

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1870

SPONSOR: Senator Cowin

SUBJECT: Education (RAB)

DATE: March 16, 2000

REVISED: 03/20/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill requires the State Board of Education to adopt rules to:

- administer s. 229.555, F.S., relating to educational planning and comprehensive management information systems.
- administer the provisions of s. 295.01, F.S., related to the education of children of deceased or disabled veterans.
- designate which categories of a visa or other classifications from the U.S. Immigration and Naturalization Service authorize an alien to be classified as a resident for tuition purposes.

An alien who possesses any category of nonresident visa or other classification from the U.S. Immigration and Naturalization Service must provide proof of permanent status to be classified as a resident for tuition purposes. An eligible alien may be classified as a state resident 12 months after the time he or she establishes legal state residence for tuition purposes. An alien who possesses a visa of a category issued for the purposes of attending a postsecondary institution in the United States must be classified as a non-resident for tuition purposes.

The bill allows the State Board of Education to adopt rules to:

- establish course requirements for basic education programs for grades 6 through 12 and adult secondary education programs.
- establish programs and courses for which the student may earn credit toward high school graduation.

Each school board must adopt a policy, in accordance with rules of the State Board of Education, that authorizes a parent or guardian to request and be granted permission for absence of a student from school for religious instruction or religious holidays. The bill provides an effective date (upon becoming a law).

The bill amends s. 229.555, F.S., s. 229.565, F.S., s. 232.0225, F.S., s. 236.081, F.S., s. 240.1201, F.S., and s. 295.01, F.S.

II. Present Situation:

State Board of Education

The State Board of Education is the chief policy making and coordinating body of public education. Part I of chapter 229, F.S., provides for the powers and duties of the State Board. The law (s. 229.053(1), F.S.) provides for the State Board's general rulemaking authority. The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring duties on it for improving the state system of public education.

Commissioner of Education

Part II of chapter 229, F.S., relates to the Commissioner of Education. Section 229.555, F.S., relates to educational planning and comprehensive management information systems, and specifies the responsibilities of the Commissioner and the districts in these areas. Section 229.565, F.S., relates to educational evaluation procedures and requires the State Board of Education to approve student performance standards in key academic subject areas and grade levels. The law defines the term "student performance standard" and requires the standards to address the skills and competencies that a student must learn to graduate from high school. The Commissioner is required to develop these standards, as well as the standards for students who learn higher level skills and competencies.

The law (s. 229.515, F.S.) provides for the Commissioner's general rulemaking authority. The Commissioner may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of the school code conferring duties on him or her, with the exception of provisions for state universities, community colleges, and the Florida School for the Deaf and the Blind.

Student Absence for Religious Instruction or Religious Holidays

Each school board, under the provisions of s. 232.0225, F.S., must adopt a policy that authorizes a parent or guardian to request and be granted permission for absence of a student from school for religious instruction or religious holidays. Provisions for religious observances, including a grievance procedure, are required by s. 240.134, F.S., by each university, community college, and degree career education school.

State Board of Education Rule 6A-1.09514, F.A.C., requires school districts that choose to permit release time during the school day for students to participate in religious instruction to adopt rules to implement s. 232.0225(1), F.S., for students in grades 9 through 12. The rule specifies the contents of the rules. School districts must also adopt rules for excusing absences from school of students in kindergarten through grade 12 for observances of a religious holiday or because the tenets of a student's religion forbid secular activity during the school day. The contents of the rules are specified.

The rule also requires districts that operate one or more postsecondary vocational schools to include a grievance procedure as specified in s. 240.134, F.S. The policy must separately specify the reasonable accommodations for admissions, class attendance, and scheduling examinations and work assignments, subject to certain conditions. Also, the rule provides for proof that a student is a member of, or practices and observes the tenets of, a religious group, church, or denomination.

Funds for the Operation of Schools

The procedure for calculating the Florida Education Finance Program (FEFP) allocation for each school district is specified in s. 236.081, F.S., if the allocations are not determined in the General Appropriations Act or a substantive bill implementing the appropriations act. The law specifies the procedure for determining the annual allocation to each district.

Determination of Resident Status for Tuition Purposes

The law requires students to be classified as residents or non-residents for tuition purposes, in order to assess tuition fees in public community colleges and universities. The law (s. 240.1201, F.S.) sets forth the qualifications for residents for tuition purposes. In general, residency requires having lived in the state, for reasons other than education, for 12 months. Also, the law enumerates those persons who must be considered as residents.

State Board of Education Rule 6A-10.044, F.A.C., requires the State Board of Community Colleges and the Board of Regents to maintain consistent policies and practices for the classification of students for tuition purposes. The purpose of the rule is to facilitate the transfer of students among institutions. The rule allows the policy to vary to accommodate differences in governance. However, the determinations of classifications must be consistent. The rule provides for the recognition of the student's resident classification by other public postsecondary institutions, the reevaluation of classification in certain circumstances, and filing changes to current practices.

Under the rule, non-U.S. citizens (e.g., resident aliens, parolees, asylees, refugees, or other permanent status persons¹) who have applied to and have been approved by the U.S. Immigration and Naturalization Service for indefinite stay and employment are eligible to establish for tuition purposes. Nonimmigrants holding one of 5 visas² are eligible to establish Florida residency for tuition purposes. Persons in any other visa categories are ineligible to establish Florida residency for tuition purposes.

The Board of Regents (s. 240.209, F.S.) is responsible for adopting systemwide rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement provisions of law conferring duties on the board. The State Board of Education must approve all rules adopted by the Board of Regents (BOR) prior to filing them with the Department of State, with an exception for rules that are not adopted by the State Board of Education within 60 days of BOR adoption. Each university governs the admissions of students, subject to s. 240.233, F.S., and BOR rules. Current BOR Rule 6C-7.005, F.A.C., provides student residency requirements.

