



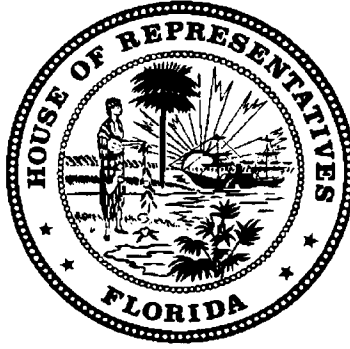
Higher Education & Workforce Subcommittee

**Wednesday, February 19, 2014
1:00 p.m. – 3:00 p.m.
102 HOB**

Meeting Packet

**Will Weatherford
Speaker**

**Jeanette Nuñez
Chair**



AGENDA

Higher Education & Workforce Subcommittee
Wednesday, February 19, 2014
1:00 p.m. – 3:00 p.m.
102 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. HB 851 – Resident Status for Tuition Purposes by Nuñez
- IV. Presentation on Florida College System performance funding
- V. Closing Remarks and Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Higher Education & Workforce Subcommittee

Start Date and Time: Wednesday, February 19, 2014 01:00 pm
End Date and Time: Wednesday, February 19, 2014 03:00 pm
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 851 Resident Status for Tuition Purposes by Nuñez

Presentation on Florida College System performance funding

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by a member who is not a member of the subcommittee shall be 6:00 pm, Tuesday, February 18, 2014.

By request of the Chair, all subcommittee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Tuesday, February 18, 2014.

NOTICE FINALIZED on 02/12/2014 15:39 by Flynn.Kaley



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Higher Education &
 2 Workforce Subcommittee
 3 Representative Nuñez offered the following:

Amendment

Remove lines 162-163 and insert:

7 (8) Once a student has been classified as a resident for
 8 tuition purposes by any institution of higher education in the
 9 state, an institution of higher education is not

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Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Higher Education &
 2 Workforce Subcommittee
 3 Representative Nuñez offered the following:

Amendment (with title amendment)

Remove lines 181-182 and insert:

7 (10) The following persons are not classified as residents
 8 for tuition purposes but may be reported for purposes of state
 9 funding and are not required to pay out-of-state fees shall be
 10 classified as residents for tuition purposes:

13 -----
 14 **T I T L E A M E N D M E N T**

Remove line 2 and insert:

16 An act relating to determination of resident status for tuition
 17



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Higher Education &
 2 Workforce Subcommittee
 3 Representative Nuñez offered the following:
 4

Amendment (with title amendment)

6 Remove lines 241-244 and insert:
 7 of attendance and graduation.
 8

9 Notwithstanding s. 1009.40(1)(a)2., a person who is not required
 10 to pay out-of-state fees pursuant to this subsection may be
 11 eligible for state financial aid awards or tuition assistance
 12 grants upon submission of proof of United States citizenship,
 13 permanent resident status, or other immigration status that
 14 permits receipt of federal financial aid.
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Amendment No. 3

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T I T L E A M E N D M E N T

Remove lines 14-19 and insert:
tuition purposes; providing that certain persons are not
classified as residents for tuition purposes but are not
required to pay out-of-state fees; including certain veterans of
the Armed Services of the United States, persons who receive
certain tuition exemptions or waivers, and students who meet
certain attendance, graduation, and enrollment requirements;
providing requirements for receipt of state financial aid awards
or tuition assistance grants;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851 Resident Status for Tuition Purposes
SPONSOR(S): Nuñez and others
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Sherry <i>HRS</i>	Sherry <i>HRS</i>
2) Education Appropriations Subcommittee			

SUMMARY ANALYSIS

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

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

The bill also clarifies that postsecondary institutions may satisfy the verification requirement for documents by accepting an affidavit that requires the person claiming residence to submit specific information. Furthermore, postsecondary institutions would not be required to reevaluate the classification status of a student classified as a resident for tuition purposes so long as there is no inconsistent information suggesting an erroneous classification and there is no break in the student's enrollment of 12 months or longer.

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

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

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

The bill classifies students who attend a Florida high school for 3 consecutive years and enroll in a postsecondary institution within 24 months after graduation as residents for tuition purposes, provided they submit their high school transcript as documentary evidence of residence in Florida. Students who are classified as residents for tuition purposes under s. 1009.21(10)(n), F.S., must also show proof of United States citizenship in order to be eligible for state financial aid.

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

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

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

Documentation of residency for tuition purposes

An applicant seeking an initial determination of residency must submit two or more documents evidencing residency to the institution. For students who are eligible to be claimed as a dependent under the federal income tax code (regardless of whether they are claimed or not), the applicant's parent (not the applicant) must submit documentation evidencing length of residency in Florida. No one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes.⁶ At least one of the following must be provided by the applicant or the applicant's parent if the applicant is a dependent:

- A Florida voter's registration card;
- A Florida driver's license;
- A State of Florida identification card;
- A Florida vehicle registration;
- Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child;
- Proof of a homestead exemption in Florida;
- Transcripts from a Florida high school for multiple years if the Florida high school diploma or GED was earned within the last 12 months; or
- Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.⁷

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

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

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

⁴ Section 1009.21(3)(c), F.S.

