

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 802 (Delegate McDonough)
Ways and Means

Public Institutions of Higher Education - Resident Tuition - Determinations of Eligibility for Illegal Immigrants

This bill prohibits a public institution of higher education from determining if a prospective student who is not a United States citizen or permanent resident is eligible for the institution's in-state tuition rate until the institution has made a final determination on the admission applications of all other prospective students who are legal residents who applied during the same admission cycle. Prospective students who are in the country on student visas are exempt from this requirement. The governing board of each public institution of higher education must adopt appropriate policies to implement the bill.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: Higher education expenditures may increase minimally in FY 2010 to reprogram institutions' admissions databases. Revenues are not affected.

Local Effect: Community college finances are not materially affected because they have open-door, rolling admissions processes.

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.

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

Source: Governor's Budget Book, Fiscal 2010

*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 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 Expenditures: Higher education expenditures may increase minimally in fiscal 2010 to reprogram institutions' admissions databases. USM advises that at the majority of the institutions, the admissions processes and computer programming are designed to make an initial residency determination as part of the admissions review process for any applicant, regardless of their citizenship status. USM further advises that separating these processes creates inefficiencies and may require significant reprogramming of the admissions database system. Morgan State University and St. Mary's College of Maryland advise that the bill has no fiscal effect on their admissions processes. St. Mary's College of Maryland further advises that its admissions officers do not verify self-determined residency status during the admissions process.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City Community College, Maryland Higher Education Commission, Judiciary (Administrative Office of the Courts), Montgomery County, Morgan State University, St. Mary's College, University System of Maryland, National Conference of State Legislatures, *Los Angeles Times*, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2009
mlm/rhh

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