

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 470
Ways and Means

(Delegate Hixson, *et al.*)

Higher Education - Tuition Charges - Maryland High School Students

This bill exempts individuals who attended and graduated from Maryland high schools from paying nonresident tuition at public institutions of higher education in Maryland. Documented immigrants who are in the country on student visas do not qualify for the exemption, but otherwise the exemption applies regardless of residency status. The governing board of each public institution of higher education must adopt policies to implement the bill.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund expenditures for the Senator John A. Cade funding formula increase by at least \$778,400 in FY 2014 due to an increase in the enrollments of qualified in-state students at community colleges. General fund expenditures for Baltimore City Community College (BCCC) may also increase minimally beginning in FY 2014 (not shown below). Future year expenditure increases reflect growth in the number of qualified resident students attending community colleges and increasing per pupil appropriations for the Cade and BCCC formulas. Tuition revenues at public institutions of higher education are not materially affected. **This bill affects a mandated appropriation.**

| (in dollars) | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
|----------------|---------|---------|-------------|---------------|---------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 0 | 0 | 778,400 | 1,653,100 | 3,505,700 |
| Net Effect | \$0 | \$0 | (\$778,400) | (\$1,653,100) | (\$3,505,700) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: State aid for community colleges increases by at least \$778,400 in FY 2014. Community college tuition revenues are not materially affected. Community college expenditures may increase if enrollments increase significantly as a result of the bill.

Small Business Effect: Minimal.

Analysis

Bill Summary: To qualify for an exemption from paying nonresident tuition, an individual must have attended a secondary school in the State for at least two years; have graduated from a high school in the State or received the equivalent of a high school diploma in the State; register as an entering student at a public institution of higher education in Maryland no earlier than the fall 2011 semester; provide documentation that the individual or the individual's parent or guardian has had Maryland income tax withheld during the year prior to high school graduation; and make application to attend the institution within three years of high school graduation. An individual who qualifies for the exemption and is not a permanent resident must also provide an affidavit stating that the individual will file an application to become a permanent resident within 30 days after becoming eligible to do so.

Current Law: The Board of Regents for the University System of Maryland (USM) sets tuition policies for USM institutions, including the determination of which students are eligible for resident tuition. USM policies require individuals to have the legal ability under federal and Maryland law to live permanently in Maryland in order to qualify for in-state tuition rates. In general, these individuals qualify for in-state tuition when they can document that they have lived continuously in Maryland for at least 12 consecutive months.

The Board of Regents of Morgan State University and the Board of Trustees of St. Mary's College of Maryland set tuition policies for the institutions. The policies for the institutions are very similar to the USM policy. Both institutions require one year of residency in Maryland to qualify for in-state tuition rates.

Tuition policies at community colleges are set by State regulations and the boards of trustees for the colleges. There are three levels of tuition at community colleges: in-county, out-of-county, and out-of-state. In general, there is a three-month residency requirement for community colleges. Community college students who are considered Maryland residents for tuition purposes are included in the enrollment counts used to determine State aid to the colleges.

Because of their inability to establish permanent residency, many immigrants, both documented and undocumented, are considered nonresidents for tuition purposes regardless of how long they have lived in Maryland. Undocumented students are not eligible for federal student aid or loans as well as most State financial aid since they cannot legally establish State residency.

Background: HB 253 of 2003 would have extended in-state tuition benefits to undocumented and other immigrants who attended and graduated from Maryland high schools. The bill passed the General Assembly but was vetoed by the Governor. In his veto letter, Governor Ehrlich gave several policy reasons for vetoing the bill. First, the Governor stated that granting in-state status to undocumented immigrants violates the spirit of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and would reward illegal behavior. Second, the Governor raised concerns that the fiscal cost to the State was indeterminate and could be potentially large. He noted that additional community college students included in the enrollment counts would increase the State's obligations under the Senator John A. Cade funding formula. Finally, the Governor raised concerns that the bill would allow undocumented immigrants to take in-state slots from legal Maryland residents.

Other States

Since 2001, laws that allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education have been enacted in 10 states: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington; bills with similar intentions have been introduced in several other states. A November 2005 article in the *Boston Globe* reported that public four-year colleges in Texas have realized a sizable increase in the number of undocumented immigrants attending the schools since the enactment of the legislation, but that other states have seen only modest increases in the numbers. A report from the National Conference of State Legislatures notes that at least four of the states that have passed laws providing in-state tuition benefits to undocumented immigrants have since considered repealing the laws.