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

⁶ Section 1009.21(3)(c), F.S.

⁷ Section 1009.21(3)(c)1., F.S.

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

- A declaration of domicile in Florida;
- A Florida professional or occupational license;
- Florida incorporation;
- A document evidencing family ties in Florida;
- Proof of membership in a Florida-based charitable or professional organization; or
- Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments, a lease agreement and proof of 12 consecutive months of payments, or an official state, federal, or court document evidencing legal ties to Florida⁸

Implementation of Residency Requirements

Present Situation

The State Board of Education (SBE) and Florida Board of Governors (BOG) must adopt rules to implement the provisions of Section 1009.21, F.S.⁹ Accordingly, the SBE has adopted Rule 6A-10.044, F.A.C., "Residency for Tuition Purposes." The BOG has adopted a similar set of provisions under Rule 72.1001, F.A.C., also entitled "Residency for Tuition Purposes."¹⁰ Each rule establishes requirements for determining residency for tuition purposes.

Federal law provides that an "alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefits unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."¹¹

Ruiz v. Robinson

In 2011, a group of five dependent, U.S. citizen residents of Florida filed a lawsuit against the SBE and the BOG challenging the above-referenced rule and regulation promulgated by both boards. The plaintiffs had applied to attend various postsecondary institutions in Florida,¹² but were denied residency status by the institutions application of the rules because the plaintiffs' parents could not establish legal immigration status.¹³ The plaintiffs claimed in their lawsuit that the rules are unconstitutional because they violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The court held that the State cannot deny in-state residency status to a U.S. citizen resident of Florida based upon his or her parent's inability to prove their own legal presence in the country. While the court stated the definition of "legal resident" under Section 1009.21, F.S. is facially neutral; it found that the additional criteria set forth in the challenged rules, as implemented by the institutions, denied the Plaintiffs the same benefits and opportunities as similarly situated individuals.¹⁴ Therefore, the rules, insofar as they require dependent United States citizen students who are residents of Florida to establish the immigration status of their Florida resident parents, were found to violate the Equal Protection Clause of the Fourteenth Amendment. The court also enjoined the BOG and the SBE from

⁸ Section 1009.21(3)(c)2., F.S.

⁹ Section 1009.21(13), F.S.

¹⁰ The Florida Board of Governors also adopted Regulation 7.005 in 2011 with language that is identical to Rule 72.1001, F.A.C.

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

¹² The institutions included Florida International University, Miami-Dade College, and Palm Beach State College.

¹³ 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

¹⁴ *Ruiz v. Robinson* at 1333.

interpreting the rules in a way that would require such students to establish the immigration status of their Florida-resident parents.¹⁵

The court clarified that the order would not preclude the State from requiring proof of Florida residency from a student and the student's parents in order to classify the student as a resident for tuition purposes.¹⁶

The Court also noted that the SBE or BOG could not use the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PROWRA) as justification for requiring proof of a parent's legal presence in the country because that law merely precludes unlawful *aliens*, not U.S. citizens, from receiving tuition benefits. Since the children in this case were U.S. citizens and the tuition benefit accrues to the child and not the parent, PROWRA was inapplicable.¹⁷

Effect of Proposed Changes

The bill provides that a United States citizen, who is a dependent child, may not be denied classification as a resident for tuition purposes based solely upon the immigration status of his or her parent. This, in effect, codifies the holding in *Ruiz v. Robinson*.¹⁸

Definitions

Present Situation

A "dependent child" is defined as any person, whether or not living with his or her parent, who is eligible to be claimed by his or her parent as a dependent under the federal income tax code.¹⁹ A "parent," in the context of establishing residency for tuition purposes, is defined as the natural or adoptive parents or legal guardian of a dependent child.²⁰ However, the federal income tax code allows a stepparent to claim a stepson or stepdaughter as a dependent.²¹

For purposes of determining eligibility for federal financial aid, an independent student is one of the following: at least 24 years old, married, a graduate or professional student, a veteran, a member of the armed forces, an orphan, a ward of the court, someone with legal dependents other than a spouse, an emancipated minor, or someone who is homeless or at risk of becoming homeless.²²

Effect of Proposed Changes

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

¹⁵ Final Judgment in *Ruiz v. Robinson*. Docket Document 109, 1:11-cv-23776-KMM, Federal District Court, Southern District of Florida.

¹⁶ *Id.* at 8-9.

¹⁷ *Id.* at 9.

¹⁸ 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

¹⁹ Section 1009.21(1)(a), F.S.

²⁰ Section 1009.21(1)(f), F.S.

²¹ 26 U.S.C. s. 152.

