

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HEWS 13-02 Resident Status for Tuition Purposes

SPONSOR(S): Higher Education & Workforce Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Higher Education & Workforce Subcommittee	13 Y, 0 N	Brink	Sherry

SUMMARY ANALYSIS

The bill revises provisions relating to the determination of resident status for tuition purposes.

The bill provides that a United States citizen who is a dependent child may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. It amends the definitions of "dependent child" and "parent" regarding establishing residency for tuition purposes.

The bill also allows, under certain circumstances, dependent students to utilize an additional pathway to establish residency for tuition purposes by submitting evidence of their own residency in Florida. Further, institutions would not be required to reevaluate the classification status of a student classified as a resident for tuition purposes so long as there is no inconsistent information suggesting an erroneous classification and there is no break in the student's enrollment of 12 months or longer.

The bill provides that a student who resides in Florida may be classified as a resident for tuition purposes if he or she marries a person who qualifies as a resident for tuition purposes. It also allows a student who has been classified as a nonresident to reclassify as a resident upon subsequently marrying a person who already qualifies as a resident for tuition purposes.

For a dependent child living with an adult relative who is a Florida resident and who is not the child's parent, the bill reduces from five years to three years the amount of time the child must live with the relative in order to use the relative's documentation to establish residency for tuition purposes.

The bill classifies as residents for tuition purposes individuals who receive certain tuition waivers and exemptions under Florida law and veterans of the U.S. Armed Forces, including reserve components, who physically reside in Florida while enrolled in a Florida institution of higher learning.

The bill clarifies that the Board of Governors must adopt regulations, instead of rules, to implement the section.

The fiscal impact of the bill is indeterminate at this time.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers; career centers operated by school districts; Florida College System institutions, and state universities. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.¹

Applicants to a postsecondary institution must meet certain qualifying standards in order to be classified as a resident of Florida for tuition purposes. The applicant, or in the case of a dependent child, his or her parents,² must establish legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her enrollment in a postsecondary institution.³

Each postsecondary institution determines the residency status of the students who apply for admission to the institution.⁴ Each applicant must provide to the institution a statement of length of residence and establish that his or her presence in the state is for the purpose of maintaining a bona fide domicile and not as a temporary residence or residence incident to enrollment.⁵

System Implementation of Residency Requirements

Present Situation

The State Board of Education (SBE) and Florida Board of Governors (BOG) must adopt rules to implement the provisions of Section 1009.21, F.S.⁶ Accordingly, the SBE has adopted Rule 6A-10.044, F.A.C., "Residency for Tuition Purposes." The BOG has adopted a similar set of provisions under Rule 72-1.001, also entitled "Residency for Tuition Purposes." Each rule establishes requirements for determining residency for tuition purposes.

Federal law provides that an "alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefits 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."⁷

Ruiz v. Robinson

In 2011, a group of five dependent, U.S. citizen residents of Florida filed a lawsuit against the SBE and the BOG challenging the above-referenced rules promulgated by both boards. The plaintiffs had applied to attend various institutions of higher education in Florida,⁸ but were denied residency status by the institutions application of the rules because the plaintiffs' parents could not establish legal

¹ See Sections 1009.22, 1009.23, and 1009.24, F.S. Out-of-state tuition is established by each university board of trustees, subject to the approval of the BOG. Section 1009.24(4)(c), F.S.

² The legal residence of a dependent child's parents is prima facie evidence of the dependent child's residence. Section 1009.21(4), F.S.

³ Section 1009.21(2)(a)1., F.S. A legal resident, for purposes of tuition, is a person who has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in Florida pursuant to s. 222.17, F.S. Section 1009.21(1)(d), F.S.

⁴ Section 1009.21(3)(c), F.S.

⁵ Section 1009.21(2)(a)2., F.S. Each institution must also establish a residency appeal committee under s. 1009.21(12), F.S.

⁶ Section 1009.21(13), F.S.

⁷ 8 U.S.C. § 1623, Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

⁸ The institutions included Florida International University, Miami-Dade College, and Palm Beach State College.

immigration status.⁹ The plaintiffs claimed in their lawsuit that these rules are unconstitutional because they violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The court held that the State cannot deny in-state residency status to a U.S. citizen resident of Florida based upon his or her parent's inability to prove their own legal presence in the country. While the Court stated the definition of "legal resident" under Section 1009.21, F.S. is facially neutral; it found that the additional criteria set forth in the challenged rules, as implemented by the institutions, denied the Plaintiffs the same benefits and opportunities as similarly situated individuals.¹⁰ Therefore, the rules, insofar as they require dependent United States citizen students who are residents of Florida to establish the immigration status of their Florida resident parents, were found to violate the Equal Protection Clause of the Fourteenth Amendment. The court also enjoined the BOG and the SBE from interpreting the rules in a way that would require such students to establish the immigration status of their Florida-resident parents.¹¹

The court clarified that the order would not preclude the State from requiring proof of Florida residency from a student and the student's parents in order to classify the student as a resident for tuition purposes.¹²

The Court also noted that the SBE or BOG could not use the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PROWRA) as justification for requiring proof of a parent's legal presence in the country because that law merely precludes unlawful *aliens*, not U.S. citizens, from receiving tuition benefits. Since the children in this case were U.S. citizens and the tuition benefit accrues to the child and not the parent, PROWRA was inapplicable.¹³

Effect of Proposed Changes

The bill provides that a United States citizen, who is a dependent child, may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. This, in effect, codifies the holding in *Ruiz v. Robinson*¹⁴ that such a classification violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Documentation of residency for tuition purposes

Present Situation

An applicant seeking an initial determination of residency must submit two or more documents evidencing residency to the institution. For students who are eligible to be claimed as a dependent under the federal income tax code (regardless of whether they are claimed or not), the applicant's parent (not the applicant) must submit documentation evidencing length of residency in Florida. No one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes.¹⁵ At least one of the following must be provided by the applicant or the applicant's parent if the applicant is a dependent:

- A Florida voter's registration card
- A Florida driver's license
- A State of Florida identification card
- A Florida vehicle registration

⁹ *Ruiz v. Robinson*, 2012 WL 3779058 (S.D. Fla. 2012).

¹⁰ *Ruiz v. Robinson* at 10.

¹¹ Final Judgment in *Ruiz v. Robinson*. Docket Document 109, 1:11-cv-23776-KMM, Federal District Court, Southern District of Florida.

¹² *Id.* at 8-9.

¹³ *Id.* at 9.

¹⁴ 2012 WL 3779058 (S.D. Fla. 2012).

¹⁵ Section 1009.21(3)(c), F.S.

- Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child
- Proof of a homestead exemption in Florida
- Transcripts from a Florida high school for multiple years if the Florida high school diploma or GED was earned within the last 12 months
- Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period¹⁶

One or more of the following documents may be provided by the applicant:

- A declaration of domicile in Florida
- A Florida professional or occupational license
- Florida incorporation
- A document evidencing family ties in Florida
- Proof of membership in a Florida-based charitable or professional organization
- Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments, a lease agreement and proof of 12 consecutive months of payments, or an official state, federal, or court document evidencing legal ties to Florida¹⁷

Effect of Proposed Changes

In addition to the current statutory options for establishing residency for tuition purposes, the bill provides an alternative option which allows an applicant to an institution of higher education to submit documentary evidence of his or her own residency in Florida, even if he or she is a dependent, under certain circumstances.

In order to qualify for the alternative option, the applicant must have attended high school in Florida for at least three consecutive years, applied for enrollment at a Florida institution of higher education within 12 months of graduation, and submitted his or her official Florida high school transcript as one of two documents evidencing Florida residency. If the applicant submits his or her high school transcript, the second item submitted as proof of residency may pertain either to the applicant's residency or the residency of the applicant's parent. A dependent child applicant who does not meet the alternative requirements would still have the option of establishing residency by meeting the current statutory requirements.