In late 2010, California's Supreme Court unanimously upheld a state statute allowing some undocumented students to pay in-state tuition at public colleges and universities, overturning an earlier decision by an appellate court. Under the California law, known as AB 540, documented and undocumented immigrant students qualify for in-state tuition if they attended a California high school for three years, graduated from a California high school, and sign an affidavit saying they will apply for permanent residency as soon as they are eligible. In the 2006-2007 school year, 1,639 University of California undergraduate and graduate students received in-state tuition under AB 540. About 70% of those students were in the United States legally, the remaining 30% were potentially undocumented, in the process of obtaining residency, or their status could not be

determined. While the California decision is not binding in other states, it may be a litmus test for future legal challenges such as currently unresolved suits in Nebraska and Texas.

Federal Law

Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept undocumented immigrants. In its decision, the court contended that denying an education to the children of undocumented immigrants would “foreclose any realistic possibility that they will contribute ... to the progress of our Nation.” However, since 1996, federal immigration law has prohibited undocumented immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain. To get around the federal law, states that have passed in-state tuition benefits for undocumented immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status.

Federal legislation called the Development, Relief and Education for Alien Minors Act of 2009 – or the DREAM Act – would have created a path to citizenship for certain immigrants who entered the United States illegally when they were younger than 16 and would have allowed those students to receive in-state tuition. In December 2010, the U.S. House of Representatives passed the DREAM Act; however, in the U.S. Senate it failed to get the necessary supermajority of 60 required to force a final vote on the legislation.

Maryland Tuition Rates

Proposed fall 2011 in-state and out-of-state tuition and fee rates for full-time undergraduates at the State’s public four-year institutions are shown in **Exhibit 1**.

Exhibit 1
In-state and Out-of-state Tuition and Mandatory Fees
Proposed Fall 2011 Rates

| | <u>In-state</u> | <u>Out-of-state</u> | <u>Difference</u> |
|-------------------------------------|-----------------|---------------------|-------------------|
| USM Institutions | | | |
| Coppin State | \$5,491 | \$15,096 | \$9,605 |
| UM Eastern Shore | 6,482 | 14,263 | 7,781 |
| Bowie State University | 6,309 | 16,850 | 10,541 |
| Salisbury University | 7,332 | 15,678 | 8,346 |
| Frostburg State University | 7,128 | 17,020 | 9,892 |
| Towson University | 7,906 | 19,418 | 11,512 |
| University of Baltimore | 7,495 | 17,446 | 9,951 |
| UM College Park | 8,655 | 25,795 | 17,140 |
| UM Baltimore County | 9,467 | 19,870 | 10,403 |
| UM University College | 5,869 | 11,989 | 6,120 |
| Other Public Four-year Institutions | | | |
| Morgan State University | 6,929 | 16,340 | 9,411 |
| St. Mary's College | 14,039 | 25,774 | 11,735 |

Source: Morgan State University, St. Mary's College, University System of Maryland; rates are pending final approval

The differences between the rates average more than \$10,000. Fall 2010 in-county, out-of-county, and out-of-state tuition rates for community colleges are shown in **Exhibit 2**. The exhibit shows that out-of-state rates at community colleges are generally two to three times the in-county tuition rates.

Exhibit 2
In-county, Out-of-county, and Out-of-state Tuition and Fees at Community Colleges
Based on 30 Credit Hours Per Year
Fall 2010

| <u>College</u> | <u>In-county</u> | <u>Out-of-county</u> | <u>Out-of-state</u> |
|------------------------|------------------|----------------------|---------------------|
| Allegany | \$3,414 | \$6,054 | \$7,194 |
| Anne Arundel | 3,010 | 5,440 | 9,340 |
| Baltimore City | 3,030 | 3,030 | 6,690 |
| Baltimore County | 3,402 | 6,132 | 8,982 |
| Carroll | 3,624 | 5,244 | 7,368 |
| Cecil | 2,940 | 5,640 | 6,990 |
| Chesapeake | 3,544 | 5,614 | 7,924 |
| College of Southern MD | 3,874 | 6,752 | 8,745 |
| Frederick | 3,621 | 7,221 | 9,621 |
| Garrett | 3,315 | 7,095 | 8,265 |
| Hagerstown | 3,320 | 5,000 | 6,500 |
| Harford | 2,755 | 5,215 | 7,675 |
| Howard | 4,063 | 6,553 | 7,903 |
| Montgomery | 4,272 | 8,304 | 11,184 |
| Prince George's | 4,045 | 6,175 | 8,815 |
| Wor-Wic | 2,898 | 6,138 | 7,518 |

Source: Maryland Association of Community Colleges

State Expenditures: General fund expenditures for the Senator John A. Cade funding formula increase beginning in fiscal 2014. The Cade formula determines aid to community colleges based on full-time equivalent (FTE) student enrollment counts from the second prior fiscal year. By regulation, only qualified Maryland residents are included in FTE enrollment counts. Allowing additional students to qualify as in-state students in fall 2011 (fiscal 2012) increases spending for the formula in fiscal 2014.

