

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 5009 PCB SUPC 09-01 Postsecondary Education Funding
SPONSOR(S): Full Appropriations Council on Education and Economic Development; State Universities & Private Colleges Appropriations Committee; Proctor
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: State Universities & Private Colleges Appropriations Committee, 8 Y, 0 N, Trexler, Trexler. Row 2: Full Appropriations Council on Education & Economic Development, 17 Y, 3 N, As CS, Trexler, Martin. Rows 3-5 are empty.

SUMMARY ANALYSIS

CS/HB 5009 revises provisions relating to the determination of resident status for tuition purposes; provides criteria for documenting resident status; and provides guidelines for reclassification of resident status.

The bill modifies the Bright Futures Scholarship Program to: (1) prohibit the use of funds to pay for courses dropped by students or from which students withdrew after the end of the drop and add period; and (2) require that full-time students complete at least 24 semester hours, or the equivalent, per academic year for renewal of the scholarship.

The bill authorizes the Board of Governors, or the board's designee, to increase tuition and out-of-state fees for university graduate programs by up to 15 percent each year, rather than 10 percent as currently authorized.

The bill revises provisions relating to several state student financial assistance programs to clarify eligibility criteria and to specify that award amounts may be prorated based on legislative appropriations. The bill also requires annual reporting from all institutions that participate in state-funded student financial assistance programs.

The bill provides for consistent reporting requirements for private colleges and universities that receive state appropriations.

The bill authorizes the Prepaid College Board to provide advance payment contracts that cover registration fees, tuition differential fees, and local fees under one contract, rather than under separate contracts as presently offered. The bill also establishes a new payment methodology to state universities on behalf of beneficiaries of Prepaid College Plan contracts purchased prior to July 1, 2009. The payment methodology specifies the level of tuition increases, tuition differential increases, and local fee increases that the Prepaid College Board will pay each year.

The bill provides an exemption from current statutory provisions relating to university debt. The exemption allows Florida International University to use lease payments as an eligible revenue stream to secure revenue bonds for the construction of a health facility on its campus.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 1009.21, 1009.24, 1009.40, 1009.53, 1009.532, 1009.55, 1009.57, 1009.58, 1009.59, 1009.60, 1009.605, 1009.701, 1009.76, 1009.765, 1009.94, 1009.98, and 1011.521.

The effective date of this act is July 1, 2009.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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## 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:

##### **Residency Determination for Tuition Purposes**

###### Present Situation

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities. To qualify as a resident for tuition purposes, a student, or the student's parents if the student is a dependent, must have established legal residence in the state and maintained legal residence in the state for at least 12 months immediately prior to the student's qualification. Presence in the state must have been for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode, incidental to enrollment in an institution of higher education. Every applicant for admission must make a statement affirming compliance with these requirements.<sup>1</sup>

The Office of Program Policy Analysis and Government Accountability (OPPAGA) has examined issues relating to student residency in three different reports since 2003.<sup>2</sup> Report 03-29 found that 28 percent of the nonresident students in community colleges and 25 percent in state universities were reclassified as in-state residents by the end of a 3-year period. Because out-of-state students must pay more than Florida residents, this reclassification resulted in an estimated annual loss in fee revenue of \$28.2 million. A 2005 report found that the estimated annual loss in revenue had nearly doubled to \$56.5 million, due in part to growth in nonresident students and tuition increases. The most recent review, a RESEARCH MEMORANDUM issued March 12, 2009, finds that the percentage of out-of-state students reclassifying as Florida residents has continued to increase and that reclassification of out-of-state students admitted in 2005-06 resulted in a loss of \$92.2 million over three years (2005-06 through 2007-08).<sup>3</sup>

Two of the recommendations included in the OPPAGA reports are:

1. The Legislature should amend Florida statutes to require that students (or their parents if the students are dependents) must maintain legal residence in the state for at least 12 months

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<sup>1</sup> Section 1009.21, F.S.

<sup>2</sup> See OPPAGA Report 03-29, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*; OPPAGA Report 05-41, *Department of Education Improves Rules Guiding Resident Tuition Determinations*; OPPAGA Research Memorandum (March 12, 2009).

<sup>3</sup> This estimate assumes that nonresident students would still have attended a Florida institution even if they were not reclassified as Florida residents.

immediately prior to the student's initial enrollment or registration at a Florida public postsecondary institution to be eligible for classification for in-state residency.<sup>4</sup>

2. The Legislature should amend Florida statutes to define more clearly when a nonresident student could be eligible for reclassification as a resident.<sup>5</sup>

Current law authorizes each university board of trustees to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university. Each university must report the purpose, number, and value of all fee waivers granted annually to the Board of Governors. The state universities reported out-of-state fee waivers totaling \$26,201,612 for 2006-07.<sup>6</sup> It is not clear if this number represents the total value of out-of-state fees waived by state universities. For example, the report indicates no out-of-state fee waivers for graduate assistants at UF although 3,052 graduate assistant matriculation waivers were provided valued at \$5,848,420. The report also indicates that UF provided 3,017 "university board of trustees" waivers valued at \$17,249,669. Information on who receives the "university board of trustees" waivers or what fees are covered by the waivers was not available from the report.

### Effect of Proposed Changes

The bill revises residency criteria to require that a person reside in the state for 12 consecutive months immediately prior to initial enrollment in an institution of higher education in Florida to qualify as a resident for tuition purposes.

The bill defines the term "initial enrollment" as the first day of class at an institution of higher education. The bill also defines the term "institution of higher education" as any community college as defined in s. 1000.21(3), F.S., or state university as defined in s. 1000.21(6), F.S.<sup>7,8</sup>

The bill requires that legal residence must be established by written or electronic verification that includes two or more of the following Florida documents: voter information card; driver's license; identification card issued by the state; vehicle registration; declaration of domicile; proof of purchase of a permanent home; proof of a homestead exemption in the state; transcript from a Florida high school; equivalency diploma and transcript from a Florida high school; proof of permanent full-time employment; proof of 12 consecutive months of payment of utility bills; domicile lease and proof of 12 consecutive months of payments; or, other official state or court documents evidencing legal ties to Florida. All of these documents must demonstrate clear and convincing evidence of continuous residence in the state for at least 12 consecutive months prior to the student's initial enrollment in an institution of higher education.

The bill clarifies that a dependent child can claim residency by documentation of his or her parent's legal residence and its duration, as well as documentation confirming his or her status as a dependent child. The documentation must provide clear and convincing evidence that residency in Florida was for a minimum of 12 consecutive months prior to the student's initial enrollment in an institution of higher education.

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<sup>4</sup> OPPAGA Report 03-29, *Non-Residents Qualify Too Easily for Much Lower Resident Tuition Rates*

<sup>5</sup> *Id.*

<sup>6</sup> State University System of Florida Fact Book, Table 37.

<sup>7</sup> Section 1000.21(3), F.S. defines the term "community college" to include: Brevard Community College; Broward College; Central Florida Community College; Chipola College; Daytona Beach College; Edison College; Florida Community College at Jacksonville; Florida Keys Community College; Gulf Coast Community College; Hillsborough Community College; Indian River College; Lake City Community College; Lake-Sumter Community College; Manatee Community College; Miami Dade College; North Florida Community College; Okaloosa-Walton College; Palm Beach Community College; Pasco-Hernando Community College; Pensacola Junior College; Polk College; St. Johns River Community College; St. Petersburg College; Santa Fe College; Seminole Community College; South Florida Community College; Tallahassee Community College; and Valencia Community College.

<sup>8</sup> Section 1000.21(6), F.S., defines the term "state university" to include: University of Florida; Florida State University; Florida A & M University; University of South Florida; Florida Atlantic University; University of West Florida; University of Central Florida; University of North Florida; Florida International University; Florida Gulf Coast University; and New College of Florida.

The bill provides for reclassification from nonresident to resident status if a person provides documentation that supports the person's permanent residency in the state, such as documentation of permanent full-time employment for the prior 12 months or the purchase of a home in this state and residence therein for the prior 12 months while not enrolled at an institution of higher education. If a dependent child's parents or parent moves to Florida while the child is in high school and the child graduates from a high school in this state, the child may become eligible for reclassification as a resident for tuition purposes when the parent qualifies for permanent residency.

The bill requires each community college and state university to determine the dependency status of students who have been admitted and to determine that applicants who have been admitted as Florida residents meet the residency requirements at the time of initial enrollment.

## **Florida Bright Futures Scholarships**

### Present Situation

The Department of Education (DOE) issues awards for the Bright Futures Scholarship Program annually. Annual awards may be for up to 45 semester credit hours or the equivalent. Awards are sent to the institutions before registration; institutions must certify to DOE the eligibility status of each student within 30 days after the end of regular registration each semester. This is the only time the institution has to determine the eligibility status of the student. After the end of the drop/add period, the institution is obligated to make refunds to DOE if a student receives an award disbursement, terminates enrollment for any reason during an academic term, and a refund is permitted by the institution's refund policy.<sup>9</sup> An institution must certify to DOE the amount of funds disbursed to each student and must remit to the DOE any undisbursed advances within 60 days after the end of regular registration.<sup>10</sup>

Currently, neither students nor institutions are required to return payments to the state if the student drops or withdraws from the course after the drop period or, for any other reason, does not earn the credit for which the student initially enrolled.

A student who receives funding during the academic year (Fall through Spring) is automatically evaluated for renewal at the end of the Spring term.<sup>11</sup> To be eligible to renew a scholarship, a student must:<sup>12</sup>

- Complete at least 12 semester credit hours or the equivalent in the last academic year in which the student earned a scholarship.
- Maintain the cumulative grade point average required by the scholarship program.

### Effect of Proposed Changes

The bill prohibits the use of Bright Futures Scholarship funds to pay for courses dropped by students or from which students withdrew after the end of the drop and add period.

The bill requires institutions to refund to DOE within 30 days after the end of the semester any funds received for courses dropped by students or from which students withdrew after the end of the drop and add period, unless a student has dropped or withdrawn from the courses due to a verifiable illness or other documented emergency.

The bill also requires full-time students funded in the 2009-10 academic year and thereafter to complete at least 24 semester hours or the equivalent per academic year for renewal of the scholarship. If a student fails to earn the minimum number of hours required to renew the scholarship, the student loses his or her eligibility for renewal for one academic year. The bill provides a one-time restoration for students the following academic year if the student earns the hours for which the student was enrolled at the level defined by DOE and meets the grade point average for renewal.

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<sup>9</sup> Section 1009.53(5)(a), F.S.

<sup>10</sup> Section 1009.53(5)(b), F.S.

<sup>11</sup> <http://www.floridastudentfinancialaid.org/SSFAD/factsheets/BF.htm> (last visited March 10, 2009).

<sup>12</sup> Section 1009.532(1)(a)(b), F. S.

The bill also includes notification requirements, whereby the DOE and the institutions must notify eligible Bright Futures awards recipients of the provisions of the legislation.

## **State University Graduate and Professional Tuition**

### Present Situation

The Board of Governors, or the board's designee, may establish tuition for state university graduate and professional programs, and out-of-state fees for all programs. The sum of tuition and out-of-state fees assessed to nonresident students must be sufficient to offset the full instructional cost of serving such students. However, adjustments to out-of-state fees or tuition for graduate programs may not exceed 10 percent in any year, and adjustments to out-of-state fees or tuition for professional programs may not exceed 15 percent in any year.<sup>13</sup>

### Effect of Proposed Changes

The bill increases the authorized annual tuition and out-of-state fees adjustment for graduate programs from 10 percent to 15 percent to match the existing authorization for professional programs.

## **Rosewood Family Scholarship Program**

### Present Situation

The Rosewood Family Scholarship Program was established in 1994 to provide annual scholarships of up to \$4,000 to descendants of Rosewood families affected by the incidents of January 1923. The program provides for a maximum of 25 scholarships each year, which are available to minority students, with preference given to direct descendants of the Rosewood families.<sup>14</sup> Currently, all of the available scholarships are going to direct descendants of the Rosewood families.<sup>15</sup> Since the creation of the program in 1994, 354 Rosewood Scholarships have been awarded, with 205 (58%) of the scholarships going to direct descendants.<sup>16</sup>

In order to determine whether a student is a direct descendent, the student must provide to the DOE documentation of ancestry, which may include birth certificates, death certificates, and marriage licenses. The department reviews this documentation in relation to the Rosewood Family Tree, which was created by the Office of the Attorney General in 1995.<sup>17</sup>

### Effect of Proposed Changes

The bill requires that recipients of Rosewood Family Scholarships must be direct descendants of the Rosewood families. The bill does not reduce the number of scholarships available, which remains at 25 scholarships per year. The bill also repeals obsolete language requiring legislative appropriations for the program to be deposited in the State Student Financial Assistance Trust Fund.

## **State Financial Assistance Programs**

### Present Situation

Florida has a variety of specialty state financial assistance programs, including the Florida Teacher Scholarship and Forgivable Loan Program, the Critical Teacher Shortage Tuition Reimbursement and Student Loan Forgiveness Programs, and the Minority Teacher Education Scholars Program. The statutes for these programs include specified award amounts that are not consistent with the level of appropriations for these programs.<sup>18</sup> During recent years the state priority as reflected in appropriations has been growth in need-based awards for students as opposed to specialty programs. Awards for the specialty programs have been prorated based on funds available. The Minority Teacher Education

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<sup>13</sup> Section 1009.24(4)(c), F.S.

<sup>14</sup> Section 1009.55, F.S.

<sup>15</sup> Telephone conversation with Office of Student Financial Assistance staff.

<sup>16</sup> E-mail from Department of Education staff (April 7, 2009).

<sup>17</sup> *Id.*

<sup>18</sup> Sections 1009.57, 1009.58, 1009.59, 1009.60, and 1009.605, F.S.

Scholars Program is administered by a private entity, the Florida Fund for Minority Teachers.<sup>19</sup> Unlike other scholarship funds, these funds, if unused, are not required to be returned to the state.

The First Generation Matching Grant Program provides grants to degree-seeking undergraduate Florida residents whose parents have not earned baccalaureate degrees. Although the statute authorizing the program lists need as a basis for consideration for receiving the grant, no criteria for determining need are provided.<sup>20</sup>

The Ethics in Business Scholarship Program was created by the 1997 Florida Legislature from funds received from a settlement as specified in the Consent Order of the Treasurer and Insurance Commissioner, case number 18900-96-c.<sup>21</sup> The scholarship program is not heavily utilized.

Currently, there are different reporting requirements for each of the state financial assistance programs, limiting the ability of the DOE to collect consistent information from each institution participating in these programs.<sup>22</sup>

### Effect of Proposed Changes

The bill aligns the statutes with current practice by clarifying that the Florida Teacher Scholarship and Forgivable Loan Program, the Critical Teacher Shortage Tuition Reimbursement and Student Loan Forgiveness Programs, and the Minority Teacher Education Scholars Program awards will be based on funds available, rather than a fixed amount. The bill requires unused scholarship funds for the Minority Teacher Education Scholars Program to be returned to the state, as is the practice for other state scholarship programs.

The bill provides that students participating in the First Generation Matching Grant Program must meet the same need-based criteria as the state's primary need-based financial aid program, the Florida Public Student Assistance Grant Program.<sup>23</sup>

The bill repeals the Ethics in Business Scholarship Program, allowing the settlement proceeds to be utilized for other state financial assistance programs.

The bill requires each institution participating in a state-funded financial assistance program to report annually to the DOE the eligible students to whom financial assistance is disbursed; the eligibility requirements for recipients; and the aggregate demographics of recipients.

## **Florida Prepaid College Plan**

### Present Situation

The State of Florida offers the Stanley G. Tate Florida Prepaid College Plan (Prepaid Plan) to assist families in planning and saving for a college education.<sup>24</sup> The Prepaid Plan contracts lock in many of the costs associated with postsecondary attendance at the time the contracts are purchased. The Prepaid College Board is authorized to offer advance payment contracts for a community college tuition plan, a university tuition plan, a community college plus university tuition plan, a university dormitory plan, a local fee plan, and a tuition differential fee plan.<sup>25</sup>

The tuition plans cover registration fees, which include the tuition fee, the financial aid fee, the building fee, and the Capital Improvement Trust Fund fee.<sup>26</sup> Typically, the tuition fee increases annually based on Legislative authorization.<sup>27</sup> Below is a chart showing the authorized undergraduate tuition increases for the previous three years:

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<sup>19</sup> Section 1009.605, F.S.

<sup>20</sup> Section 1009.701, F.S.

<sup>21</sup> Sections 1009.76 and 1009.765, F.S.

<sup>22</sup> Part III, ch. 1009, F.S.

<sup>23</sup> See s. 1009.50, F.S.

<sup>24</sup> Section 1009.98(1), F.S.

<sup>25</sup> Section 1009.98(2), F.S.; see also <http://www.myfloridaprepaid.com/plans> (last visited Sept. 29, 2008).

<sup>26</sup> Section 1009.97(3)(g), F.S.

<sup>27</sup> Sections 1009.23 and 1009.24, F.S.

Tuition Increase	2006-07	2007-08	2008-09
Community Colleges	2.5%	5.0%	6.0%
State Universities	3.0%	5.0%	6.0%

The local fee plans cover the local fees charged by community colleges and state universities.<sup>28</sup> Local fees at state universities include the activity and service fee, the health fee, and the athletic fee.<sup>29</sup> The aggregate sum of the local fees may not increase by more than five percent each year.<sup>30</sup>

Each year, the Prepaid College Board conducts an analysis of the actuarial adequacy of the Prepaid Trust Fund.<sup>31</sup> In order to conduct this analysis, assumptions are made regarding investment yield, tuition increases, tuition differential fee increases, local fee increases, and dormitory fee increases.<sup>32</sup> The result of the analysis is a determination of the actuarial reserve, which means the amount by which the expected value of the assets in the Prepaid Trust Fund exceeds the value of the expected liabilities. Below is a chart showing a three-year history of the actuarial reserve and the university tuition and local fee increases used in the assumptions.<sup>33</sup>

Actuarial Information	2005-06	2006-07	2007-08
Actuarial Reserve	\$586 million	\$847 million	\$775 million
% of Expected Liabilities	9.6%	12.9%	10.3%
Assumed Tuition Increase	6.5%	6.5%	6.5%
Assumed Local Fee Increase	6.0%	5.0%	5.0%

To the extent the tuition increase and other assumptions are more or less than the actuarial assumptions, the actuarial reserve may grow or decline significantly. The current reserve, estimated as of March 20, 2009, is approximately \$408 million, which is 4.9 percent of expected liabilities.<sup>34</sup>

Beginning July 1, 2007, the Prepaid College Board was authorized to provide a tuition differential contract to cover the tuition differential fee, which was created during the 2007 Session.<sup>35</sup> As of February 12, 2009, the board has sold 17,846 tuition differential contracts.<sup>36</sup> Beneficiaries who enroll at state universities and have prepaid tuition contracts for university plans which were in effect on July 1, 2007, which remain in effect, are exempt from the payment of the tuition differential.<sup>37</sup> As of June 30, 2007, there were 829,804 active prepaid contracts.<sup>38</sup>

#### Effect of Proposed Changes

The bill authorizes the Prepaid College Board to provide advance payment contracts that cover registration fees, tuition differential fees, and local fees under one contract, rather than under separate contracts as presently offered. The board is authorized to provide such contracts in specific increments, such as credit hours, usable toward either an associate degree or a baccalaureate degree, rather than the two-year or four-year increments presently offered.

The bill establishes a payment methodology to state universities on behalf of beneficiaries of advance payment contracts purchased prior to July 1, 2009. The payment methodology specifies the level of tuition increases and tuition differential increases that the Prepaid College Board will pay each year,

<sup>28</sup> Sections 1009.98(2)(a)2. and 1009.98(2)(b)2. , F.S.

<sup>29</sup> Section 1009.24(9) – (12), F.S.

<sup>30</sup> Section 1009.24(4)(d), F.S.

<sup>31</sup> Section 1009.971(4)(f), F.S.

<sup>32</sup> Florida Prepaid College Board, *Analysis of Actuarial Adequacy as of June 30, 2008*.

<sup>33</sup> Florida Prepaid College Board, *Analysis of Actuarial Adequacy as of June 30, 2006; June 30, 2007; June 30, 2008*.

<sup>34</sup> E-mail from Prepaid College Board staff (March 29, 2009).

<sup>35</sup> Ch. 2007-225, L.O.F.; s. 1009.24(16), F.S.