²² U.S. Department of Education, *Federal Student Aid Glossary*, available at <http://studentaid.ed.gov/glossary> (last visited Feb. 27, 2014)

Verification of documents by postsecondary institutions

Present Situation

Public postsecondary institutions must affirmatively determine that an applicant granted admission to that institution meets the residency requirements.²³ Residency determination must be documented by the submission of written or electronic verification that includes two or more documents including either a Florida voter registration card, a Florida driver's license, a State of Florida identification card, a Florida vehicle registration, proof of a permanent home in Florida occupied as a primary residence, proof of a homestead exemption, a Florida high school transcript, or proof of permanent full-time employment in Florida.²⁴

Currently, the residency affidavit submitted by applicants provides for the person claiming residency to verify his or her voter registration card, driver's license, identification card, or vehicle registration by the state of issuance, number, original issue date and current issue date. In lieu of requiring the claimant to produce verified documents from the various state agencies responsible for issuing the documents, which could result in great expense and delay to the student and the claimant, postsecondary institutions have been using the residency affidavit to satisfy the electronic verification requirement in the statute.²⁵ There have been differing interpretations by some state auditors as to what constitutes "electronic verification" of this information.

Effect of Proposed Changes

The bill clarifies that postsecondary institutions may satisfy the verification requirement for documents by accepting an affidavit that requires the person claiming residence to submit specific information.

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

Present Situation

A dependent child living with an adult relative, who is not the child's parent, may be classified as a resident for tuition purposes if the child has lived with the adult relative for five consecutive years immediately prior to initial enrollment and the adult relative has maintained legal residence in Florida for at least 12 months prior to the child enrolling in an institution of higher education.²⁶

Effect of Proposed Changes

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

Effect of marital status on residency for tuition purposes

Present Situation

A student may not be denied legal resident status solely by reason of marriage to a person domiciled in another state, so long as the student remains a legal resident of Florida.²⁷ Conversely, a student cannot

²³ Section 1009.21(3)(c), F.S.

²⁴ *Id.*

²⁵ Email, State University System of Florida, Board of Governors (Feb. 5, 2014).

²⁶ Section 1009.21(2)(b), F.S.

²⁷ Section 1009.21(5)(a), and (6)(d), F.S.

establish legal residence in this state solely by reason of marriage to a person domiciled in this state.²⁸ Florida law also provides that, upon becoming a legal resident, a student may reclassify as a resident for tuition purposes if his or her spouse is already a legal resident.²⁹

Effect of Proposed Changes

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

Reevaluation of residency status

Present Situation

Currently, if the parents of a dependent student establish a domicile in another state after the student has been classified as a Florida resident for tuition purposes, the student loses his or her resident status. However, the student enjoys a one-year grace period, measured from the date the circumstances resulting in the loss of residency status arose, during which the student continues to enjoy in-state tuition rates.³⁰

Effect of Proposed Changes

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

Residency of individuals eligible for tuition exemptions and waivers

Present Situation

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

- Individuals who are homeless;³¹
- Individuals who were in the custody of the Department of Children and Families at the time they reached 18 years of age;³²
- Individuals who were in the custody of a relative under s. 39.5085 at the time they reached 18 years of age or who were adopted from the Department of Children and families after May 5, 1997;³³
- Individuals who have been wrongfully incarcerated;³⁴
- Dependents or spouses of firefighters killed in the line of duty,³⁵ and

²⁸ Section 1009.21(5)(b), F.S.

²⁹ Section 1009.21,(6)(d), F.S. The student must submit evidence of his or her own residency in this state, evidence of his marriage to the spouse, and evidence of the spouse's legal residency in the state for at least 12 consecutive months immediately preceding the application for reclassification.

³⁰ Section 1009.21(8), F.S.

³¹ Section 961.06(1)(b), F.S.

³² Section 1009.25(1)(c), F.S.

³³ Section 1009.25(1)(d), F.S.

³⁴ Section 1009.25(1)(f), F.S.

³⁵ Section 112.191(3), F.S.

- Dependents or spouses of law enforcement, correctional, or correctional probation officers killed in the line of duty.³⁶

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

Effect of Proposed Changes

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

Veterans in Florida

Present Situation

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

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

attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed.

- Active duty members of a foreign nation's military who are serving as liaison officers and are residing or stationed in this state, and their spouses and dependent children, attending a Florida College System institution or state university within 50 miles of the military establishment where the foreign liaison officer is stationed.³⁷

Under current law, however, veterans must meet the residency requirements set forth under s. 1009.21(2), F.S., to be eligible for in-state tuition rates.³⁸

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

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

Florida is tied with Texas for the second largest population of veterans in the nation at 1.6 million. Only California has a larger population of veterans, at 2 million.³⁹

Effect of Proposed Changes

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

Florida High School Graduates

Present Situation

Currently, transcripts from a Florida high school for multiple years may be used as one piece of documentation for students trying to establish residency for tuition purposes.⁴⁰ However, in addition to the high school transcripts, students who are dependents must provide a second piece of documentation that attests to the residency of their parents or legal guardians. This may be difficult for students whose parents are estranged, unwilling to provide documentation, or are undocumented immigrants. Since no one document, alone, may be considered as conclusively establishing Florida residency for tuition purposes,⁴¹ many Florida high school graduates who have lived in Florida for multiple years cannot provide the required documentation and are classified as out-of-state students. This has been a particularly difficult problem for students who are undocumented immigrants that were brought to the United States by their parents as a child.

Several states currently have laws, referred to as tuition equity, that permit certain undocumented students who have attended and graduated from their primary and secondary schools to pay the same tuition as their classmates at public institutions of higher education. A majority of America's

³⁷ Section 1009.21(10), F.S.

³⁸ To establish residency for tuition purposes, a person, or if that person is a dependent child, his or her parent, to establish legal residence in Florida and maintain legal residence in Florida for at least 12 consecutive months immediately prior to initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.

³⁹ United States Census Bureau, *A Snapshot of Our Nation's Veterans*, available at: <http://www.census.gov/how/infographics/veterans.html> (Last visited Feb. 14, 2014)

⁴⁰ Section 1009.21(3)(c), F.S.

⁴¹ *Id.*

undocumented immigrants live in these states, and several other states are considering similar policies.⁴²

Tuition equity laws generally allow students who attend high school in a state, and who graduate and meet other criteria, to pay in-state tuition rates, regardless of their immigration status. Currently, **17 states** have provisions allowing for in-state tuition rates for undocumented students. Fifteen states—California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington— extend in-state tuition rates to undocumented students through state legislation. Two states—Oklahoma and Rhode Island— allow in-state tuition rates to undocumented students through Board of Regents decisions.⁴³

The states that have passed laws to allow undocumented students to receive in-state tuition delineate requirements for eligibility. In general, students must live in state and attend high school for a specified period (1-4 years), and graduate or receive their GED. Students must be accepted to a public college or university, and must sign an affidavit stating their intention to file for legal immigration status. Only 3 states—California, New Mexico and Texas—currently allow undocumented students to receive state financial aid. Students without legal immigrant status are ineligible for federal financial aid.⁴⁴

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) states, "...an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."⁴⁵

The states that have enacted laws granting in-state tuition rates to undocumented students have worded the legislation so that it is contingent on high school attendance and graduation, and not based on residency within the state. Since legal United States residents are also entitled to in-state tuition rates based on the same criteria, the states claim that their laws do not violate the IIRIRA. The California Supreme Court upheld California's law that grants in-state tuition rates to eligible undocumented students.⁴⁶

Effect of Proposed Changes

The bill classifies students who attend a Florida high school for 3 consecutive years and enroll in an institution of higher education within 24 months after graduation as residents for tuition purposes, provided they submit their high school transcript as documentary evidence of residence in Florida.

The bill also specifies that students who are classified as residents for tuition purposes under s. 1009.21(10)(n), F.S., must also show proof of US citizenship in order to be eligible for state financial aid. This limitation is consistent with the current federal policy that students without legal immigration status are not eligible for federal student aid. The limitation does not impact financial aid eligibility for students who are classified as residents for tuition purposes under existing law.

⁴² National Immigration Law Center, *Facts About In-state Tuition*, available at: <http://www.nilc.org/fsinstat.html> (Last visited Feb. 7, 2014)

⁴³ National Council of State Legislatures, *Undocumented Student Tuition: Overview*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (Last visited Feb. 7, 2014)

⁴⁴ National Council of State Legislatures, *Undocumented Student Tuition: State Action*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx> (Last visited Feb. 7, 2014)

⁴⁵ Pub. L. No. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996).

⁴⁶ National Council of State Legislatures, *Undocumented Student Tuition: Federal Action*, available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-federal-action.aspx> (Last visited Feb. 7, 2014)

B. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact is indeterminate as it is difficult to identify the number of students who meet the criteria outlined in the bill, but are not currently enrolled in an institution of higher education.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

Student veterans of state universities

For the 2013-2014 academic year, the average cost of SUS undergraduate tuition and fees for two semesters (30 credit hours) is \$6,155 for residents and \$21,434 for non-residents. For graduate students, the average cost of tuition and fees for two semesters (24 hours) is \$10,262 for residents and

\$25,138 for non-residents. Thus, student veterans could expect savings in the amount of \$15,279 at the undergraduate level and \$14,876 at the graduate level for the 2013-2014 academic year.⁴⁷

The State University System reported 353 non-resident or unclassified undergraduate veteran students and 195 non-resident graduate level veteran students in 2013-2014.⁴⁸

Student veterans of Florida College System institutions

For 2013-14, the Florida College System reports the average cost for two semesters is \$3,124 for residents enrolled in non-baccalaureate degree programs and \$11,531 for non-residents. For students enrolled in the baccalaureate degree programs, the cost for two semesters is \$3,585 for residents and \$15,400 for non-residents. Thus, student veterans could expect savings in the amount of \$8,407 in non-baccalaureate degree programs and \$11,815 in baccalaureate degree programs for the 2013-14 academic year.⁴⁹

The Florida College System reported that there were 449 veteran students who were classified as non-residents in 2012-13.⁵⁰

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable

⁴⁷ State University System of Florida Board of Governors, *Tuition & Fees*, available at <http://www.flbog.edu/about/budget/tuition.php>. (last visited Feb. 11, 2014).

⁴⁸ State University System of Florida Board of Governors, *Legislative Bill Analysis for HB 851* (2014).

⁴⁹ Email, Florida College System, Division of Florida Colleges (Feb. 12, 2014).

⁵⁰ Email, Florida College System, Division of Florida Colleges (Feb. 12, 2014). Only GI Bill recipients are included in count.