There is little information available on the number of additional students who might qualify for resident tuition, thus the general fund expenditure increase cannot be reliably estimated. However, it is assumed that at least 366 FTE students are added to the Cade formula enrollment count in fiscal 2014, with Cade funding expected to be approximately \$2,100 per FTE student in fiscal 2014. Under the current statutory formula, general fund

expenditures increase by at least \$778,400. This amount increases in future years as more students qualify for resident tuition. By fiscal 2016, the additional general fund expenditures resulting from the bill may exceed \$3.5 million. The following information and assumptions were used to calculate this estimate.

- Montgomery College has a policy of allowing students who graduated from a Montgomery County high school within three years of enrolling to qualify for in-county tuition regardless of immigration status. However, Montgomery College does not collect information on how many undocumented immigrants attend the college.
- Montgomery College reports that, in fiscal 2010, 732 of its students received in-county tuition, but they were not included in the FTE count to receive funding from the Cade formula.
- Credit hours at a community college may be ineligible to receive Cade funding for a number of reasons. According to regulations, a community college may not receive Cade funding for continuing education courses that have not received approval from the Maryland Higher Education Commission, recreational courses, for students who are younger than age 16 enrolled in continuing education courses, or for dually enrolled high school students. In addition, a community college may lack full documentation of a student's residency status for a variety of reasons.
- Therefore, many of the credit hours that Montgomery College did not submit for Cade funding could be attributable to U.S. citizens or legal immigrants. It is assumed for the purposes of this estimate that approximately half of the students, or 366, are undocumented immigrants.
- It is unknown how many students at other community colleges in the State may be undocumented immigrants. Community college policies toward these students vary from Montgomery College's policy to the Community College of Baltimore County's policy of not admitting undocumented immigrants. It is also unknown how many additional undocumented immigrants would choose to enroll knowing they would receive in-state tuition.
- Therefore, it is assumed that at least 366 additional students will qualify for resident tuition in future years.

General fund expenditures will increase more (less) than \$778,400 in fiscal 2014 if more (fewer) than 366 additional FTE students qualify for resident tuition in fall 2011 (fiscal 2012).

State funding for BCCC is also based on in-state FTE enrollment from the second prior fiscal year. For each additional student qualifying for in-state tuition rates in the 2011-2012 academic year, expenditures for the current BCCC formula in statute increase by an estimated \$6,200 in fiscal 2014. The number of additional qualifying students attending BCCC is not expected to be large.

Local Fiscal Effect: Unlike four-year institutions, community colleges have open enrollments and cannot control the proportion of in-county, out-of-county, and out-of-state students who attend the colleges. Any expansion in the definition of a resident student may, therefore, result in a decrease in community college tuition revenues. However, granting resident tuition rates may also attract students who qualify for reduced rates, thereby increasing enrollments and revenues. Overall, it is assumed that the bill has a negligible net impact on total community college tuition revenues. If enrollments increase significantly, however, community college expenditures to meet student needs may also increase.

Beginning in fiscal 2014, local community colleges receive additional State aid under the Senator John A. Cade funding formula for each additional student who attends a college and qualifies as a Maryland resident. The increases cannot be reliably estimated but are expected to be at least \$778,400 in fiscal 2014 and at least \$3.5 million by fiscal 2016.

Additional Information

Prior Introductions: HB 612 of 2009 received a hearing in the House Ways and Means Committee, but no further action was taken by the committee. Similar legislation has been introduced in prior years, including HB 253 of 2003, which was passed by the General Assembly and vetoed by the Governor.

Cross File: SB 167 (Senator Ramirez, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Higher Education Commission, Morgan State University, University System of Maryland, Maryland Association of Community Colleges, Baltimore City Community College, Montgomery College, Community College of Baltimore County, National Conference of State Legislatures, *Los Angeles Times*, *Inside Higher Ed*, Department of Legislative Services

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