

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1261 Higher Education

SPONSOR(S): Education & Employment Committee, Toledo and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	12 Y, 2 N	Kiner	Kiner
2) Higher Education Appropriations Subcommittee	12 Y, 2 N	Crowley	Smith
3) Education & Employment Committee	14 Y, 6 N, As CS	Kiner	Hassell

SUMMARY ANALYSIS

The bill contains several provisions relating to and impacting higher education, such as COVID-19 liability protection for educational institutions, state university system institution tuition and fee waivers, and tuition assistance program metrics.

The bill provides liability protections for educational institutions for actions related to the COVID-19 pandemic and provides that these liability protections apply retroactively to causes of actions accruing on or after March 1, 2020, the date of the declaration of the COVID-19 public health emergency by the State Surgeon General, and apply prospectively to causes of action that accrue before the end of the academic term during which the emergency declaration expires or is terminated. However, the bill specifies that the liability protections do not apply in a civil action against a particular named defendant which is commenced before the provision's effective date.

To provide an incentive to students to enroll in, and graduate from, state university baccalaureate degree programs linked to in-demand occupations, the bill provides a 'buy one, get one free' tuition and fee waiver on upper-level courses in a program of strategic emphasis as identified by the Board of Governors (BOG). In doing so, the bill lowers tuition costs for students and assists the BOG's efforts to align degree programs to meet the state's economic and workforce needs. A student receiving Bright Futures will receive a disbursement for the tuition and fees waived that is equal to his or her award amount. A Florida Academic Scholar will receive 100 percent of the amount of the tuition and course fees waived. A Florida Medallion Scholar will receive 75 percent. A state university is eligible to earn incentive funding, subject to appropriation, based on the number and value of waivers it grants pursuant to the bill's provisions. The bill specifies this funding would be in addition to Performance-based Funding Incentive.

To attract talented out-of-state students, the bill provides an out-of-state fee waiver for top-performing, out-of-state high school graduates who have a grandparent that is a Florida resident.

The bill also provides minimum performance standards for institutions to be eligible to participate in the Effective Access to Student Education tuition assistance program.

The bill will have an indeterminate fiscal impact on colleges and universities. See Fiscal Analysis section.

The effective date of the bill is July 1, 2021, except for Section 1, relating to COVID-19 liability protection, which is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

COVID-19 Liability Protection (Section 1)

Present Situation

COVID-19

The COVID-19 pandemic has drastically affected the state of Florida since the outbreak began affecting the United States in early 2020. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, over 2 million positive COVID-19 cases have been diagnosed in the state, over 85,000 people have been hospitalized, and over 33,000 people have died of the virus.¹

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended seven times,² most recently by Executive Order No. 21-45, issued on February 26, 2021.

To respond to the potentially serious impacts of COVID-19 on the health and safety of state university students, faculty, and staff, the Board of Governors of the State University System (BOG) issued guidance to the state universities for the academic and operational continuity of the institutions during the virus outbreak.

On March 11, 2020,³ the BOG directed state universities to make plans to transition to remote instruction as soon as possible. Subsequently, the BOG directed that remote instruction would continue through the end of the Spring 2020 semester at each state university and students who could return home should return home. Universities were also encouraged to consider using remote instruction for the early summer terms.⁴

On June 23, 2020, the BOG approved reopening plans for the state universities that, among other items, included plans to shift back to remote instruction in case of an outbreak, and to continue to provide high-quality educational experiences while utilizing technology and flexibility and prioritizing student and faculty welfare.⁵

As universities moved classes online to curtail the spread of COVID-19, students across the country have raised concerns that they were still paying regular tuition prices for what became an online education. Students at several public and private universities in Florida have sued for tuition reimbursements. In one such case, the court explained that the:⁶

[COVID-19] pandemic has wreaked havoc on the world. In the Spring of 2020, many schools and colleges, both public and private, were forced to move their curriculum from in-person to online instruction out of concern for the health of their students, faculty, and staff, and in response to government-mandated closures and social-distancing measures. This case is novel

¹ Florida Department of Health, Division of Disease Control and Health Protection, *available at* [Florida's COVID-19 Data and Surveillance Dashboard \(arcgis.com\)](https://www.flhhs.com/disease/covid-19/surveillance) (last visited April 2, 2021).

