

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 723 Postsecondary Education Fee Waivers  
**SPONSOR(S):** State Universities & Private Colleges Policy Committee; Sachs  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2102

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	State Universities & Private Colleges Policy Committee	11 Y, 0 N, As CS	Valenstein	Tilton
2)	State Universities & Private Colleges Appropriations Committee	13 Y, 0 N	Smith	Trexler
3)	Education Policy Council	12 Y, 0 N, As CS	White	Lowell
4)				
5)				

### SUMMARY ANALYSIS

CS/CS/HB 723 authorizes a state university or community college to waive tuition and fees for full-time public school classroom teachers for six credit hours per term in undergraduate courses, as space is available. These fee waivers are only available for courses approved by the Department of Education and must relate to special education, mathematics, or science. Additionally, a public school teacher must meet any academic requirements established by the state university or community college and cannot use the fee waiver for courses scheduled during the school day.

CS/CS/HB 723 limits the liability of state universities for actions or decisions made by its student government, by allowing a cause of action against a state university only when the action or decision by the student government is made final by the university and is a violation of state or federal law.

CS/CS/HB 723 allows institutions eligible for the William L. Boyd, IV, Florida Resident Access Grant to charge a convenience fee for the use of a credit card to pay tuition, fees, and other student account charges.

The fiscal impact of CS/CS/HB 723 is indeterminate. (See FISCAL COMMENTS)

CS/CS/HB 723 takes effect on July 1, 2010.

## 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:

##### **Background**

##### *Fee Waivers*

Currently, school districts, community colleges, and state universities are authorized to grant fee waivers under various circumstances.<sup>1</sup> Section 1009.26, F.S., authorizes fee waivers for: supervisors of university student interns; full-time university employees for up to 6 credit hours per term, as space is available; state residents 60 years of age or older, as space is available; graduate students in a psychology training program for specified internships; certain nondegree-seeking students; spouses of deceased state employees; Purple Heart recipients; and for other such purposes that support the mission of a state university.<sup>2</sup> Additionally, s. 1009.26, F.S., authorizes school districts and community colleges to waive fees for any fee-nonexempt student, up to the amount established annually in the General Appropriations Act. Section 1009.265, F.S., requires state universities and community colleges to waive tuition and fees for approved state employees to take up to six credit hours per term, as space is available.<sup>3</sup> There is no specific statutory authority to waive tuition and fees for public school classroom teachers; however, some of these individuals may be eligible for an existing fee waiver such as one granted under the general authority provided to state universities to waive tuition and out-of-state fees for any purpose that supports the mission of the university.

According to the State University System Fee Waiver Summary report for 2007-2008,<sup>4</sup> there were 30,064 students enrolled using a fee waiver. This resulted in the universities forgoing approximately \$77,194,555 in revenues.<sup>5</sup>

According to the Department of Education Summary of Student Fee Exemptions and Waivers report for 2008-2009,<sup>6</sup> there were 8,115 students enrolled using a fee waiver. This resulted in the community colleges forgoing approximately \$4,473,638 in revenues.<sup>7</sup>

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<sup>1</sup> Sections 1009.26 and 1009.265, F.S.

<sup>2</sup> Section 1009.26(1)-(9), F.S.

<sup>3</sup> Section 1009.265(1), F.S.

<sup>4</sup> Fee Waiver Summary created from the Student Data Course File Edit Reports – Summer 2007, Fall 2007, and Spring 2008.

<sup>5</sup> State University System of Florida, Fee Waiver Summary 2007-08, State University System of Florida Fact Book, Table 37, available at <http://www.flbog.org/resources/factbooks/factbooks.php> (last visited March 12, 2010).

<sup>6</sup> Report created from data reported on an academic year basis including, Summer 2008, Fall 2008, and Spring 2009.

<sup>7</sup> Department of Education, Summary of Student Fee Exemptions and Waivers, FY 2008-2009, Schedule 4.

The Education Information and Accountability Services Data Report states that there were 166,724 teachers in the fall of 2009.<sup>8</sup> These teachers typically continue to take academic course work at community colleges and state universities during their careers to maintain licensure, participate in professional development, and seek additional academic credentials and degrees.<sup>9</sup>

#### University Liability for Student Government Action

In February 2008, the University of Florida's student government denied placement of an online voting referendum for the 2008 spring election that, if passed, would have amended the student body constitution to require that online voting be the only method of voting in all student government elections, subject to certain limitations.

The proponents of the online voting referendum appealed the student government decision to the Vice President for Student Affairs who declined to reverse the decision of the student government, and instead, caused a student committee to be formed to explore the security and privacy concerns of online voting.

The proponents then filed a Petition with the First District Court of Appeal seeking that the online voting referendum be placed on the student election ballot.

The District Court of Appeal issued an order in December 2009 directing the University of Florida to file the letter from the Vice President for Student Affairs that declined to reverse the decision of the student government relating to placement on the ballot of the online voting referendum. This matter remains pending before the District Court of Appeal.

University student governments are authorized by statute for each state university and the university boards of trustees are authorized to create branches of student government on any branch campus.<sup>10</sup> University student governments must be organized and maintained by students and include a student body president, a student legislative body, and a student judiciary. The student body president and the student legislative body must be elected by the student body. Section 1004.26, F.S. also prescribes items the student government internal procedures must govern and addresses when an officer may be suspended, removed or disciplined. Section 1004.26, F.S. does not address when a cause of action may be brought against a state university based on the actions or decisions of the student government.<sup>11</sup>

#### Convenience Fees for Credit Card Use at FRAG Eligible Institutions

Currently, credit card companies impose fees on sellers, ranging from 2-3%, for the use of credit cards by the sellers' customers.<sup>12</sup> Florida Statutes prohibit a seller from imposing a surcharge, or convenience fee, for the use of a credit card.<sup>13</sup> However, state agencies, including state universities, are granted an exception. State agencies, the judicial branch, and units of local government are authorized to charge a convenience fee for the use of a credit card; however, the convenience fee cannot exceed the total cost incurred.<sup>14</sup> Therefore, state universities do not experience a loss by allowing students the convenience of paying tuition, fees, and other student account services by credit card because they are able to pass the fees charged by the credit card company on to the students.

As stated above, public institutions are the only entities that are granted an exception to charge a convenience fee for the use of a credit card. The institutions eligible for the William L. Boyd, IV, Florida Resident Access Grant are not public institutions and are, therefore, not authorized to recoup the fees charged by the credit card companies for allowing their students the convenience to use a credit card to pay tuition, fees, and other student account services.

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<sup>8</sup> Available at <http://www.fl DOE.org/eias/eiaspubs/default.asp> (Last visited March 12, 2010).

<sup>9</sup> Florida Department of Education Analysis of HB 723, February 2, 2010.

<sup>10</sup> S. 1004.26(1), F.S.

<sup>11</sup> See s. 1004.26, F.S.

<sup>12</sup> Andrew Martin, *Card Fees Pit Retailers Against Banks*, The New York Times, July 16, 2009, available at <http://www.nytimes.com/2009/07/16/business/16fees.html> (last visited April 16, 2010).

<sup>13</sup> S. 501.0117, F.S.

<sup>14</sup> S. 215.322, F.S.

## **Effect of Proposed Changes**

### **Fee Waivers**

CS/CS/HB 723 authorizes, but does not require, a state university or community college to waive tuition and fees for full-time public school classroom teachers for six credit hours per term in undergraduate courses, as space is available. These fee waivers are only available for courses approved by the Department of Education and must relate to special education, mathematics, or science. Additionally, a public school teacher must meet any academic requirements established by the state university or community college and cannot use the fee waiver for courses scheduled during the school day.

CS/CS/HB 723 authorizes the State Board of Education to adopt a rule that prescribes the process for the approval of courses by the Department of Education.

### **University Liability for Student Government Action**

CS/CS/HB 723 limits the liability of a state university with respect to actions and decisions made by its student government. CS/CS/HB 723 allows a cause of action only when the action or decision by the student government is made final by the state university and violates state or federal law.

### **Convenience Fees for Credit Card Use at FRAG Eligible Institutions**

CS/CS/HB 723 allows those institutions eligible for the William L. Boyd, IV, Florida Resident Access Grant to charge a convenience fee for the use of a credit card to pay tuition, fees, and other student account charges. The convenience fee charged by the institutions will not exceed the total cost charged by the credit card companies.

## **B. SECTION DIRECTORY:**

- Section 1. Amends s. 1009.26, F.S., authorizing a state university or community college to waive tuition and fees for certain public school teachers for certain undergraduate courses.
- Section 2. Amends s. 1004.26, F.S., prohibiting a cause of action against a state university for the actions or decisions of a state university student government, except in certain circumstances.
- Section 3. Amends s. 501.0117, F.S., providing that a convenience fee imposed on a student or family making payment by credit card to certain postsecondary institutions is not considered a surcharge for purposes of certain restrictions.
- Section 4. Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
See FISCAL COMMENTS.
- 2. Expenditures:  
See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Fee waivers would benefit K-12 instructional personnel who currently pay to take academic course work during their careers for the purpose of maintaining certification, for professional development, or to seek additional credentialing.<sup>15</sup>

Allowing certain educational institutions to recoup the cost associated with using a credit card for the payment of tuition, fees, and other student account charges will result in an increase in revenues to these universities; however, by allowing these institutions to recoup the fees, it will impose an additional fee on those students choosing to pay tuition, fees, and other student account charges by credit card.

D. FISCAL COMMENTS:

Fee Waivers

Public school classroom teachers continue to take academic course work during their careers to maintain licensure, participate in professional development, and seek additional academic credentials and degrees. The universities and community colleges may lose revenues from existing fee paying students who will qualify for the fee waiver.<sup>16</sup> Universities are allocated a specific amount of money to use at their discretion in awarding fee waivers and financial assistance to students; it is unlikely that the institutions would offer waivers exceeding this amount.

The fiscal impact of implementing the fee waivers is indeterminate at this time. The impact will depend on numerous factors, including the number of institutions that grant the fee waivers, the number of eligible personnel that participate in the fee waiver program, and whether there are any administrative costs to the institutions as a result of this legislation. Specific information regarding these variables is unavailable at this time. The fiscal impact may be negligible, as CS/CS/HB 723 does not require an institution to waive fees.

University Liability for Student Government Action

At the time of this analysis, it is unclear how many causes of action arise out of actions or decisions of a university's student government; however, CS/CS/HB 723 may limit the number of future causes of action brought based on the actions and decisions of a university student government, thus potentially reducing the costs and fees associated with litigation.

Convenience Fees for Credit Card Use at FRAG Eligible Institutions

Allowing those institutions eligible for the William L. Boyd, IV, Florida Resident Access Grant to charge students a convenience fee for the use of a credit card will save the institutions the amount they currently pay credit card companies for the use of credit cards. The convenience fee is limited to the total cost charged by the credit card company.

Additionally, allowing these institutions to recoup the costs associated with using a credit card will result in another fee for students. The fee will be limited to those students choosing to pay tuition, fees, and other student account charges by credit card.

The fiscal impact is indeterminate at this time. The impact will depend on the current fee charged by credit card companies and the number of students that will continue to pay tuition, fees, and other student account charges by credit card.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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<sup>15</sup> Florida Department of Education Analysis of HB 723, February 2, 2010.

<sup>16</sup> Florida Department of Education Analysis of HB 723, February 2, 2010.

1. Applicability of Municipality/County Mandates Provision:

CS/CS/HB 723 does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

CS/CS/HB 723 does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

CS/CS/HB 723 does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The State Board of Education is granted the authority to adopt a rule that prescribes the process for the approval of courses by the Department of Education.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2010, the State Universities and Private Colleges Policy Committee adopted one amendment to HB 723 and reported the bill favorably as a Committee Substitute (CS). The amendment limits the use of the fee waivers to full time public school classroom teachers for six credit hours per term in undergraduate courses, as space is available. The amendment clarifies that fee waivers are only available for courses approved by the Department of Education. The courses must relate to special education, mathematics, or science. Additionally, the amendment requires public school teachers to meet any academic requirements established by the state university or community college and prohibits the use of the fee waiver for courses scheduled during the school day. The amendment also grants rulemaking authority to the State Board of Education.

On April 16, 2010, the Education Policy Council adopted two amendments to CS/HB 723 and reported CS/HB 723 favorably as a Committee Substitute. The first amendment limits the liability of universities for actions or decisions of its student government. The amendment allows a cause of action against a university only when the action or decision by the student government is made final by the university and is a violation of state or federal law. The second amendment allows those institutions eligible for the William L. Boyd, IV, Florida Resident Access Grant to charge a convenience fee for the use of a credit card to pay tuition, fees, and other student account charges. This analysis is drafted to the CS/CS.