27 (3), subsections (4) and (5), paragraph (d) of subsection (6),
 28 and subsections (8), (10), and (13) of section 1009.21, Florida
 29 Statutes, are amended, and paragraph (d) is added to subsection
 30 (2) of that section, to read:

31 1009.21 Determination of resident status for tuition
 32 purposes.—Students shall be classified as residents or
 33 nonresidents for the purpose of assessing tuition in
 34 postsecondary educational programs offered by charter technical
 35 career centers or career centers operated by school districts,
 36 in Florida College System institutions, and in state
 37 universities.

38 (1) As used in this section, the term:

39 (a) "Dependent child" means any person, whether or not
 40 living with his or her parent, who is eligible to be claimed by
 41 his or her parent as a dependent under the federal income tax
 42 code or who is not deemed independent for federal financial aid
 43 purposes.

44 (f) "Parent" means the natural or adoptive parent,
 45 stepparent, or legal guardian of a dependent child.

46 (2)

47 (b) However, with respect to a dependent child living with
 48 an adult relative other than the child's parent, such child may
 49 qualify as a resident for tuition purposes if the adult relative
 50 is a legal resident who has maintained legal residence in this
 51 state for at least 12 consecutive months immediately before
 52 ~~prior to~~ the child's initial enrollment in an institution of

53 higher education, provided the child has resided continuously
 54 with such relative for the 3 ~~5~~ years immediately before ~~prior to~~
 55 the child's initial enrollment in an institution of higher
 56 education, during which time the adult relative has exercised
 57 day-to-day care, supervision, and control of the child.

58 (d) A dependent child who is a United States citizen may
 59 not be denied classification as a resident for tuition purposes
 60 based solely upon the immigration status of his or her parent.

61 (3)

62 (c) Each institution of higher education shall
 63 affirmatively determine that an applicant who has been granted
 64 admission to that institution as a Florida resident meets the
 65 residency requirements of this section at the time of initial
 66 enrollment. The residency determination must be documented by
 67 the submission of written or electronic verification that
 68 includes two or more of the documents identified in this
 69 paragraph. Verification of the documents listed in sub-
 70 subparagraphs 1.a.-d. may be satisfied by submission of an
 71 affidavit by the person claiming residency. No single piece of
 72 evidence shall be conclusive.

73 1. The documents must include at least one of the
 74 following:

- 75 a. A Florida voter information ~~voter's registration~~ card.
- 76 b. A Florida driver ~~driver's~~ license.
- 77 c. A State of Florida identification card.
- 78 d. A Florida vehicle registration.

79 e. Proof of a permanent home in Florida which is occupied
 80 as a primary residence by the individual or by the individual's
 81 parent if the individual is a dependent child.

82 f. Proof of a homestead exemption in Florida.

83 g. Transcripts from a Florida high school for multiple
 84 years if the Florida high school diploma or GED was earned
 85 within the last 12 months.

86 h. Proof of permanent full-time employment in Florida for
 87 at least 30 hours per week for a 12-month period.

88 2. The documents may include one or more of the following:

89 a. A declaration of domicile in Florida.

90 b. A Florida professional or occupational license.

91 c. Florida incorporation.

92 d. A document evidencing family ties in Florida.

93 e. Proof of membership in a Florida-based charitable or
 94 professional organization.

95 f. Any other documentation that supports the student's
 96 request for resident status, including, but not limited to,
 97 utility bills and proof of 12 consecutive months of payments; a
 98 lease agreement and proof of 12 consecutive months of payments;
 99 or an official state, federal, or court document evidencing
 100 legal ties to Florida.

101 (4) With respect to a dependent child, the legal residence
 102 of the dependent child's parent or parents is prima facie
 103 evidence of the dependent child's legal residence, which
 104 evidence may be reinforced or rebutted, relative to the age and

105 general circumstances of the dependent child, by the other
 106 evidence of legal residence required of or presented by the
 107 dependent child. However, the legal residence of a dependent
 108 child's parent or parents who are domiciled outside this state
 109 is not prima facie evidence of the dependent child's legal
 110 residence if that dependent child has lived in this state for 3
 111 ~~5~~ consecutive years before ~~prior to~~ enrolling or reregistering
 112 at the institution of higher education at which resident status
 113 for tuition purposes is sought.

114 (5) A person who physically resides in this state may be
 115 classified as a resident for tuition purposes if he or she
 116 marries a person who meets the 12-month residency requirement
 117 under subsection (2) and otherwise qualifies as a resident for
 118 tuition purposes under this section ~~In making a domiciliary~~
 119 ~~determination related to the classification of a person as a~~
 120 ~~resident or nonresident for tuition purposes, the domicile of a~~
 121 ~~married person, irrespective of sex, shall be determined, as in~~
 122 ~~the case of an unmarried person, by reference to all relevant~~
 123 ~~evidence of domiciliary intent. For the purposes of this~~
 124 ~~section:~~

