

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE

House Bill 43 (Delegate Ramirez, *et al.*)  
 Ways and Means

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, 2006.

Fiscal Summary

**State Effect:** General fund expenditures for the Senator John A. Cade funding formula would increase by an estimated \$631,500 in FY 2009 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. General fund expenditures for the Baltimore City Community College (BCCC) could also increase minimally. Tuition revenues at most public institutions of higher education would not be materially affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	631,500	721,400	820,000
Net Effect	\$0	\$0	(\$631,500)	(\$721,400)	(\$820,000)

*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 \$631,500 in FY 2009, rising to \$820,000 by FY 2011. Community college tuition revenues would not be materially affected.

**Small Business Effect:** Minimal.

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## **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 2006 semester or later. To qualify, an individual must also 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 in the last several years in California, Illinois, Kansas, New Mexico, New York, Oklahoma, Texas, Utah, and Washington, and 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 February 2006 *Wall Street Journal* article reports that three states are considering repealing the laws, and lawsuits challenging the extension of in-state tuition benefits to undocumented immigrants are pending in two states. In addition, six states are considering legislation that would deny in-state tuition or state scholarships to undocumented immigrants

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. To address this issue, states have crafted legislation that bases eligibility on where a student went to high school, not immigration status. For more than two years Congress has considered legislation that would clarify the federal law and allow states to offer resident tuition rates to undocumented immigrants, but that legislation has stalled.

The difference between proposed fiscal 2007 in-State and out-of-state undergraduate tuition rates at each of Maryland's four-year public institutions of higher education is

shown in **Exhibit 1**. Fall 2005 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 2006 Rates**

	<u>In-State</u>	<u>Out-of-state</u>	<u>Difference</u>
USM Institutions			
Coppin State College	\$4,850	\$11,768	\$6,918
UM Eastern Shore	6,072	12,475	6,403
Bowie State University	5,923	15,249	9,326
Salisbury University	6,628	14,306	7,678
Frostburg State University	6,616	15,442	8,826
Towson University	7,398	16,522	9,124
University of Baltimore	7,074	18,920	11,846
UM College Park	8,201	21,345	13,144
UM Baltimore County	8,914	17,354	8,440
UM University College*	5,768	10,660	4,892
Other Public Four-year Institutions			
Morgan State University	\$6,369	\$13,915	\$7,546
St. Mary's College	11,695	21,265	9,570

\* Based on 24 credit hours.

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**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 2005**

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$2,894	\$5,354	\$6,254
Anne Arundel	2,770	5,050	8,740
Baltimore City	2,550	2,550	5,250
Baltimore County	2,986	4,876	6,526
Carroll	3,234	4,476	6,788
Cecil	2,730	5,430	6,780
Chesapeake	2,944	4,864	7,024

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
College of Southern MD	3,312	5,760	7,236
Frederick	2,889	5,949	7,959
Garrett	2,910	6,030	7,110
Hagerstown	3,000	4,590	5,910
Harford	2,475	4,725	6,975
Howard	3,578	6,068	7,418
Montgomery	3,708	7,236	9,612
Prince George's	3,710	5,840	8,480
Wor-Wic	2,246	5,576	6,508

Source: Maryland Association of Community Colleges

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**State Revenues:** This bill would grant resident tuition privileges 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 most public four-year institutions of higher education will not be significantly affected. 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 proportion of students who qualify for resident tuition rates, institutions can adjust admissions to avoid any significant loss of tuition revenues.

Unlike other four-year institutions, University of Maryland University College (UMUC) applicants who meet minimum admission criteria are automatically accepted regardless of their residency status. The bill could, therefore, have an impact on UMUC revenues. UMUC revenues will decrease by \$4,892 for each full-time equivalent (FTE) student who qualifies for resident tuition under the bill in the 2006-2007 school year. The revenue loss could be partially offset by increased revenues that would be realized if the bill enables more undocumented immigrants to attend UMUC. The number of individuals who would qualify for in-State residency status and attend UMUC cannot be reliably estimated but is not expected to be large.

**State Expenditures:** General fund expenditures for the Senator John A. Cade funding formula would increase beginning in fiscal 2009. The Cade formula determines aid to community colleges based on 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 2006 (fiscal 2007) would increase spending for the formula in fiscal 2009. The increase is estimated at \$631,530 in fiscal 2007 and \$820,017 by fiscal 2011. 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 has estimated that approximately 350 of its students could be undocumented immigrants. It is assumed that a total of 400 undocumented immigrant students would enroll in local community colleges around the State in the 2006-2007 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 Cade formula count in the 2006-2007 school year. This would increase fiscal 2009 Cade formula funding by an estimated \$631,530.
- Assuming 10% growth in the number of undocumented immigrants attending community colleges in the 2007-2008 and 2008-2009 school years, Cade formula expenditures would increase by an estimated \$721,413 in fiscal 2010 and \$820,017 in fiscal 2011.

State funding for the Baltimore City Community College 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 2006-2007 school year, expenditures for the BCCC formula would increase by \$6,174 in fiscal 2009. The number of undocumented immigrants attending BCCC is not expected to be significant.

**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 2009, local 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 \$631,530 for fiscal 2009, \$721,413 for fiscal 2010, and \$820,017 for fiscal 2011.

## Additional Information

**Prior Introductions:** This bill was most recently introduced as HB 1171 of 2004. The bill passed in the House but received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. A similar bill was introduced as HB 253 in 2003 and was passed by the General Assembly; however, the Governor vetoed the bill. 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, but the Senate Education, Health, and Environmental Affairs Committee took no action on the bill.

**Cross File:** None.

**Information Source(s):** University System of Maryland, Maryland Higher Education Commission, Office of the Comptroller, *Boston Globe*, *Wall Street Journal*, Department of Legislative Services

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Analysis by: Mark W. Collins

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