<sup>36</sup> Florida Prepaid College Board analysis of HB 403.

<sup>37</sup> Section 1009.24(16)(c), F.S.

<sup>38</sup> Florida Prepaid College Board, *Analysis of Actuarial Adequacy as of June 30, 2007*.

based on the actuarial reserve for that year. Such a methodology may provide greater predictability to both the Prepaid College Board and the state universities.

The payment methodology is as follows:

<b>If the actuarial reserve is:</b>	<b>The increase above the prior year shall be:</b>
<5% of expected liabilities	5.5%
5% - 6% of expected liabilities	6.0%
6% - 7.5% of expected liabilities	6.5%
>7.5% of expected liabilities	7.0%

Qualified beneficiaries of advance payment contracts purchased prior to or on July 1, 2007, are exempt from paying the tuition differential. For local fees, the Prepaid College Board will pay state universities five percent above the amount assessed for local fees in the preceding fiscal year.

The bill also establishes a payment methodology to state universities on behalf of beneficiaries of advance payment contracts purchased after July 1, 2009. The Prepaid College Board must pay state universities the actual amount assessed in accordance with law for registration fees and the tuition differential fee for such contracts.

## **Private Colleges and State Universities**

### Present Situation

Each year, the Legislature provides appropriations to a number of private colleges and universities in the state to provide access to Florida residents seeking a postsecondary education; to support programs that meet the state's workforce needs; and to support medical research. Examples of institutions receiving funds include the state's private Historically Black Colleges and Universities (Bethune-Cookman University, Edward Waters College, and Florida Memorial University) and the health programs at Nova Southeastern University, the Lake Erie College of Osteopathic Medicine, and the University of Miami.<sup>39</sup> Currently, there are no statutory provisions requiring an accounting of the expenditure of the appropriated funds.

### Effect of Proposed Changes

The bill creates a new section of law to require private institutions receiving state appropriations to report annually to the DOE on the expenditure of appropriated funds and to prohibit the use of the appropriated funds to construct buildings.

## **State University Debt**

### Present Situation

State universities are authorized to secure debt to acquire, construct, or improve capital facilities. Such debt must be secured pursuant to statutory requirements and approval by the Board of Governors. The sources of revenue that may be pledged to secure debt include the Capital Improvement Trust Fund fee, the building fee, the health fee, the transportation access fee, hospital revenues, revenues derived from auxiliary enterprises, a portion of the activity and service fee, a portion of the athletic fee, or any other revenue approved by the Legislature for facilities construction. Current law does not specifically authorize the use of lease payments as a source of revenue to secure debt.<sup>40</sup>

Florida International University (FIU) plans to construct a public health facility on its campus, a portion of which will be leased to the Florida Department of Health (FDOH) and the Miami-Dade County Health Department (MDCHD). The lease will cover a 30-year period. The FDOH and the MDCHD currently have a number of health care sites throughout Miami-Dade County. They are in the process of consolidating several of these sites and plan to locate a site on the FIU campus. At this site, they will

<sup>39</sup> See Specific Appropriations 61 through 69, s. 2, ch. 2008-152, L.O.F.; Specific Appropriations 26 through 35, s. 2, ch. 2009-1, L.O.F.

<sup>40</sup> Section 1010.62, F.S.



collaborate on a community-based health program with the university's School of Public Health, the Medical School, and other health-related disciplines within the university. The FDOH pays for facilities rental through its expenses budget, which is subject to state appropriations.<sup>41</sup>

#### Effect of Proposed Changes

The bill provides an exemption from statutory requirements relating to state university debt to authorize the use of lease payments from the FDOH and the MDCHD for the rental of space within a public health facility on the FIU campus. The bill requires the Board of Governors to approve the financial structure of the debt.