125 ~~(a) A person shall not be precluded from establishing or~~
 126 ~~maintaining legal residence in this state and subsequently~~
 127 ~~qualifying or continuing to qualify as a resident for tuition~~
 128 ~~purposes solely by reason of marriage to a person domiciled~~
 129 ~~outside this state, even when that person's spouse continues to~~
 130 ~~be domiciled outside of this state, provided such person~~

131 ~~maintains his or her legal residence in this state.~~

132 ~~(b) A person shall not be deemed to have established or~~
 133 ~~maintained a legal residence in this state and subsequently to~~
 134 ~~have qualified or continued to qualify as a resident for tuition~~
 135 ~~purposes solely by reason of marriage to a person domiciled in~~
 136 ~~this state.~~

137 ~~(c) In determining the domicile of a married person,~~
 138 ~~irrespective of sex, the fact of the marriage and the place of~~
 139 ~~domicile of such person's spouse shall be deemed relevant~~
 140 ~~evidence to be considered in ascertaining domiciliary intent.~~

141 (6)

142 (d) A person classified as a nonresident for tuition
 143 purposes may be reclassified as a resident by subsequently
 144 marrying a person who meets the criteria to establish residency
 145 for tuition purposes. In order to be reclassified, a person must
 146 submit all of the following:

147 1. Evidence of his or her own physical residence in this
 148 state.

149 2. Evidence of marriage to a person who qualifies as a
 150 resident for tuition purposes under this section.

151 3. Documentation to support his or her spouse's residency
 152 classification. ~~A person who is classified as a nonresident for~~
 153 ~~tuition purposes and who marries a legal resident of the state~~
 154 ~~or marries a person who becomes a legal resident of the state~~
 155 ~~may, upon becoming a legal resident of the state, become~~
 156 ~~eligible for reclassification as a resident for tuition purposes~~

157 ~~upon submitting evidence of his or her own legal residency in~~
 158 ~~the state, evidence of his or her marriage to a person who is a~~
 159 ~~legal resident of the state, and evidence of the spouse's legal~~
 160 ~~residence in the state for at least 12 consecutive months~~
 161 ~~immediately preceding the application for reclassification.~~

162 (8) After a student has been classified as a resident for
 163 tuition purposes, an institution of higher education is not
 164 required to reevaluate the classification unless inconsistent
 165 information suggests that an erroneous classification was made
 166 or the student breaks enrollment from the institution for a
 167 period of 12 months or longer. ~~A person who has been properly~~
 168 ~~classified as a resident for tuition purposes but who, while~~
 169 ~~enrolled in an institution of higher education in this state,~~
 170 ~~loses his or her resident tuition status because the person or,~~
 171 ~~if he or she is a dependent child, the person's parent or~~
 172 ~~parents establish domicile or legal residence elsewhere shall~~
 173 ~~continue to enjoy the in-state tuition rate for a statutory~~
 174 ~~grace period, which period shall be measured from the date on~~
 175 ~~which the circumstances arose that culminated in the loss of~~
 176 ~~resident tuition status and shall continue for 12 months.~~
 177 ~~However, if the 12-month grace period ends during a semester or~~
 178 ~~academic term for which such former resident is enrolled, such~~
 179 ~~grace period shall be extended to the end of that semester or~~
 180 ~~academic term.~~

181 (10) The following persons shall be classified as
 182 residents for tuition purposes:

183 (a) Active duty members of the Armed Services of the
 184 United States residing or stationed in this state, their
 185 spouses, and dependent children, and active drilling members of
 186 the Florida National Guard.

187 (b) Active duty members of the Armed Services of the
 188 United States and their spouses and dependents attending a
 189 Florida College System institution or state university within 50
 190 miles of the military establishment where they are stationed, if
 191 such military establishment is within a county contiguous to
 192 Florida.

193 (c) Veterans of the Armed Services of the United States,
 194 including reserve components thereof, who were honorably
 195 discharged and who physically reside in this state while
 196 enrolled in an institution of higher education.

197 (d)~~(e)~~ United States citizens living on the Isthmus of
 198 Panama, who have completed 12 consecutive months of college work
 199 at the Florida State University Panama Canal Branch, and their
 200 spouses and dependent children.

201 (e)~~(d)~~ Full-time instructional and administrative
 202 personnel employed by state public schools and institutions of
 203 higher education and their spouses and dependent children.

204 (f)~~(e)~~ Students from Latin America and the Caribbean who
 205 receive scholarships from the federal or state government. Any
 206 student classified pursuant to this paragraph shall attend, on a
 207 full-time basis, a Florida institution of higher education.

208 (g)~~(f)~~ Southern Regional Education Board's Academic Common

209 Market graduate students attending Florida's state universities.

210 ~~(h)(g)~~ Full-time employees of state agencies or political
 211 subdivisions of the state when the student fees are paid by the
 212 state agency or political subdivision for the purpose of job-
 213 related law enforcement or corrections training.

214 ~~(i)(h)~~ McKnight Doctoral Fellows and Finalists who are
 215 United States citizens.

216 ~~(j)(i)~~ United States citizens living outside the United
 217 States who are teaching at a Department of Defense Dependent
 218 School or in an American International School and who enroll in
 219 a graduate level education program which leads to a Florida
 220 teaching certificate.