² A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

³ Board of Governors, *State University System Statement on COVID-19*, <https://www.flbog.edu/2020/03/11/state-university-system-statement-on-covid-19/> (last visited April 2, 2021).

⁴ Board of Governors, *State University System Extends Remote Learning* (Mar. 17, 2020) <https://www.flbog.edu/2020/03/17/state-university-system-extends-remote-learning/> (last visited April 2, 2020).

⁵ Board of Governors, *HIGHLIGHTS: Board of Governors' Meeting* (Last visited Mar. 27, 2021).

⁶ *Salerno v. Florida S. Coll.*, 488 F. Supp. 3d 1211 (M.D. Fla. 2020).

in the sense that there is no legal precedent involving a pandemic's impact on a school's promise to provide in-person learning when doing so would be unsafe and/or against government mandates. And so, like the ripple in a pond after one throws a stone, the legal system is now feeling COVID-19's havoc with the current wave of class action lawsuits that seek tuition reimbursement related to forced online tutelage.

Breach of Contract

"For a breach of contract claim, Florida law requires the plaintiff to plead and establish: (1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach."⁷ A student and a private university have an "implied-in-fact contract", the terms and conditions of which are found in the publications such as the university catalogs, student manuals, student handbooks, and other university policies and procedures.⁸

Retroactive Application of a Statute and Due Process

In Florida, absent an express statement of legislative intent, a statute is presumed to operate only prospectively, not retroactively.⁹ Both the Florida and U.S. Constitutions explicitly forbid passage of a law criminalizing past conduct (an "*ex post facto* law");¹⁰ but the Legislature may provide that a non-criminal law applies retroactively in certain situations. But even a non-criminal law may be held unconstitutional if its retroactive application impermissibly burdens existing constitutional rights.¹¹

The Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law"¹² Due process prevents the Legislature from retroactively abolishing or curtailing legal duties and rights once those rights and duties are vested.¹³ Generally, once a cause of action accrues, it becomes a vested right."¹⁴

Effect of Proposed Changes

The bill provides liability protections for educational institutions for actions related to the COVID-19 pandemic. Specifically, the bill:

- Defines an educational institution as "any postsecondary institution, whether public or nonpublic."
- Extends the protections to an educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 and provides immunity from any civil damages, equitable relief, or other remedies relating to such actions.
- Defines reasonably necessary actions taken while a state of emergency was declared for this state for the COVID-19 pandemic to include, but not limited to, any of the following:
 - Shifting in-person instruction to online or remote instruction for any period of time.
 - Pausing or modifying ancillary student activities and services available through the educational institution.
- Deems the provision of in-person or on-campus education and related services to have been impossible for educational institutions during any period of time in which such institutions took reasonably necessary actions described to protect students, staff, and educators in response to the COVID-19 public health emergency.
- Deems the reasonably necessary actions as justified as a result of the various governmental orders and the need for educational institutions to protect their communities.

⁷ *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009).

⁸ *Salerno v. Florida Southern College*, 488 F. Supp. 33 1211 (M.D. Fla. 2020)

⁹ *Fla. Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187, 194-95 (Fla. 2011).

¹⁰ U.S. Const. art. I, ss. 9, 10; Art. I, s. 10, Fla. Const.

¹¹ *See Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010) ("[E]ven where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty").

¹² Art. I, s. 9, Fla. Const.

¹³ *Id.*

¹⁴ *Id. citing Spiewak*, 73 So.3d 120, 125-126 (Fla 2011).

Additionally, the bill specifies that the provisions do not apply to losses or damages that:

- Resulted solely from a breach of an express contractual provision allocating liability, or
- Caused by an act or omission of a college or university which was in bad faith or malicious.

The bill provides that if any aspect of the immunity relating to the reasonably necessary actions taken by an educational institutions due to COVID-19 is limited by a court or by operation of law from applying to certain types of claims or causes of action, the immunity must still be provided to the fullest extent authorized by law to any other types of claims or causes of action.