Definitions

Present Situation

A "dependent child" is defined as any person, whether or not 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.¹⁸ A "parent," in the context of establishing residency for tuition purposes, is defined as the natural or adoptive parents or legal guardian of a dependent child.¹⁹ However, the federal income tax code allows a stepparent to claim a stepson or step daughter as a dependent.²⁰

For purposes of eligibility for federal financial aid, an independent student is one of the following: at least 24 years old, married, a graduate or professional student, a veteran, a member of the armed

¹⁶ Section 1009.21(3)(c)1., F.S.

¹⁷ Section 1009.21(3)(c)2., F.S.

¹⁸ Section 1009.21(1)(a), F.S.

¹⁹ Section 1009.21(1)(f), F.S.

²⁰ 26 U.S.C. s. 152.

forces, an orphan, a ward of the court, someone with legal dependents other than a spouse, an emancipated minor, or someone who is homeless or at risk of becoming homeless.²¹

Effect of Proposed Changes

The bill amends the definition of “dependent child” to include any person who is not deemed an independent for purposes of federal financial aid. This would help to promote consistency and avoid discrepancy between the determination of dependent or independent status for residency purposes and the determination of such status for financial aid purposes. It also amends the definition of “parent” to include stepparents to align with the federal income tax code definition.

Children who reside with an adult (non-parent) relative

Present Situation

A dependent child living with an adult relative, who is not the child’s parent, may be classified as a resident for tuition purposes if the child has lived with the adult relative for five consecutive years immediately prior to initial enrollment and the adult relative has maintained legal residence in Florida for at least 12 months prior to the child enrolling in an institution of higher education.²²

Effect of Proposed Changes

For a dependent child living with an adult relative who is not the child’s parent, the bill reduces from five years to three years the amount of time the child must live with the relative in order to use the adult relative’s documentation to qualify as a resident for tuition purposes. The three year requirement aligns with other time periods established in the bill.

Effect of marital status on residency for tuition purposes

Present Situation

A student may not be denied legal resident status solely by reason of marriage to a person domiciled in another state, so long as the student remains a legal resident of Florida.²³ Conversely, a student cannot establish legal residence in this state solely by reason of marriage to a person domiciled in this state.²⁴ Florida law also provides that, upon becoming a legal resident, a student may reclassify as a resident for tuition purposes if his or her spouse is already a legal resident.²⁵

Effect of Proposed Changes

The bill clarifies when a person may be classified or reclassified, due to marriage, as a resident for tuition purposes. A person residing in Florida may be classified as a resident for tuition purposes if he or she marries a person who meets the 12-month residency requirement and otherwise qualifies as a resident for tuition purposes. A person may be reclassified as a resident for tuition purposes if the person submits evidence of: his or her own physical residence in the state and marriage to a person who qualifies as a resident for tuition purposes.

Reevaluation of residency status

²¹ U.S. Department of Education, *Federal Student Aid Glossary*, available at <http://studentaid.ed.gov/glossary> (last viewed Feb. 27, 2013)

²² Section 1009.21(2)(b), F.S.

²³ Section 1009.21(5)(a), and (6)(d), F.S.

²⁴ Section 1009.21(5)(b), F.S.

²⁵ Section 1009.21,(6)(d), F.S. The student must submit evidence of his or her own residency in this state, evidence of his marriage to the spouse, and evidence of the spouse’s legal residency in the state for at least 12 consecutive months immediately preceding the application for reclassification.

Present Situation

If the parents of a dependent student establish a domicile in another state after the student has been classified as a Florida resident for tuition purposes, the student loses his or her resident status. However, the student enjoys a one-year grace period, measured from the date the circumstances resulting in the loss of residency status arose, during which the student continues to enjoy in-state tuition rates.²⁶

Effect of Proposed Changes

The bill provides that once a student has been classified as a resident for tuition purposes, an institution of higher education is not required to reevaluate the classification unless either inconsistent information suggests an erroneous classification or there is a break in enrollment from the institution for a period of 12 months or longer.

Residency of individuals eligible for tuition exemptions and waivers

Present Situation

Under current law, certain persons are eligible for tuition exemptions and waivers, including:

- Individuals who are homeless;²⁷
- Individuals who were in the custody of the Department of Children and Families at the time they reached 18 years of age;²⁸
- Individuals who were in the custody of a relative under s. 39.5085 at the time they reached 18 years of age or who were adopted from the Department of Children and families after May 5, 1997;²⁹
- Individuals who have been wrongfully incarcerated;³⁰
- Dependents or spouses of firefighters killed in the line of duty;³¹ and
- Dependents or spouses of law enforcement, correctional, or correctional probation officers killed in the line of duty.³²

Although these individuals are legal residents of Florida, it can be difficult, or even impossible, for them to compile and provide documentation establishing their residence in Florida for tuition purposes. Consequently, institutions may grant the exemption or waiver to the student as a non-resident student. Currently, there are no provisions under Florida law automatically classifying persons eligible for these tuition exemptions and waivers as residents for tuition purposes.

Effect of Proposed Changes

Under the bill, individuals who receive a tuition exemption or waiver under the above-referenced sections are classified as in-state residents for tuition purposes so long as they remained eligible for the exemption or waiver. This would eliminate the burden borne by the student and the institutions regarding classification of residency based on the submission of various documents to which these individuals may not have access.

Veterans in Florida

²⁶ Section 1009.21(8), F.S.

²⁷ 961.06(1)(b), F.S.

²⁸ Section 1009.25(1)(c), F.S.

²⁹ Section 1009.25(1)(d), F.S.

³⁰ Section 1009.25(1)(f), F.S.

³¹ Section 112.191(3), F.S.

³² Section 112.19(3), F.S.

Present Situation

Florida law also classifies certain individuals as Florida residents for tuition purposes without requiring the individuals to submit the above-described documentation under Section 1009.21(3)(c), F.S. Such individuals include:

- Active duty members of the Armed Services of the United States residing or stationed in this state, their spouses, and dependent children, and active drilling members of the Florida National Guard.
- Active duty members of the Armed Services of the United States and their spouses and dependents attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed, if such military establishment is within a county contiguous to Florida.
- United States citizens living on the Isthmus of Panama, who have completed 12 consecutive months of college work at the Florida State University Panama Canal Branch, and their spouses and dependent children.
- Full-time instructional and administrative personnel employed by state public schools and institutions of higher education and their spouses and dependent children.
- Students from Latin America and the Caribbean who receive scholarships from the federal or state government. Any student classified pursuant to this paragraph shall attend, on a full-time basis, a Florida institution of higher education.
- Southern Regional Education Board's Academic Common Market graduate students attending Florida's state universities.
- Full-time employees of state agencies or political subdivisions of the state when the student fees are paid by the state agency or political subdivision for the purpose of job-related law enforcement or corrections training.
- McKnight Doctoral Fellows and Finalists who are United States citizens.
- United States citizens living outside the United States who are teaching at a Department of Defense Dependent School or in an American International School and who enroll in a graduate level education program which leads to a Florida teaching certificate.
- Active duty members of the Canadian military residing or stationed in this state under the North American Air Defense (NORAD) agreement, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed.
- Active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where the foreign liaison officer is stationed.³³

Under current law, however, veterans must meet the residency requirements set forth under s. 1009.21(2) to be eligible for in-state tuition rates.³⁴

Section 1.01(14), F.S., defines the term veteran as:

a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

Florida is tied with Texas for the second largest population of veterans in the nation at 1.6 million. Only California has a larger population of veterans, at 2 million.³⁵

³³ Section 1009.21(10), F.S.