221 ~~(k)(j)~~ Active duty members of the Canadian military
 222 residing or stationed in this state under the North American Air
 223 Defense (NORAD) agreement, and their spouses and dependent
 224 children, attending a Florida College System institution or
 225 state university within 50 miles of the military establishment
 226 where they are stationed.

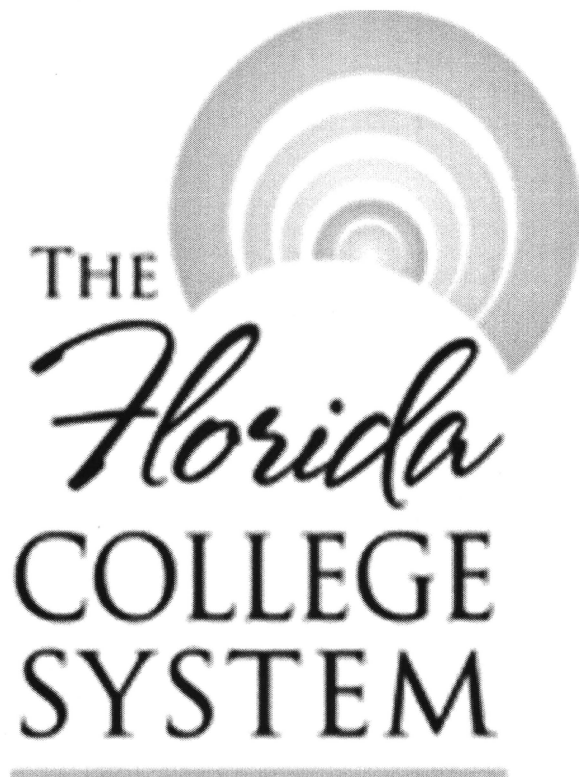
227 ~~(l)~~(k) Active duty members of a foreign nation's military
 228 who are serving as liaison officers and are residing or
 229 stationed in this state, and their spouses and dependent
 230 children, attending a Florida College System institution or
 231 state university within 50 miles of the military establishment
 232 where the foreign liaison officer is stationed.

233 (m) Persons who receive a tuition exemption or waiver
 234 under s. 112.19(3), s. 112.191(3), s. 961.06(1)(b), s.

235 1009.25(1)(c), (d), or (f), or s. 1009.26(8) or (10).
 236 (n) Students who attend a secondary school in this state
 237 for 3 consecutive years immediately before high school
 238 graduation, apply for enrollment in an institution of higher
 239 education within 24 months after graduation, and submit an
 240 official Florida high school transcript as documentary evidence
 241 of residence in this state. Students who are classified as
 242 residents for tuition purposes under this paragraph must also
 243 provide proof of United States citizenship to be eligible for
 244 state financial aid pursuant to s. 1009.40.

245 (13) The State Board of Education shall adopt rules, and
 246 the Board of Governors shall adopt regulations, ~~rules~~ to
 247 implement this section.

248 Section 2. This act shall take effect July 1, 2014.



**Florida College System
Council of Presidents**

**Subcommittee
on Higher Education and
Workforce**

February 19, 2014

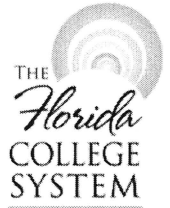
Guiding Principles

- Use metrics that align with FCS Strategic Plan
- Recognize the uniqueness of each institution regarding its mission, size, and service region
- Reward sustained excellence and continuous improvement
- Award amounts will be meaningful to drive institutional improvements for student success

Key Components

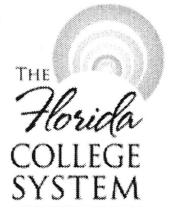
- Funds allocated based on 7 metrics
- Institutions evaluated on excellence **and** improvement for each metric
- Performance funds by college will be determined each year based on performance from the previous year
- Establish 2014-15 as a “pilot” year for performance funding

Measures with Benchmarks



Points	EXCELLENCE <i>(Achieving System Goals)</i>					IMPROVEMENT <i>(Recognizing Annual Improvement)</i>									
	5	4	3	2	1	5	4	3	2	1					
1	Student Transfer Rates (associate degree graduate students transferred within 2 years to a FCS institution or state university)					60.5%	55.5%	50.5%	45.5%	40.5%	5%	4%	3%	2%	1%
2	Student Retention Rates (3-yr average):										5%	4%	3%	2%	1%
	AA Degree					67.5%	62.5%	57.5%	52.5%	47.5%					
	AAS/AS Programs					59.7%	54.7%	49.7%	44.7%	39.7%					
3	Completion Rates (Full-Time FTIC cohort – 4yr)					43.5%	38.5%	33.5%	28.5%	23.5%	5%	4%	3%	2%	1%
4	Graduates Employed (within State of Florida in one year)					66.6%	61.6%	56.6%	51.6%	46.6%	5%	4%	3%	2%	1%
5	Average Entry Level Wages (FCS graduate entry level wage versus average entry level wage by service area)					92.4%	87.4%	82.4%	77.4%	72.4%	5%	4%	3%	2%	1%
6	Cost per graduate Cost over 5-year average					95%	100%	105%	110%	115%	5%	4%	3%	2%	1%
7	Time to Degree Completion:										5%	4%	3%	2%	1%
	With Acceleration					2.76	2.90	3.04	3.20	3.35					
	Without Acceleration					4.36	4.58	4.81	5.05	5.30					