The bill establishes the provision that these liability protections apply retroactively to causes of actions accruing on or after March 1, 2020, the date of the declaration of the COVID-19 public health emergency by the State Surgeon General, and must apply prospectively to causes of action that accrue before the end of the academic term during which the emergency declaration expires or is terminated. However, the bill specifies that the liability protections do not apply in a civil action against a particular named defendant which is commenced before the provision's effective date.

Tuition & Fee Waivers (Section 2)

Present Situation

Tuition and Out-of-State Fees

Under Florida law, 'tuition' is defined as the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state.¹⁵ A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.¹⁶

An 'out-of-state fee' is the additional fee for instruction provided by a public postsecondary education institution in the state, and is charged to a student who does not qualify for the in-state tuition rate.¹⁷

Residents for tuition purposes are charged in-state rates for tuition while non-residents pay out-of-state fees in addition to tuition, unless these costs are exempted or waived.¹⁸

The resident undergraduate tuition rate for the SUS is currently set in statute at \$105.07 per credit hour.¹⁹ The average cost of resident and nonresident tuition and fees per credit hour is shown below²⁰:

¹⁵ s. 1009.01(1), F.S. Additionally, the definition states that "[a] charge for any other purpose shall not be included within this fee."

¹⁶ s. 1009.21(1)(g), F.S.

¹⁷ s. 1009.01(2), F.S. Adding that "[a] charge for any other purpose shall not be included within this fee."

¹⁸ s. 1009.24(2), F.S.

¹⁹ s. 1009.24(4)(a), F.S.

²⁰ See State University System of Florida, Tuition and Required Fees, 2020-211.

State University Tuition & Fees²¹				
Undergraduate Baccalaureate	Standard Tuition (Per Credit Hour)	Average Tuition & Fees (Per Credit Hour)	Standard Tuition (Per 30 Credit Hours)	Average Tuition & Fees (Per 30 Credit Hours)
Resident	\$105.07	\$199.72	\$3,152.10	\$5,991.79
Non-Resident	\$105.07	\$690.63	\$3,152.10	\$20,719.07
Difference	-	\$490.91	-	\$14,727.28

Fee Exemptions and Fee Waivers

Florida law authorizes school districts that provide workforce education programs, state colleges, and state universities to grant fee exemptions²² and fee waivers²³ to qualified students that meet specified criteria. A number of fee exemptions and fee waivers are permissive²⁴ while others are mandatory.²⁵ There is a limitation on the number of permissive fee waivers a school district providing workforce education programs or a state college may grant;²⁶ however, this limit does not apply to mandatory fee waivers.

Legal Residency in Florida

With respect to tuition and fees at postsecondary institutions, a legal Florida resident is someone who has maintained his or her residence in this state 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 this state.²⁷

State University System Out-of-State Student Enrollment

By regulation, the Board of Governors of the State University System limits the system-wide enrollment of out-of-state students at ten percent.²⁸ The ten percent limit on out-of-state student enrollment applies system-wide and not at each individual institution.

State University System – Programs of Strategic Emphasis

As part of its duties to operate the State University System (SUS), the Board of Governors (BOG)²⁹ develops a strategic plan which specifies the goals and objectives for each university and the SUS.³⁰ Part of the strategic plan includes criteria for designating baccalaureate degree and master's degree high-demand programs of emphasis.³¹ The criteria for designating high-demand programs of emphasis include the following:

BOG High-Demand Programs of Emphasis Criteria
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²¹ *Id.*
²² s. 1009.25, F.S.
²³ s. 1009.26, F.S.
²⁴ s. 1009.25(2), F.S. (authorizing each state college to grant additional fee exemptions “up to 54 full-time equivalent students or 1 percent of [an] institution’s total full-time equivalent enrollment, whichever is greater at each institution”); ss. 1009.26(1)-(4), (6), (9), (10), (11), F.S.
²⁵ ss. 1009.25(1)(a)-(g), and 1009.26(5), (7), (8), F.S.
²⁶ s. 1009.26(1), F.S.
²⁷ s. 1009.21(1)(d), F.S.
²⁸ BOG Regulation 7.006
²⁹ Art. IX., s. 7, Fla. Const.
³⁰ Section 1001.706(5)(b), F.S.
³¹ Section 1001.706(5)(b)4., F.S.
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Criteria Percentage	Criteria Metrics
50 Percent	Achievement of performance outcome thresholds determined by the Board of Governors. ³²
50 Percent	Achievement of performance outcomes linked to: <ol style="list-style-type: none"> 1. Job placement in employment of 36 hours or more per week and average full-time wages of graduates of the degree program 1 year and 5 years after graduation. 2. BOG data-driven gap analysis of the state's job market demands and the outlook for jobs that require a baccalaureate degree or higher, with a growth rate of at least 10.1 percent, and a median Florida wage of at least \$45,000 per year.³³