³⁴ To establish residency for tuition purposes, a person, or if that person is a dependent child, his or her parent, to establish legal residence in Florida and maintain legal residence in Florida for at least 12 consecutive months immediately prior to initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.

Effect of Proposed Changes

The bill grants classifies, as a Florida resident for tuition purposes, veterans of the Armed Services of the United States, including reserves, who physically reside in Florida while enrolled in a Florida institution of higher education. Under the bill, veterans would not have to maintain legal residence for 12 months prior to enrollment. Student veterans living in Florida would be exempt from paying the out-of-state fee ordinarily charged to non-resident students of state universities and Florida College System institutions.

B. SECTION DIRECTORY:

Section 1. Amends s. 1009.21, F.S., revising provisions relating to the establishment of residency for tuition purposes; reducing the five-year requirement for children living with resident, non-parent relatives; allowing students to maintain established resident status; amending the definition of “dependent child”; amending the definition of “parent”; providing that the state may not deny a U.S. citizen resident of Florida residency status for tuition purposes based solely on the immigration status of his or her parent; clarifying provisions on residency for tuition purposes pertaining to marital status; granting residency status to veterans of the U.S. Armed Forces who physically reside in Florida while enrolled in a Florida institution of higher learning; granting residency status to individuals eligible for certain tuition waivers and exemptions under Florida law; requiring the Board of Governors to adopt regulations implementing the section.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would allow veterans, who would otherwise be unable to establish Florida residency for tuition purposes, to pay lower, in-state tuition rates at state universities and Florida College System institutions.

Student veterans of state universities

³⁵ United States Census Bureau. A Snapshot of Our Nation’s Veterans. Available : <http://www.census.gov/how/infographics/veterans.html>. (Last viewed Feb. 12, 2013.)

For the 2012-2013 academic year, the average cost of undergraduate tuition and fees for two semesters (30 credit hours) is \$6,069 for residents and \$20,590 for non-residents. For graduate students, the average cost of tuition and fees for two semesters (24 hours) is \$10,118 for residents and \$24,910 for non-residents. Thus, student veterans could expect savings in the amount of \$14,521 at the undergraduate level and \$14,792 at the graduate level for the 2012-2013 academic year.³⁶

The State University System reported 358 non-resident or unclassified undergraduate veteran students and 198 non-resident graduate level veteran students in 2011-2012.

Student veterans of Florida College System institutions

For the same period, the Florida College System reports the average cost for two semesters is \$3,090 for residents enrolled in non-baccalaureate degree programs and \$11,455 for non-residents. For students enrolled in the baccalaureate degree programs, the cost for two semesters is \$3,541 for residents and \$15,741 for non-residents.³⁷

The Florida College System reported that there were 1,808 veteran students who were classified as non-residents in 2010-11.

D. FISCAL COMMENTS:

State Universities

The Board of Governors, using figures for academic year 2011-2012, estimated unrealized tuition revenue for the State University System in the amount of \$8,127,334 for the 2012-2013 academic year.³⁸ This does not take into account any additional veterans who might move to the state to take advantage of the new residency classification policy.

Florida College System Institutions

The Florida College System estimates unrealized tuition revenue for the Florida College System in the amount of \$13,600,000 for the 2012-2013 academic year.³⁹ This does not take into account any additional veterans who might move to the state to take advantage of the new residency classification policy.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

None.

B. RULE-MAKING AUTHORITY:

³⁶ Board of Governors, *Legislative Bill Analysis for SB 260* (2013).

³⁷ Florida College System, *Legislative Bill Analysis for SB 260* (2013).

³⁸ Board of Governors, *Legislative Bill Analysis for SB 260* (2013).

³⁹ Florida College System, *Legislative Bill Analysis for SB 260* (2013).

This bill requires the Board of Governors to adopt regulations to implement the provisions of the section. The SBE and BOG may need to amend any rules or regulations inconsistent with the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES