

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 1236
 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, 2008.

Fiscal Summary

State Effect: General fund expenditures for the Senator John A. Cade funding formula would increase by at least \$418,500 in FY 2011 due to an increase in the enrollments of qualified in-state students at community colleges. General fund expenditures for Baltimore City Community College could also increase minimally beginning in FY 2011 (not shown below). Future year expenditure increases would 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 would not be materially affected.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	418,500	918,700	1,243,400
Net Effect	\$0	\$0	(\$418,500)	(\$918,700)	(\$1,243,400)

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

Local Effect: State aid for community colleges would increase by at least \$418,500 in FY 2011. Community college tuition revenues would not be materially affected. Community college expenditures could 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 2008 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 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.

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, the Governor 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. 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.

Since 2001, laws that allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education have been enacted in California, Illinois, Kansas, Nebraska, 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 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.

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. Although federal legislation that would clarify immigration laws and allow states to offer resident tuition rates to undocumented immigrants has been introduced, the measure has continually stalled in Congress.

Proposed fall 2008 in-state and out-of-state tuition and fee rates for full-time undergraduates at the State's four-year public institutions are shown in **Exhibit 1**. The differences between the rates average nearly \$10,000. Fall 2007 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 1
In-state and Out-of-state Tuition and Mandatory Fees
Proposed Fall 2008 Rates

	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
USM Institutions			
Coppin State University	\$5,140	\$13,365	\$8,225
UM Eastern Shore	6,042	12,830	6,788
Bowie State University	6,005	16,226	10,221
Salisbury University	6,442	14,744	8,302
Frostburg State University	6,614	16,810	10,196
Towson University	7,314	17,860	10,546
University of Baltimore	7,054	20,559	13,505
UM College Park	8,005	23,076	15,071
UM Baltimore County	8,780	17,512	8,732
UM University College*	5,760	12,000	6,240
Other Public Four-year Institutions			
Morgan State University	6,420	14,871	8,451
St. Mary's College	12,604	23,454	10,850

* Based on 24 credit hours.

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 2007

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegheny	\$3,074	\$5,534	\$6,434
Anne Arundel	2,860	5,230	9,040
Baltimore City	2,750	2,750	5,450
Baltimore County	3,056	5,576	7,436
Carroll	3,240	4,476	6,788
Cecil	2,940	5,630	6,980
Chesapeake	3,094	5,164	7,474
College of Southern MD	3,102	5,904	7,524
Frederick	3,028	6,178	8,278
Garrett	2,970	6,180	7,260
Hagerstown	3,120	4,770	6,180
Harford	2,541	4,851	7,161
Howard	3,993	6,483	7,833
Montgomery	3,876	7,512	9,996
Prince George's	3,710	5,990	8,630
Wor-Wic	2,404	5,884	6,716

Source: Maryland Association of Community Colleges

State Revenues: This bill would grant resident tuition privileges to some immigrants 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 applicants who qualify for resident tuition rates, institutions can adjust admissions to avoid any significant loss of tuition revenues.

The bill would also apply to some permanent U.S. residents who attended high school in Maryland but left the State before attending college, thus forfeiting their opportunity to attend public institutions of higher education at in-state prices. Again, the number of

students who would meet this condition is assumed to be relatively small and is not expected to have a significant impact on 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 statuses. The bill could, therefore, have an impact on UMUC revenues. UMUC revenues will decrease by \$6,240 for each full-time equivalent (FTE) student who qualifies for resident tuition under the bill in the 2008-2009 school year. The revenue loss could be partially offset by the increased revenues that would be realized if the bill enables more students to attend UMUC at the lower, in-state cost. 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 2011. 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 2008 (fiscal 2009) would increase spending for the formula in fiscal 2011.

Because so little information is available on the number of additional students who might qualify as resident students, the general fund expenditure increase cannot be reliably estimated. However, based on information that is now several years old, it is assumed that at least 135 FTE students would be included in the Cade formula enrollment count in fiscal 2011. With Cade funding expected to approach \$3,100 per FTE student in fiscal 2011, general fund expenditures would increase by at least \$418,500. This amount would increase in future years as more students would qualify for resident tuition. By fiscal 2013, the additional general fund expenditures resulting from this bill could exceed \$1.2 million.

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 2008-2009 school year, expenditures for the BCCC formula would increase by an estimated \$7,600 in fiscal 2011. 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 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 enrollments and revenues. Overall, it is assumed that this bill would have a negligible net impact on total community college tuition revenues. If enrollments increase significantly, however, community college expenditures to meet student needs could also increase.

Beginning in fiscal 2011, 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 cannot be reliably estimated but are expected to be at least \$418,500 in fiscal 2011 and at least \$1.2 million by fiscal 2013.

Additional Information

Prior Introductions: As amended and passed by the House of Delegates, HB 6 of 2007 was nearly identical to this bill. HB 6 received a hearing from the Senate Education, Health, and Environmental Affairs Committee, but the committee took no further action on the bill.

Similar bills were also considered in 2006 and each year from 2002 to 2004 with varying degrees of success. HB 43 of 2006 received a hearing from the House Ways and Means Committee, but no further action was taken on the bill. HB 1171 of 2004 passed in the House but received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. HB 253 of 2003 was passed by the General Assembly, but the Governor vetoed the bill. Finally, HB 426 of 2002 as introduced was similar to this bill. It 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 designated, although SB 591 (Senator Pinsky, *et al.*) is identical.

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

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