#### B. SECTION DIRECTORY:

- Section 1. Amends s. 1009.21, F.S.; revising definitions; revising provisions relating to qualification as a resident for tuition purposes; providing for reclassification of status; providing duties of institutions of higher education.
- Section 2. Amends s. 1009.24, F.S.; revising authorization for state universities to increase tuition and out-of-state fees for graduate programs.
- Section 3. Amends s. 1009.53, F.S., revising provisions relating to a refund to the Department of Education of funds received by an educational institution for certain courses; prohibiting the use of funds for certain purposes; establishing notification requirements.
- Section 4. Amends s. 1009.532, F.S., revising credit-hour requirements for renewal of a scholarship; providing for restoration of eligibility; establishing notification requirements.
- Section 5. Amends s. 1009.55, F.S.; revising eligibility criteria for the Rosewood Family Scholarship Program.
- Section 6. Amends s. 1009.57, F.S.; revising provisions relating to awards made under the Florida Teacher Scholarship and Forgivable Loan Program.
- Section 7. Amends s. 1009.58, F.S.; revising provisions relating to awards made under the Florida Critical Teacher Shortage Tuition Reimbursement Program.
- Section 8. Amends s. 1009.59, F.S.; revising provisions relating to awards made under the Florida Critical Teacher Shortage Loan Forgiveness Program.
- Section 9. Amends s. 1009.60, F.S.; revising provisions relating to awards made under the Minority Teacher Scholarship Program.
- Section 10. Amends s. 1009.605, F.S.; requiring an annual report and return of unused funds by the Florida Fund for Minority Teachers.
- Section 11. Amends s. 1009.701, F.S.; revising eligibility criteria for the First Generation Matching Grant Program.
- Section 12. Amends s. 1009.94, F.S.; clarifying reporting requirements for institutions that participate in state-funded student financial assistance programs.
- Section 13. Amends s. 1009.98, F.S.; authorizing a new type of prepaid contract; authorizing a new payment procedure for prepaid beneficiaries who attend a state university and who purchase a prepaid contract before July 1, 2009.
- Section 14. Creates s. 1011.521, F.S.; providing requirements for private colleges and universities receiving state appropriations.

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<sup>41</sup> Telephone conversation with Florida International University staff (March 31, 2009).

- Section 15. Repeals ss. 1009.76 and 1009.765, F.S.; relating to the Ethics in Business Scholarship Program.
- Section 16. Amends s. 1009.40, F.S.; conforming provisions.
- Section 17. Provides an exemption from the requirements of s. 1010.62, F.S., relating to revenue bonds and debt for state universities.
- Section 18. Provides an effective date of July 1, 2009.

## 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:

#### Residency for Tuition Purposes

Under the provisions of the bill, a student may be required to pay the out-of-state fee if the student is not eligible for reclassification.

#### Bright Futures Scholarship Program

Award recipients may be less likely to drop or withdraw from courses and, therefore, complete their programs of study in a timely manner. To the extent Bright Futures award recipients drop or withdraw from courses after the drop and add period, they may be required by an institution to reimburse the institution for any funds returned by the institution to DOE. To the extent students drop or withdraw from courses during the drop/add period rather than after the drop/add period, additional students may have access to needed courses.

#### State University Graduate Tuition

To the extent state universities increase graduate tuition and out-of-state fees by 15 percent each year, rather than 10 percent as currently authorized, the cost for graduate education at a state university may increase at a faster rate.

### Florida Prepaid College Plan

The bill authorizes the Prepaid College Board to provide advance payment contracts that cover registration fees, tuition differential fees, and local fees under one contract, rather than under separate contracts as presently offered. The board is authorized to provide such contracts in specific increments, such as credit hours, usable toward either an associate degree or a baccalaureate degree, rather than the two-year or four-year increments presently offered. Such contracts provide an additional option for Floridians who are saving for the costs of a college education.

#### D. FISCAL COMMENTS:

##### Residency for Tuition Purposes

In 2007-08, the state provided approximately 70 percent of the cost of instruction for Florida residents enrolled in community colleges and state universities, with students paying the balance with tuition. To the extent the proposed changes result in fewer out-of-state students being reclassified as Florida residents, there may be increased revenues collected by community colleges and state universities and cost savings to the state if these students choose to continue their education at a Florida community college or state university.

In its most recent review of residency classification, OPPAGA found that reclassification of out-of-state students admitted in 2005-2006 to Florida resident status resulted in a loss of \$92.2 million over three years (2005-06 through 2007-08). These estimates assume that nonresident students who were reclassified would still have attended a Florida institution, even if they were not reclassified as Florida residents.<sup>42</sup>

The bill does not impact the ability of state universities to issue fee waivers.

The exact fiscal impact is indeterminate.

