

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

House Bill 1171  
 Ways and Means

(Delegate Hixson, *et al.*)

Budget and Taxation

**Higher Education - Tuition Charges - Maryland High School Students**

This bill exempts undocumented immigrants who attended and graduated from Maryland high schools from paying nonresident tuition at public institutions of higher education in Maryland. The Maryland Higher Education Commission must adopt regulations to implement the bill.

The bill takes effect July 1, 2004.

**Fiscal Summary**

**State Effect:** General fund expenditures for the Senator John A. Cade funding formula would increase by an estimated \$498,700 in FY 2007 due to an increase in the enrollments of in-state students at community colleges. Future year expenditure estimates reflect projected increases in undocumented immigrants attending community colleges and increased per pupil appropriations for the Cade formula. Tuition revenues at public institutions of higher education would not be materially affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	498,700	559,000	627,200
Net Effect	\$0	\$0	(\$498,700)	(\$559,000)	(\$627,200)

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

**Local Effect:** State aid for community colleges could increase by an estimated \$498,700 in FY 2007, rising to \$627,200 by FY 2009. Community college tuition revenues would not be materially affected.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** The bill exempts an undocumented immigrant from paying nonresident tuition at a Maryland public institution of higher education if the individual: (1) attended a secondary school in the State for at least three years; (2) graduated from a high school in the State or received the equivalent of a high school diploma in the State; (3) makes application to attend the institution within five years of high school graduation; and (4) registers as an entering student for the fall 2004 semester or later. To qualify, an individual must provide documentation showing that the individual or the individual's parent or guardian paid Maryland income tax during the year prior to the individual's graduation. In addition, the individual must 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.

A public institution of higher education may not award a degree to an individual who qualifies for resident tuition under the bill unless the individual files the required affidavit or pays the difference between the tuition charges for a nonresident student and a resident student.

**Current Law:** For institutions within the University System of Maryland (USM), the Board of Regents sets tuition policies, including the determination of which students are eligible for resident tuition. The basic policy requires students to be identified as permanent residents of Maryland to qualify for resident tuition, meaning they have lived continuously in the State for at least 12 months immediately prior to attendance at a USM institution.

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 policies. Both institutions require one year of residency in Maryland to qualify for in-state tuition rates.

Tuition policies at community colleges are set by COMAR 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. Individuals who are considered Maryland residents for tuition purposes at community colleges are included in the count used to determine State aid to the colleges.

Because of their inability to establish legal residency, undocumented immigrants are considered nonresidents for tuition purposes regardless of how long they have lived in Maryland.

**Background:** HB 253 of 2003 would have extended in-state tuition privileges to undocumented 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, the Governor gave several policy reasons for vetoing the bill. First, the Governor stated that granting in-state status to illegal immigrants violates the spirit of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and would reward illegal behavior. Secondly, 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.

Laws that allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education have been enacted within the last three years in California, Illinois, New York, Oklahoma, Texas, Utah, and Washington, and bills with similar intentions have been introduced in several other states. In contrast, the Virginia General Assembly passed legislation last year that specifically excluded undocumented aliens from qualifying for in-state tuition rates; however, the bill was vetoed by Virginia's Governor.

Public elementary and secondary schools are required by federal law to accept undocumented immigrants, and students are accepted at institutions of higher education regardless of their residency statuses. However, federal immigration law prohibits undocumented immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain, including in-state tuition rates. To address this issue, states have crafted legislation that bases eligibility on where a student went to high school, not immigration status.

The differences between in-state and out-of-state undergraduate tuition rates at Maryland's four-year public institutions of higher education are shown in **Exhibit 1**. Fall 2003 in-county, out-of-county, and out-of-state tuition rates for community colleges are shown in **Exhibit 2**.

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**Exhibit 1**  
**In-state and Out-of-state Tuition and Mandatory Fees**  
**Proposed Fall 2004 Rates**

	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
USM Institutions			
Coppin State College	\$4,454	\$10,626	\$6,172
UM Eastern Shore	5,558	11,421	5,863
Bowie State University	5,218	13,583	8,365
Salisbury University	5,976	13,554	7,578
Frostburg State University	5,830	13,374	7,544
Towson University	6,672	15,352	8,680
University of Baltimore	6,448	17,791	11,343
UM College Park	7,426	18,726	11,300
UM Baltimore County	8,020	15,620	7,600
UM University College*	5,304	9,768	4,464
Other Public Four-year Institutions			
Morgan State University	\$5,578	\$12,748	\$7,170
St. Mary's College	8,847	15,483	6,636

\* Based on 24 credit hours.

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**Exhibit 2**  
**In-county, Out-of-county, and Out-of-state Tuition Rates at Community Colleges**  
**Fiscal 2004**

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$2,550	\$5,010	\$5,910
Anne Arundel	1,980	3,570	6,240
Baltimore City	2,070	2,070	4,770
Baltimore County	2,310	4,500	6,150
Carroll	2,460	3,840	5,850
Cecil	2,250	4,950	6,300
Chesapeake	2,250	3,060	4,170
College of Southern Md	2,610	4,500	6,000
Frederick	2,400	5,310	7,350
Garrett	2,280	4,950	6,240
Hagerstown	2,430	3,900	5,130
Harford	2,250	4,500	6,750
Howard	2,700	5,340	6,690
Montgomery	2,580	5,310	7,080
Prince George's	2,490	4,200	6,660
Wor-Wic	2,040	5,130	6,000

Source: Maryland Association of Community Colleges

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**State Revenues:** This bill would grant resident tuition to undocumented immigrants, a category of individuals who do not currently qualify for in-state tuition rates. Despite the differences in tuition levels between in-state and out-of-state students, tuition revenues at four-year public institutions of higher education would not be significantly affected by charging undocumented immigrants in-state tuition rates. Institutions have considerable authority over admissions and generally maintain fairly stable proportions of in-state and out-of-state students. The legislation does not affect this authority. As long as there are no major adjustments to the classification of students into in-state and out-of-state categories, institutions can adjust admissions to avoid any significant loss of tuition revenues. The bill only applies to students entering in the fall 2004 semester or later, which would give institutions time to determine whether students would be subject to in-state or out-of-state tuition rates. The addition of undocumented immigrants to the pool of in-state students as proposed in this legislation would only affect a small percentage of the student populations at four-year public institutions and would not reduce tuition revenues.

**State Expenditures:** General fund expenditures for the Senator John A. Cade funding formula would increase beginning in fiscal 2007. 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 2004 (fiscal 2005) would increase spending for the formula in fiscal 2007. The increase is estimated at \$498,690 in fiscal 2007 and \$627,186 by fiscal 2009. These estimates are based on the following information and assumptions.

- Montgomery College enrolls the largest number of foreign-born students among the community colleges and estimates that approximately 350 of its students could be undocumented immigrants. It is assumed that a total of 400 undocumented immigrant students would enroll in community colleges around the State in the 2004-2005 school year.
- Approximately 65% of community college enrollees are part-time students, and 35% are full-time students.
- Assuming an average FTE rate of 0.5 for part-time students, 270 additional FTE students would be included in the fiscal 2005 Cade formula count. This would increase fiscal 2007 Cade formula funding by an estimated \$498,690.
- Assuming 10% growth in the number of undocumented immigrants attending community colleges in the 2005-2006 and 2006-2007 school years, Cade formula expenditures would increase by an estimated \$558,954 in fiscal 2008 and \$627,186 in fiscal 2009.

**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 resident student could, therefore, result in a decrease in community college tuition revenues. However, granting resident tuition rates could also attract students who qualify for reduced rates, thereby increasing revenues. Overall, it is assumed that this bill would have a negligible impact on total community college tuition revenues.

Beginning in fiscal 2007, community colleges would 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 are estimated at \$498,690 for fiscal 2007, \$558,954 for fiscal 2008, and \$627,186 for fiscal 2009.

## **Additional Information**

**Prior Introductions:** HB 253 of 2003 would have extended resident tuition benefits to undocumented immigrants. The bill was passed by the General Assembly but was vetoed by the Governor. HB 426 of 2002, as introduced, would have had the same effect. The bill passed in the House with amendments that limited its application to community colleges; however, the bill was not reported out of the Senate Education, Health, and Environmental Affairs Committee.

**Cross File:** None.

**Information Source(s):** University System of Maryland, Maryland Higher Education Commission, Department of Legislative Services

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Analysis by: Mark W. Collins

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