents may be required to pay the appropriate cost of attending the state's postsecondary institutions.

C. Government Sector Impact:

Residency for Tuition Purposes at the State Universities and Community Colleges

OPPAGA estimates that the state could save approximately \$28 million by implementing clearer criteria, coupled with consistent implementation by the postsecondary institutions, if the students remain enrolled.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