The BOG periodically updates the list of identified programs of strategic emphasis (PSE), and most recently updated the list in September 2020³⁴ identifying 868 PSE.³⁵ Prior to the 2020 update, the previous updates were effective in 2014 and 2008.³⁶ The BOG categorizes PSEs into five areas:

1. Critical Workforce - Education: comprised of the State Board of Education (SBE) critical teacher shortage areas.³⁷
2. Critical Workforce - Health: comprised of workforce projections by the Florida Department of Economic Opportunity (DEO).³⁸
3. Critical Workforce - Gap Analysis: programs leading to occupations projected to be critically under-supplied in the BOG analysis of labor market projections and related degree production.³⁹
4. Economic Development - Global Competitiveness: programs that assist in making the SUS globally competitive.⁴⁰
5. Economic Development - Science Technology Engineering and Math (STEM): programs identified with national usage.⁴¹

The PSE are used by the BOG to develop annual accountability plans, coordinate academic programs, and approve new academic programs.⁴² PSEs are also a component of State University System performance based funding.⁴³ For the 2019-2020 academic year, 54 percent of bachelor's degrees awarded by the SUS and 63 percent of graduate degrees awarded by the SUS were in PSE.⁴⁴

³² *Id.*

³³ Section 1001.706(5)(b)4.a.-b., F.S. *See also* Florida Board of Governors, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (February 10, 2021), at 6, *available at* <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pe1%202-10-21.pdf>.

³⁴ Florida Board of Governors, *Programs of Strategic Emphasis*, <https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/> (last visited February 27, 2021).

³⁵ Florida Board of Governors, *Approved PSE List 2020-2021* (September 2020), *available at* <https://www.flbog.edu/wp-content/uploads/Current-PSE-list-approved-by-the-BOG-at-its-September-2020-meeting-XLSX.xlsx>.

³⁶ Florida Board of Governors, *Programs of Strategic Emphasis*, *available at* <https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/>.

³⁷ Florida Board of Governors, *Current CIP 2020 Programs of Strategic Emphasis methodology* (September 2020), at 3, *available at* https://www.flbog.edu/wp-content/uploads/CIP_2020_PSE_Methodology_CE_FINAL.pdf.

³⁸ *Id.* at 4.

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 5.

⁴¹ *Id.* at 6.

⁴² Florida Board of Governors, *Programs of Strategic Emphasis*, <https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/> (last visited April 2, 2021).

⁴³ Florida Board of Governors, *Performance Funding Model Overview* (Nov. 2019), at 1, *available at* <https://www.flbog.edu/wp-content/uploads/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-1.pdf>. Metric 6 includes bachelor's degrees award in areas of strategic emphasis and Metric 8a. includes graduates degrees awarded in areas of strategic emphasis. *See also* s. 1001.92, F.S.

⁴⁴ Florida Board of Governors, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (April 2, 2021), at 11, *available at*

<https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pe1%202-10-21.pdf>.