\$40 Million New Total Performance Funding Scenario

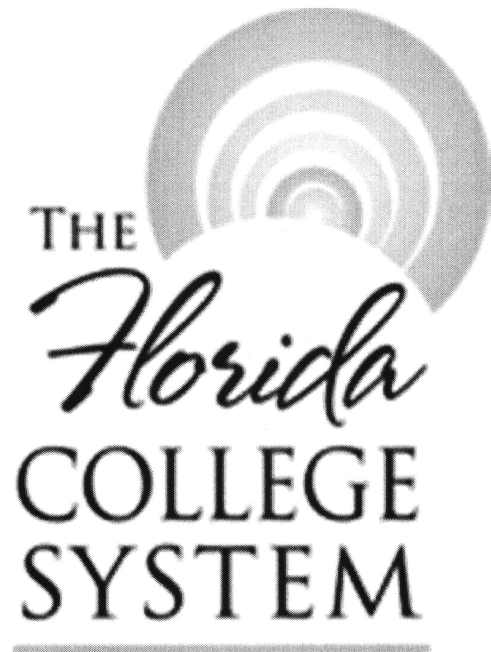


College	Total Points All (70 points)	Distribution Index Numeric Weight	Weighted Points	Perf. Funding Allocation %	*Potential Award	Total Performance Funding	Difference Potential Award & Performance Funding
Miami Dade College	50.0	26.1	1305.0	15.6%	5,094,129	6,244,094	1,149,965
Seminole State College of Florida	47.5	8.4	399.0	4.8%	1,647,159	1,909,114	261,955
Saint Petersburg College	47.0	12.2	573.4	6.9%	2,375,182	2,743,573	368,392
Valencia College	44.5	17.1	761.0	9.1%	3,337,599	3,640,953	303,354
Eastern Florida State College	43.5	8.1	352.4	4.2%	1,585,859	1,685,905	100,046
Tallahassee Community College	43.5	7.2	313.2	3.7%	1,401,797	1,498,583	96,785
Lake-Sumter	42.5	2.5	106.3	1.3%	480,962	508,379	27,417
Broward College	42.0	17.9	751.8	9.0%	3,491,389	3,597,172	105,783
North Florida Community College	41.5	1.1	45.7	0.5%	221,994	218,424	(3,571)
College of Central Florida	41.0	4.4	180.4	2.2%	851,539	863,168	11,629
Pasco-Hernando Community College	39.5	4.1	162.0	1.9%	799,499	774,890	(24,609)
Pensacola State College	39.5	5.2	205.4	2.5%	1,016,473	982,787	(33,686)
Daytona State College	39.0	6.8	265.2	3.2%	1,323,217	1,268,915	(54,302)
Chipola	38.5	1.4	53.9	0.6%	266,873	257,898	(8,975)
FL State College at Jacksonville	38.5	12.8	492.8	5.9%	2,490,294	2,357,923	(132,371)
SCF, Manatee-Sarasota	38.5	5.3	204.1	2.4%	1,036,676	976,327	(60,348)
Saint Johns River State College	38.0	2.6	98.8	1.2%	499,144	472,733	(26,412)
Edison State College	37.5	7.1	266.3	3.2%	1,387,712	1,273,939	(113,773)
Florida Gateway College	36.5	2.3	84.0	1.0%	440,047	401,679	(38,367)
Santa Fe College	36.0	6.4	230.4	2.8%	1,252,588	1,102,406	(150,183)
South Florida State College	36.0	2.2	79.2	0.9%	422,540	378,952	(43,588)
Gulf Coast State College	35.5	1.5	53.3	0.6%	295,892	254,788	(41,104)
Indian River State College	34.5	6.6	227.7	2.7%	1,293,112	1,089,487	(203,625)
Palm Beach State College	34.5	12.5	431.3	5.2%	2,450,449	2,063,422	(387,027)
Florida Keys Community College	33.5	1.0	33.5	0.4%	195,263	160,289	(34,974)
Polk State College	33.0	4.5	148.5	1.8%	880,925	710,535	(170,391)
Northwest Florida State College	30.5	3.6	109.8	1.3%	697,434	525,365	(172,069)
Hillsborough Community College	30.0	14.2	426.0	5.1%	2,764,253	2,038,302	(725,951)
Totals	1092.0		8359.9	100.0%	40,000,000	40,000,000	0

*Potential award = amount if distributed through funding formula

Model Process

- Maximum of 70 points (10 points per metric)
- College's earn points for each of the measures based on excellence (5 points) and improvement (5 points)
- Potential award amounts are determined by using the distribution index from FCS funding formula
- Points earned are weighted using the numeric value of the distribution index from funding formula
- Funds are distributed using the weighted allocation percentage
- Funds for college's not earning up to the potential award amount are allocated to higher performing colleges



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