Section 240.311(2), F.S., authorizes the State Board of Community Colleges to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring duties on it. The rules must be submitted to the State Board of Education for approval. If the rules are not disapproved by the State Board within 45 days of receiving them, they are filed with the Department of State. The law (s. 240.319(2), F.S.) provides community college district boards of

¹ Other permanent status persons (e.g., persons who married U.S. citizens and temporary permanent residents).

² Visa categories: A (government official), E (treaty trader or inventor), G (representatives of international organizations), I (foreign information media representative), and K (fiancé, fiancée, or child of a U.S. citizen).

trustees with rulemaking authority. The rules may supplement the rules of the State Board of Education and the State Board of Community Colleges. Under s. 240.321, F.S., community college district boards of trustees must adopt rules for the admission of students.

Children of Deceased or Disabled Veterans

The law (s. 295.01, F.S.) provides for the education of certain dependent children at state expense. State Board of Education Rule 6A-20.019, F.A.C., provides for scholarship eligibility for children of deceased or disabled veterans or children of servicemen classified as prisoners of war or missing in action. The rule specifies the eligibility criteria, appeals process, period and amount of award, as well as award procedures and institutional responsibilities.

Administrative Procedures Act

In enacting chapter 99-379, L.O.F., the Legislature amended chapter 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule. A specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency must be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., required that each agency, by October 1, 1999 provide to the Joint Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency must also identify the language of the rule which exceeds this authority. The Joint Administrative Procedures Committee combined the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives.

The Legislature must, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

- By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.
- By February 1, 2001, the Joint Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated.
- As of July 1, 2001, the Joint Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section.

- Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

In its submission (September 24, 1999) to the Joint Administrative Procedures Committee, the Department of Education identified three rules which appear to exceed the rulemaking authority permitted by s. 120.536, F.S.:

- State Board Rule 6A-1.09441, F.A.C., which sets forth the requirements for programs and courses which are funded through the Florida Education Finance Program and for which the student may earn credit toward high school graduation.
- State Board Rule 6A-1.09412, F.A.C., relating to course requirements for grades 6-12 basic and adult secondary programs, provides that course requirements approved by the State Board of Education are contained in the publication, "Course Descriptions for Grades 6-12 Basic and Adult Secondary Programs 1999-2000," and are incorporated by reference and made a part of the rule effective with the 1999-2000 school year. The rule also provides for district variance authority and election to offer special topics courses, as well as variance authority for the Commissioner of Education.
- State Board Rule 6A-1.0014, F.A.C., relating to a comprehensive management information system, requires each school district and the Department of Education to develop and implement an automated information system component which is part of and compatible with the statewide comprehensive management information system. Certain procedures must be in accordance with specific provisions of federal law and rule and other provisions of state law. Data elements and reporting requirements are contained in certain materials that are incorporated by reference.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 229.555, F.S., to require the State Board of Education to adopt rules to administer this section of law.

Section 2. The bill amends s. 229.565, F.S., to allow the State Board of Education to adopt rules establishing course requirements for basic education programs for grades 6 through 12 and adult secondary education programs.

Section 3. The bill amend s. 232.0225, F.S., to require each school board to adopt a policy, in accordance with rules of the State Board of Education, that authorizes a parent or guardian to request and be granted permission for absence of a student from school for religious instruction or religious holidays.

Section 4. The bill amends s. 236.081, F.S., to allow the State Board of Education to adopt rules establishing programs and courses for which the student may earn credit toward high school graduation.

Section 5. The bill requires an alien who possesses any category of nonresident visa or other classification from the U.S. Immigration and Naturalization Service to provide proof of permanent

status to be classified as a resident for tuition purposes. An eligible alien may be classified as a state resident 12 months after the time he or she establishes legal state residence for tuition purposes. An alien who possesses a visa of a category issued for the purposes of attending a postsecondary institution in the United States must be classified as a non-resident for tuition purposes.

The State Board of Education must designate by rule which categories of a visa or other classifications from the U.S. Immigration and Naturalization Service authorize an alien to be classified as a resident for tuition purposes.

Section 6. The bill requires the State Board of Education to adopt rules for administering the provisions of s. 295.01, F.S., related to the education of children of deceased or disabled veterans.

Section 7. The bill provides an effective date (upon becoming a law).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There should be no direct impact as a consequence of the changes made by sections 1, 2, 3, 4, and 6 of the bill, as the changes will authorize rules currently in effect.

Section 5 of the bill requires the State Board of Education to designate by rule which categories of a visa or other classifications from the U.S. Immigration and Naturalization Service authorize an alien to be classified as a resident for tuition purposes. State Board of Education Rule 6A-10.044, F.A.C., currently provides that nonimmigrants holding one of 5 visas are eligible to establish residency for tuition purposes. Persons in any other visa categories are ineligible to establish Florida residency for tuition purposes. To the extent that

the provisions of the bill result in classifications of additional students as eligible for in-state tuition, there will be some fiscal impact.

Eligible aliens will be classified as state residents one year after establishing legal state residency for tuition purposes. Persons possessing a visa issued to attend a postsecondary institution in the U.S. will be classified as non residents for tuition purposes.

C. Government Sector Impact:

There should be no direct impact as a consequence of the changes made by sections 1, 2, 3, 4, and 6 of the bill, as the changes will authorize rules currently in effect.

The State Board of Education will incur costs associated with adopting rules for designating U.S. Immigration and Naturalization Service classifications that are to be classified as a resident for tuition purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Senate Education

Requires the State Board of Education to adopt rules to designate classifications of students as residents or nonresidents for tuition purposes at public community colleges and universities.