

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 685 Educational Dollars for Duty Program

SPONSOR(S): Proctor and others

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Fudge	Hoagland
2)	Economic Development & Community Affairs Policy Council			
3)	Full Appropriations Council on Education & Economic Development			
4)	Policy Council			
5)				

SUMMARY ANALYSIS

The Educational Dollars for Duty (EDD) program was created in 1997 to provide educational benefits to certain active Florida National Guard members and is subject to annual appropriations. Appropriations for this program in 2008 were \$1,781,900. In 2007-2008 approximately 765 members used the EDD program.

The Department of Military Affairs may pay the full cost of tuition and fees for required courses for current members of the Florida National Guard (Guard) who enlisted after June 30, 1997. A member may not participate for more than five years from becoming eligible for the program. These restrictions make it difficult for the Guard to retain their most experienced and well trained troops.

HB 685 removes certain restrictions on the EDD program to make it more competitive with programs in other states.

The bill extends the program to include: nonpublic institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; and Florida vocational-technical programs which have been accredited by the Council on Occupational Education. The amount the Department pays is limited to the average tuition and fees at a public postsecondary institution or public vocational-technical program.

The bill also expands eligibility to those seeking a masters degree, those with more than 15 years service, and to those who have not completed basic military training.

The bill clarifies that the EDD program is for an active drilling member and requires the member to continue to serve for the period specified in their enlistment or reenlistment contract instead of for 3 years after the exemption is granted. This provision is made retroactive and applies to those members who left the Florida National Guard prior to July 1, 2009, so that no member is relieved of any obligation to reimburse the Department for tuition and fees, regardless of whether the obligation was incurred before July 1, 2009.

Finally, the bill extends residency status to all active drilling members of the Florida National Guard, not just those participating in the education programs.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Department of Military Affairs administers two educational assistance programs to active Florida National Guard members: the State Tuition Exemption Program (STEP) and the Educational Dollars for Duty (EDD) program.

The STEP program is available for qualified members of the Florida National Guard. The program exempts the member from payment of one-half of tuition and fees, subject to certain limitations. According to the Board of Governors only five students received the waiver in the State University System in 2007.

The Educational Dollars for Duty (EDD) program was created in 1997 to provide educational benefits to certain active Florida National Guard members and is subject to annual appropriations. Appropriations for this program in 2008 were \$1,781,900. In 2007-2008 approximately 765 members used the EDD program.

The Department of Military Affairs may pay the full cost of tuition and fees for required courses for current members of the Florida National Guard (Guard) who enlisted after June 30, 1997. A member may not participate for more than five years from becoming eligible for the program. These restrictions make it difficult for the Guard to retain their most experienced and well trained troops.

The program provides education assistance for members in good standing of the active Florida National Guard who enroll in a public institution of higher learning. The requirements of the program are:

- 17 years of age or older
- Domiciled in the state
- Member in good standing in the active National Guard throughout the academic term
- Continuous participation in the active National Guard
- Complete a memorandum of agreement to serve in the active National Guard for 3 years after completion of studies.

The program also identifies certain members deemed ineligible to participate, such as: commissioned, officer, warrant officer, or enlisted person holding a baccalaureate degree; any member with 15 years or more of total military service; and any member that has not completed basic training.

Moreover, certain courses are not included, such as: noncredit courses, courses that do not meet degree requirements, and courses that do not meet requirements for completion of career training.

Effect of Proposed Changes

HB 685 removes certain restrictions on the EDD program to make it more competitive with other programs. The Board of Governors and State Board of Education are removed from developing the education assistance program. The bill extends the program to include: nonpublic institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; and Florida vocational-technical programs which have been accredited by the Council on Occupational Education. College preparatory courses are now specifically included. The amount the Department pays is limited to the average tuition and fees at a public postsecondary institution or public vocational-technical program.

The bill clarifies that the EDD program is for an active drilling member and requires the member to continue to serve for the period specified in their enlistment or reenlistment contract instead of for 3 years after the exemption is granted. This provision is made retroactive and applies to those members who left the Florida National Guard prior to July 1, 2009, so that no member is relieved of any obligation to reimburse the Department for tuition and fees, regardless of whether the obligation was incurred before July 1, 2009.

The bill also revises the criteria for those members who are ineligible by:

- Including those who have obtained a master's degree, thereby increasing the availability of the program to those who had obtained a bachelor's degree
- Removing the restriction on those who have 15 years or more of military service creditable toward retirement
- Removing the restriction on those who have not completed basic military training
- Inactive members of the Florida National Guard and members of the Individual Ready Reserve (IRR) are not eligible to participate in the program

The STEP program is eliminated along with the corresponding reference for fee waivers.

Finally, the bill extends residency status to all active drilling members of the Florida National Guard, not just those participating in the education programs.

B. SECTION DIRECTORY:

Section 1: Amends s. 250.10, F.S. to remove certain restrictions from the Educational Dollars for Duty program.

Section 2: Amends s. 1009.21, F.S., allowing resident status for active drilling members of the Florida National Guard, not just those that qualify for the program.

Section 3: Amends s. 1009.26, F.S., to correct cross-reference.

Section 4: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 expresses the intent that the subparagraph dealing with reimbursement obligations, shall apply retroactively to members who left the Florida National Guard prior to July 1, 2009. A law is presumed to operate prospectively absent clear legislative intent to the contrary.¹ To determine whether a statute applies retroactively, the Court considers two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional.² The Court will generally not “apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.” *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla.1995); *Basel v. McFarland & Sons, Inc.*, 815 So.2d 687, 692 (Fla. 5th DCA 2002) (“Even when the legislature expressly states that a statute is to have retroactive application, courts will refuse to apply the statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.”).

Although the bill expresses an intent for retroactive application, it does not appear to create a new obligation. Even under existing law, members who breached their enlistment or reenlistment contract

¹ *State v. Lavazzoli*, 434 So.2d 321, 323 (Fla.1983); see also *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So.2d 494, 499 (Fla.1999)

² *Chase Fed.*, 737 So.2d at 499.

are still obligated to reimburse the Florida National Guard for funds received as a condition of their enlistment or reenlistment.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES