

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 612
 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, 2009.

Fiscal Summary

State Effect: General fund expenditures for the Senator John A. Cade funding formula increase by at least \$403,900 in FY 2012 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 2012 (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.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	403,900	860,400	1,330,800
Net Effect	\$0	\$0	(\$403,900)	(\$860,400)	(\$1,330,800)

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

Local Effect: State aid for community colleges increases by at least \$403,900 in FY 2012. 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 2009 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.

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.

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.

In late 2008, California's Supreme Court agreed to hear arguments on the constitutionality of the state law allowing undocumented students to pay in-state tuition at public colleges and universities. 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.

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 the U.S. Congress.

Proposed fall 2009 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 2008 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 2009 Rates

	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
USM Institutions			
Coppin State	\$5,276	\$13,971	\$8,695
UM Eastern Shore	6,072	13,296	7,224
Bowie State University	6,040	16,226	10,186
Salisbury University	6,618	15,114	8,496
Frostburg State University	6,684	16,880	10,196
Towson University	7,418	18,323	10,905
University of Baltimore	7,171	20,678	13,507
UM College Park	8,075	24,011	15,936
UM Baltimore County	8,872	18,213	9,341
UM University College*	5,760	12,000	6,240
Other Public Four-year Institutions			
Morgan State University	6,546	15,376	8,830
St. Mary's College	13,234	24,627	11,393

*Based on 24 credit hours.

Source: Governor's Budget Book, Fiscal 2010

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 2008

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$3,164	\$5,654	\$6,584
Anne Arundel	2,860	5,230	9,040
Baltimore City	3,077	3,077	6,737
Baltimore County	3,080	5,600	8,210
Carroll	3,407	4,925	6,926
Cecil	2,860	5,560	6,910
Chesapeake	3,304	5,374	7,684
College of Southern MD	3,616	6,310	8,155
Frederick	3,069	6,309	8,469
Garrett	2,970	6,510	7,590
Hagerstown	3,180	4,830	6,240
Harford	2,550	4,860	7,170
Howard	3,993	6,483	7,833
Montgomery	3,984	7,728	10,320
Prince George's	3,905	6,035	8,675
Wor-Wic	2,474	6,044	7,034

Source: Maryland Association of Community Colleges

State Revenues: The bill grants 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 are not significantly affected. Institutions have considerable authority over admissions and generally maintain fairly stable proportions of in-state and out-of-state students. The bill 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 also applies 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 may 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 may, therefore, have an impact on UMUC revenues. UMUC revenues decrease by \$6,240 for each full-time equivalent (FTE) student who qualifies for resident tuition under the bill in the 2009-2010 academic year. The revenue loss may be partially offset by the increased revenues realized if the bill enables more students to attend UMUC at the lower, in-state cost. The number of individuals who 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 increase beginning in fiscal 2012. 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 2009 (fiscal 2010) increases spending for the formula in fiscal 2012.

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 are added to the Cade formula enrollment count in fiscal 2012, with Cade funding expected to approach \$3,000 per FTE student in fiscal 2012. Under the current statutory formula, general fund expenditures increase by at least \$403,900. This amount increases in future years as more students qualify for resident tuition. By fiscal 2014, the additional general fund expenditures resulting from the bill may exceed \$1.3 million.

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 2009-2010 academic year, expenditures for the current BCCC formula in statute increase by an estimated \$7,200 in fiscal 2012. 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 2012, 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 \$403,900 in fiscal 2012 and at least \$1.3 million by fiscal 2014.

Additional Information

Prior Introductions: HB 1236 of 2008 received a hearing in the House Ways and Means Committee, but no further action was taken by the committee. HB 6 of 2007 passed the House of Delegates, but no action was taken by the Senate. 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: None.

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

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Analysis by: Caroline L. Boice

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