

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 655
Ways and Means

(Delegate McDonough, *et al.*)

Citizen's Tuition Protection Act

This bill prohibits public institutions of higher education from charging an undergraduate student who is a U.S. citizen a tuition rate that is higher than the rate charged to an undergraduate student who is not a U.S. citizen. The governing body of a public institution must adopt policies to implement the bill. The bill applies to the 2011-2012 academic year and each academic year thereafter.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Higher education tuition revenues for public four-year institutions of higher education may increase or decrease beginning in FY 2012, depending on the decisions of permanent immigrant students and students otherwise exempted from paying in-state tuition currently attending these institutions at in-state tuition rates. Baltimore City Community College (BCCC) tuition revenues may increase or decrease beginning in FY 2012, depending on the decisions of permanent immigrant students and students otherwise exempted from paying in-state tuition either currently attending or intending to attend BCCC at in-state tuition rates. Future year tuition revenues at public four-year institutions of higher education are not materially affected.

Local Effect: Community college tuition revenues may increase or decrease beginning in FY 2012, depending on the decisions of permanent immigrant students and students otherwise exempted from paying in-state tuition either currently attending or intending to attend a community college at in-state tuition rates.

Small Business Effect: None.

Analysis

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.

Certain military personnel and their spouses and dependents are exempt from paying out-of-state tuition at public higher education institutions under State law, including active duty military, an honorably discharged military veteran, or a member of the Maryland National Guard.

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.

USM reports that there are approximately 1,900 non-U.S. citizens, including permanent residents and various non-immigrant visa holders, being charged in-state tuition due to statutory exemptions. For example, enlisted non-U.S. citizens with the appropriate visa for military service receive the in-state tuition rate. Under the bill, Legislative Services believes these students would no longer be eligible for in-state tuition.

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, the U.S. Senate 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 Revenues: Relatively few non-U.S. citizens currently qualify for in-state tuition rates at public four-year institutions based on their status as permanent immigrants or due to statutory exemptions such as military service. If this bill passes, it is assumed that public four-year institutions will charge these students out-of-state rates in order to comply with the bill. As a result, higher education tuition revenues increase for each permanent immigrant student who decides to stay in college and pay out-of-state tuition rates but decrease for each student who drops out of college due to inability or unwillingness to pay the higher out-of-state rates. In total, the net impact on tuition revenues is expected to be minimal.

Future year tuition revenues at public four-year institutions of higher education are not materially affected because public four-year institutions of higher education can choose to admit a mix of students that includes a certain percentage of in-state and out-of-state students.

If BCCC has been offering in-state tuition to non-U.S. citizens, then higher education tuition revenues increase for each student who decides to stay in college or enroll in college and pay out-of-state tuition rates but decrease for each student who drops out of college or not enroll due to inability or unwillingness to pay the higher out-of-state rates.

Local Revenues: 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. Community college policies toward undocumented students vary from Montgomery College's 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 to the Community College of Baltimore County's policy of not admitting undocumented immigrants. It is unknown how many undocumented immigrants will choose to enroll at community colleges that currently offer them in-state tuition if they would be required to paid out-of-state tuition.

For each permanent immigrant student or otherwise exempted student who decides to attend, tuition revenues at schools that previously offered them in-state tuition increase beginning in fiscal 2012. However, tuition revenues decrease for each student who drops out of college or decides not to enroll due to inability or unwillingness to pay the higher out-of-state rates. In total, the net impact on tuition revenues is expected to be minimal.

Additional Information

Prior Introductions: SB 15 of 2008 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: None.

Information Source(s): University System of Maryland, National Conference of State Legislatures, *Los Angeles Times*, *Inside Higher Ed*, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2011
ncs/rhh

Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510