State-Funded Scholarship Programs for High-Academic Achievers

The Florida Bright Futures Scholarship Program rewards Florida high school graduates who merit recognition for high academic achievement and who enroll in a degree program, certificate program, or applied technology program at an eligible Florida public or private postsecondary education institution.⁴⁵

The Bright Futures Scholarship Program consists of four awards: the Florida Academic Scholarship (FAS)⁴⁶, the Florida Medallion Scholarship (FMS)⁴⁷, the Florida Gold Seal Career and Professional Education (CAPE) Scholarship, and the Florida Gold Seal Vocational Scholarship.⁴⁸

The minimum required SAT score for the FAS award is no lower than the 89th national percentile on the SAT.⁴⁹ For the FMS award, the minimum required SAT score is no lower than the 75th national percentile on the SAT.⁵⁰ The required ACT scores for each must be made concordant to the required SAT scores, using the latest published national concordance table developed jointly by the College Board and ACT, Inc.⁵¹

Florida high school students who wish to qualify for the Florida Academic Scholar (FAS) awards or the Florida Medallion Scholars (FMS) awards must graduate from a Florida public high school with a standard high school diploma, graduate from a registered Florida Department of Education private high school, earn a general education diploma (GED), complete a home education program, or graduate from a non-Florida high school as an eligible student.⁵²

Effect of Proposed Changes

Buy One, Get One Free Tuition & Fee Waiver

Beginning with the 2021-2022 academic year, the bill provides a 'buy one, get one free' tuition and fee waiver on upper-level courses in a program of strategic emphasis. Specifically, the bill requires that for every course in a program of strategic emphasis in which a student pays the full tuition and fees, a state university must waive 100 percent of the tuition and fees for another course in a program of strategic emphasis. To be eligible, a student must be an in-state resident, initially enroll full-time at a state university for the Fall academic term immediately following high school graduation, earn at least 60 semester credit hours towards a baccalaureate degree within two academic years of initial enrollment, and be enrolled in a program of strategic emphasis in one of four categories.

The four eligible programs of strategic emphasis categories are the following:

- Science, technology, engineering, or math;
- Critical workforce education;
- Critical workforce healthcare; or
- Critical workforce undersupplied.

The tuition and fee waiver is applicable only for upper-level courses and for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled. This means that for a 120-credit hour state university baccalaureate degree program, the waiver is applicable unless the student has earned an excess of 132 credit hours.

⁴⁵ s. 1009.53(1), F.S.

⁴⁶ The award amount is 100 percent of tuition and applicable fees and \$300 for both fall and spring semesters for additional educational expenses.

⁴⁷ The award amount is 75 percent of tuition and applicable fees.

⁴⁸ s. 1009.53(2), F.S.

⁴⁹ s. 1009.531(6)(c), F.S.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² s. 1009.531(1), F.S.

A student receiving Bright Futures will receive a disbursement for the tuition and fees waived that is equal to his or her award amount. A Florida Academic Scholar will receive 100 percent of the amount of the tuition and course fees waived. A Florida Medallion Scholar will receive 75 percent.

Each state university must annually report to the Board of Governors the number and value of tuition and fee waivers granted.

A state university is eligible to earn incentive funding, subject to appropriation, based on the number and value of waivers it grants pursuant to the bill's provisions. The bill specifies this funding would be in addition to Performance-based Funding Incentive.

The bill requires the Board of Governors to adopt regulations to administer the granting of the buy one, get one free tuition and fee waiver.

Grandparent Tuition Waiver

The bill requires a state university to waive the out-of-state fee for an out-of-state student who has a grandparent who is a legal Florida resident and who meets the following criteria:

- Earns a high school diploma that is comparable to a standard Florida high school diploma, or its equivalency, or completes a home education program;
- Achieves an SAT combined score no lower than the 89th national percentile, an equivalent ACT score, or, if the university accepts it for admission purposes, an equivalent score on the Classic Learning Test (CLT) exam, if a state university accepts the CLT for admission purposes⁵³;
- Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation; and
- Provides a written declaration by the student or the student's parent, if the student is a dependent child, pursuant to s. 92.525(2), F.S., verifying the student's familial relationship to a grandparent who is a legal resident.

The waiver is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled. This means that for a 120-credit hour state university baccalaureate degree program, the waiver is applicable for up to 132 credit hours.

A student receiving the tuition waiver will be counted towards the systemwide limit on out-of-state student enrollment. However, the bill specifies that state universities shall prioritize the enrollment of students eligible for the waiver over that of other non-resident applicants.

Each state university must annually report to the Board of Governors the number and value of waivers granted pursuant to the bill's provisions.

The Board of Governors must adopt regulations to administer the granting of the waiver.

Effective Access to Student Education (EASE) Tuition Assistance Program (Section 3)

Present Situation

EASE (formerly known as the Florida Resident Access Grant, or FRAG) is a grant program administered by the Department of Education (DOE) with the following parameters:⁵⁴

- Student eligibility requirements:
 - Must be enrolled as a full-time undergraduate student at an eligible college or university.
 - Must not be enrolled in a program of study leading to a degree in theology or divinity.
 - Must be making satisfactory academic progress as defined by the college or university in which they are enrolled

⁵³ According to information posted on the Classic Learning Initiatives website, the CLT is not currently accepted by any of Florida's state universities. See <https://www.cltxam.com/colleges>. (last visited April 2, 2021).

⁵⁴ s. 1009.89, F.S.

- Institutional eligibility requirements:
 - Must be an independent nonprofit college or university.
 - Must be located in and chartered by the state of Florida.
 - Must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.
 - Must grant baccalaureate degrees.
 - Must not be a state university or Florida College System institution.
 - Must have a secular purpose, so long as the receipt of state aid by students at the institution would not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious group.

State law requires colleges and universities eligible to participate in the EASE program to annually report student-level data from the prior year for each student who receives state funds.⁵⁵ The reported data must include, at a minimum, retention rates, transfer rates, completion rates, graduation rates, employment and placement rates, and earnings of graduates.⁵⁶

Effect of Proposed Changes

The bill creates a statutory requirement for recipient institutions to report prior year academic statistics for certain metrics, including:

- Entrance requirements for the year, and if required by the institution, the minimum test score and grade point average requirements for freshmen;
- Percentage of students receiving Pell Grants, Bright Futures, and other academic aid;
- Graduation rates;
- Retention rates;
- Job placement rates;
- Job placement rates 1 year after graduation;
- Total federal loan amounts disbursed; and
- Total number of students who received federal loans.

The bill also specifies that institutions must meet three or more of the following metrics to remain eligible to receive EASE grants:

- A post-graduate employment or continuing education rate of at least 77 percent as submitted in the report dated September 2020⁵⁷, and at least 78 percent and 79 percent as submitted in each subsequent annual report, respectively;
- A graduation rate of at least 48 percent as submitted in the report dated September 2020⁵⁸, and at least 49 and 50 percent as submitted in each subsequent annual report, respectively;
- An academic retention rate of at least 71 percent as submitted in the report dated September 2020⁵⁹, and at least 72 and 73 percent as submitted in each subsequent annual report, respectively;
- A student access rate of at least 45 percent as submitted in the report dated September 2020⁶⁰, and at least 46 and 47 percent as submitted in each subsequent annual report, respectively; and
- An average federal loan disbursement rate for undergraduates of no more than \$7,320 as submitted in the report dated September 2020⁶¹, and no more than \$7,289 and \$7,258 as submitted in each subsequent report, respectively.

⁵⁵ s. 1008.31, F.S.

⁵⁶ *Id.*

⁵⁷ See 2020 Effective Access to Student Education Grant Accountability Report, available at [loaddoc.aspx \(myfloridahouse.gov\)](http://loaddoc.aspx(myfloridahouse.gov)), page 18 of 40.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

Based on the 2020 report submitted by colleges and universities to the DOE, the following institutions (along with their performance for each metric) would remain eligible to receive EASE funding:

Effective Access to Student Education (EASE) Accountability Metrics					
	Post-graduate Employment / Continuing Education Rate of at least 77%	Six-year Graduation Rate of at least 48%	Academic Retention Rate of at least 71%	Student Access Rate of at least 45%	Average Federal Loan Disbursement of at least \$7,320
Ave Maria University	77%	55%	74%	31%	\$6,203
Eckerd College	73%	70 %	81%	22%	\$6,657
Edward Waters College	80%	32%	53%	87%	\$6,684
Embry-Riddle Aeronautical University	77%	59%	78%	28%	\$6,908
Everglades University	83%	51%	62%	64%	\$7,629
Flagler College	75%	55%	74%	29%	\$6,740
Florida College	90%	17%	72%	33%	\$5,847
Florida Institute of Technology	78%	60%	79%	25%	\$6,672
Florida Southern College	81%	63%	82%	30%	\$6,753
Hodges University	90%	13%	48%	86%	\$6,625
Jacksonville University	86%	43%	74%	39%	\$6,869
Keiser University	89%	55%	75%	63%	\$11,733
Nova Southeastern University	83%	52%	81%	39%	\$8,001
Palm Beach Atlantic University	74%	54%	76%	33%	\$6,281
Ringling College of Art and Design	56%	65%	84%	25%	\$7,019
Stetson University	72%	62%	77%	36%	\$6,770
University of Miami	71%	84%	93%	13%	\$5,332
University of Tampa	74%	60%	77%	20%	\$6,471

In addition to institutional eligibility, the bill amends student eligibility requirements, specifying that recipient students must be enrolled in a program of study leading to a baccalaureate degree, and must not have completed more than 110 percent of their program credit-hours. Additionally, the bill changes the institution responsible for defining satisfactory academic progress from the recipient institution to the State Board of Education.

The bill also requires participating institutions to report the number of eligible students for each academic term along with their demographic and eligibility data.

B. SECTION DIRECTORY:

Section 1. Provides legislative findings; defines the term “educational institution”; prohibits an educational institution that has taken certain reasonably necessary actions to diminish the impact or spread of COVID-19 from being civilly liable for such actions; specifies that the provision of certain services by educational institutions was impossible during certain periods of time; provides that certain reasonably necessary actions are deemed justified; provides exceptions; provides severability; provides for retroactive applicability; provides an exception for certain civil actions.

Section 2. Amends s. 1009.26, F.S.; requires a state university to waive the tuition and fees for certain courses in which certain resident students are enrolled; requires a state university to waive the out-of-state fee for a nonresident student who meets certain requirements; provides applicability; provides specified criteria for such waivers; requires the reporting of tuition and fees waived for state funding purposes; requires disbursement to the student upon his or her enrollment in a program of strategic emphasis; requires each state university to report certain information regarding such waivers to the Board of Governors, annually; authorizes a state university in compliance with the waiver provisions to earn incentive funding, subject to appropriation; requires the board to adopt regulations;

requires a state university, within the nonresident student enrollment systemwide, to prioritize the enrollment of a student granted such fee waiver over a certain out-of-state student.

Section 3. Amends s. 1009.89, F.S.; revises eligibility criteria for the William L. Boyd, IV, Effective Access to Student Education grant program; requires recipient institutions to submit a specified report to the Department of Education; requires institutions to meet certain performance benchmarks to remain eligible under the grant program; requires each recipient institution to report certain data to the department.

Section 4. Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a negative, but indeterminate impact on state university revenues. See *Fiscal Comments*.

2. Expenditures:

The bill may provide educational institutions with liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may provide educational institutions with liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide educational institutions with liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

The bill provides a 'buy one, get one free' tuition waiver on upper-level courses in a program of strategic emphasis. In doing so, the bill assists the State University System Board of Governors in its efforts to align degree programs to meet the state's economic and workforce needs. For a typical degree program of 120 credit hours, an eligible student would save an average of \$5,991.79.

The bill provides in-state tuition for top-performing, out-of-state high-school graduates who have a grandparent that is a Florida resident, resulting in an average savings of \$490.91 per credit hour.

D. FISCAL COMMENTS:

The proposed House General Appropriations Act (GAA) appropriates \$66.3 million to the State University System to implement the provisions relating to buy one, get one tuition & fee waiver.