##### Bright Futures Scholarship Program

According to DOE, the projected cost savings to the program associated with withdrawals or courses dropped after the end of drop and add period would be \$30 million in 2009-2010.<sup>43</sup> The cost is calculated with the assumption of no tuition and fee increases from the current year. The number of dropped/withdrawn courses represents 7% of the total hours disbursed. The DOE projects a \$20 million cost savings to the program based on the proposed changes to renewal eligibility.<sup>44</sup>

According to the Board of Governors, in 2007-08, Bright Futures recipients in the SUS withdrew from nearly 150,000 credit hours. The coding of those withdrawals is not detailed enough to determine the extent to which medical conditions or other extenuating circumstances (for which there might be an exemption under this bill) were the cause of the withdrawal. If there were no exemptions, this bill, in 2007-08, would have required the return by universities of nearly \$15 million because of withdrawals.<sup>45</sup>

Universities vary in their estimates of the potential impact on administrative costs. Of the seven universities that provided cost estimates, six estimated costs ranging from \$10,000 to \$70,000, and one estimated a cost of \$400,000. The reasons for these costs were for programming computer systems and personnel/administrative costs, such as the costs of collecting refunds from students and processing requests for exemptions.<sup>46</sup>

##### State University Graduate Tuition

To the extent state universities increase graduate tuition and out-of-state fees by 15 percent each year, rather than 10 percent as currently authorized, the tuition revenue available to state universities may increase by an indeterminate amount.

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<sup>42</sup> OPPAGA Research Memorandum (March 12, 2009).

<sup>43</sup> Department of Education analysis of HB 719 (March 14, 2009).

<sup>44</sup> Department of Education analysis of HB 719 (March 14, 2009).

<sup>45</sup> Board of Governors analysis of HB 719 (March 17, 2009).

<sup>46</sup> *Id.*

### State Financial Assistance Programs

Repeal of the Ethics in Business Scholarship Program allows the settlement proceeds of approximately \$4.9 million to be utilized for other state scholarships.<sup>47</sup>

### Florida Prepaid College Plan

The bill specifies the payout rates to state universities for advance payment contracts purchased prior to July 1, 2009, which may provide additional predictability to the Prepaid College Board to ensure the actuarial soundness and financial viability of the Prepaid Trust Fund. Linking the annual tuition increases to the size of the actuarial reserve may help to limit growth in the actuarial reserve. Additionally, the bill provides a more predictable revenue stream to state universities on behalf of all prepaid contract beneficiaries who purchase a contract prior to July 1, 2009. To the extent the annual increases in the tuition differential fee exceed annual increases in tuition, the payment methodology established in the bill will increase the revenue provided to state universities on behalf of prepaid beneficiaries.

### State University Debt

The bill authorizes FIU to secure debt using lease payments from the FDOH and the MDCHD to construct a public health facility on its campus. The budget for the FDOH is subject to state appropriations for expenses. To the extent appropriations for the Department are reduced, the university may be in a position of seeking additional revenue to satisfy the required debt service for this project.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

2. Other:

The Board of Governors has challenged the Legislature's authority over the state university system.<sup>48</sup> One of the issues in that lawsuit is a challenge to the Legislature's authority in setting university tuition and fees.

### **B. RULE-MAKING AUTHORITY:**

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

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

On April 2, 2009, the State Universities and Private Colleges Appropriations Committee adopted two amendments to the proposed committee bill. The first amendment provides a definition of local fees for the purpose of payments on behalf of Prepaid College Plan beneficiaries to state universities. The second amendment authorizes the Prepaid College Board to increase payments to state universities for local fee contracts by five percent each year.

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<sup>47</sup> Specific Appropriation 67, s. 2, House Bill 5001 appropriates these funds to need-based student financial aid for the 2009-2010 fiscal year.

<sup>48</sup> *Bob Graham et al v. Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives*, Case No. 2007-CA-1818.

On April 7, 2009, the Full Appropriations Council on Education and Economic Development adopted two amendments and reported the bill favorably as a Committee Substitute (CS). The first amendment incorporated the provisions of HB 719, relating to the Bright Futures Scholarship Program. The second amendment incorporated the provisions of HB 7107, relating to the determination of residency for tuition purposes.