The bill's fiscal impact is indeterminate due to the unknown number of students that will qualify for, and take advantage of, the buy one, get one free fee waiver. However, for each student that receives the tuition and fee waiver, a state university would receive an equal amount of tuition and fee revenue on a 1:1 basis. A student receiving Bright Futures will receive a disbursement for the tuition and fees waived that is equal to his or her award amount. A Florida Academic Scholar will receive 100 percent of the amount of the tuition and course fees waived. A Florida Medallion Scholar will receive 75 percent. The

SUS resident undergraduate tuition rate is \$105.07 per credit hour, while the system-wide average of fees per credit is \$94.65. However, the fiscal impact would not be realized until the student is enrolled in an upper-level course in a program of strategic emphasis and the waiver is only applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

The bill has an indeterminate fiscal impact due to the unknown number of students that will qualify for, and take advantage of, the out-of-state fee waiver. However, university systemwide non-resident enrollment has increased steadily from 6.6% in 2015 to 9.0% in 2020.⁶² Inclusion of students eligible for a waiver under this program within the 10% systemwide cap reduces the potential fiscal impact. For each student that receives the out-of-state fee waiver, a state university would receive the in-state tuition amount, which is \$105.07 per credit hour, in lieu of the in-state tuition amount, plus the out-of-state fee. The fiscal impact would be recurring while the student is receiving the waiver, up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to impact county or municipal governments.

⁶² Email from BOG Office of Data & Analytics, received 2/4/2021.

2. Other:

Access to Courts

The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."⁶³ In *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), the Florida Supreme Court established a test to determine when the Legislature may restrict a judicial remedy. Where citizens have had a historical right of access to the courts, whether through statute or common law, the Legislature can only eliminate a judicial remedy under two circumstances. First, if it asserts a valid public purpose, the Legislature may restrict access to the courts if it provides a reasonable alternative to litigation.⁶⁴ Second, if the Legislature finds that there is an overpowering public necessity and that there is no alternative method for meeting that necessity, it may restrict access to the courts.⁶⁵

The bill makes legislative findings of an overpowering public necessity, in light of the unprecedented nature of the COVID-19 pandemic. Moreover, the bill does not eliminate all civil liability for claims against educational institutions that resulted from action taken during the COVID-19 pandemic, but rather finds that those actions were reasonably necessary and justified.

Due Process

The Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law"⁶⁶ In turn, the Florida Supreme Court has held that in certain situations, a person whose legal cause of action has already accrued may have a due process right to bring such action.⁶⁷ Florida courts have sometimes invalidated the retroactive application of laws when such due process rights are implicated.⁶⁸ The Florida Supreme Court has recently acknowledged that Florida case law on this subject is "less than precise" and that the Court has sometimes "been unclear about what it means to give retroactive application" to a procedural law.⁶⁹ However, "[c]ourts will not permit the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties, even when the Legislature expressly states that a statute is to have retroactive application."⁷⁰

B. RULE-MAKING AUTHORITY:

The bill requires the Board of Governors to adopt regulations to administer the tuition and fee waivers required pursuant to the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁶³ Art. I, s. 21, Fla. Const.

⁶⁴ See *Kluger*, 281 So. 2d at 4.

⁶⁵ *Id.*

⁶⁶ Art. I, s. 9, Fla. Const.

⁶⁷ See, e.g., *Spiewak*, 73 So. 3d at 123 ("a cause of action constitutes an intangible property right that is grounded in tort").

⁶⁸ See, e.g., *R.A.M. of S. Fla., Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla. 2d DCA 2004).

⁶⁹ See *Love v. State*, 286 So. 3d 177, 183-84 (Fla. 2019).

⁷⁰ *Romine v. Florida Birth Related Neurological Injury Compensation Ass'n*, 842 So.2d 148, 152 (Fla. 5th DCA 2003) citing *State Farm Mut. Auto. Ins. V. Laforet*, 658 So.2d 55, 61 (Fla. 1995); see also *Chase Fed.*; *McCord v. Smith*, 43 So.2d 704, 708-09 (Fla.1949).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 6, 2021, the Education & Employment Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill as originally filed by:

- Providing liability protection for public and nonpublic postsecondary institutions that have taken reasonably necessary actions in compliance with federal, state, and local guidance to diminish the impact or the spread of COVID-19.
- Providing an out-of-state fee waiver for top-performing, out-of-state high school graduates who have a grandparent that is a Florida resident to attend a state university.
- Providing minimum performance standards for institutions to be eligible to participate in the Effective Access to Student Education tuition assistance program.

The bill analysis is drafted to the committee substitute adopted by the Education & Employment Committee.