

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 167

(Senator Ramirez, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Public Institutions of Higher Education - Tuition Rates - Exemptions

This bill exempts individuals who attended and graduated from Maryland high schools from paying out-of-state tuition, and in certain instances out-of-county tuition, at community colleges in Maryland. Nonimmigrant aliens who are in the country on student visas do not qualify for the exemption, but otherwise the exemption applies regardless of residency status. An individual who graduates from or earns a certain number of credits from a community college under the bill is then exempt from paying nonresident (*i.e.*, out-of-state) tuition at a public senior higher education institution in Maryland under specified circumstances. The governing board of each public institution of higher education must adopt policies to implement the bill.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund expenditures for the Senator John A. Cade funding formula increase by at least \$778,400 in FY 2014 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 2014 (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 may be affected, with a potential significant loss of revenues for specific institutions beginning in FY 2013. **This bill affects a mandated appropriation.**

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Higher Ed Rev.	\$0	(-)	(-)	(-)	(-)
GF Expenditure	\$0	\$0	\$778,400	\$1,653,100	\$3,505,700
Net Effect	\$0	\$0	(\$778,400)	(\$1,653,100)	(\$3,505,700)

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

Local Effect: State aid for community colleges increases by at least \$778,400 in FY 2014. Community college tuition revenues may decline to the extent that additional individuals qualify for in-county rather than out-of-county tuition. Community college expenditures may increase if enrollments increase significantly as a result of the bill.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill also extends the time period from one to four years after discharge in which an honorably discharged veteran must submit specified documentation to qualify for an exemption from paying out-of-state tuition at a community college or public four-year institution.

To qualify for an exemption from paying *out-of-state* tuition at a community college, an individual must:

- beginning with the 2005-2006 school year, have attended a secondary school in the State for at least three years;
- beginning with the 2007-2008 school year, 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 community college in Maryland no earlier than the fall 2011 semester;
- provide documentation that the individual or the individual's parent or legal guardian has filed a Maryland income tax return annually for the three years while the individual attended a high school in the State, during any period between high school graduation and registration at a community college, and during the period of attendance at the community college; and
- register at a community college within four years of high school graduation.

An individual who qualifies for an 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. In addition, an individual who qualifies for an exemption and is required to register with the Selective Service System must provide documentation of the required registration.

An individual who meets the requirements described above is exempt from paying *out-of-county* tuition at a community college if the community college is supported by the county where the high school from which the individual graduated or that the individual most recently attended is located.

To be eligible to pay a rate equivalent to the *resident* tuition rate at a public senior higher education (four-year) institution, an individual must:

- have attended a community college not earlier than the 2010 fall semester and otherwise met the requirements for an exemption from paying the out-of-state tuition rate at a community college;
- have attained an associate's degree or achieved 60 credits at a community college in Maryland;
- provide the institution a copy of the affidavit stating that the individual will file an application to become a permanent resident within 30 days after becoming eligible to do so;
- provide documentation that the individual or the individual's parent or legal guardian has filed a Maryland income tax return annually while the individual attended a community college, during any period between graduation from or achieving 60 credits at a community college and registration at a public four-year institution, and during the period of attendance at an institution; and
- register at a public four-year institution within four years of graduating from or achieving 60 credits at a community college.

Students qualifying under the bill for tuition rates equivalent to the resident tuition rates at four-year institutions may not be counted as in-state students for the purposes of determining the number of Maryland undergraduate students enrolled at the institutions.

Information collected under the bill must remain confidential. Community colleges and public four-year institutions must keep a record of the number of individuals who pay resident tuition charges under the exemptions and annually report such information to the Maryland Higher Education Commission (MHEC). MHEC must annually compile and report the information to the General Assembly.

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. Undocumented students are not eligible for federal student aid or loans nor are they eligible for most State financial aid since they cannot legally establish State residency.

An honorably discharged veteran of the U.S. armed forces is exempt from paying nonresident tuition at a public institution of higher education in Maryland if the veteran presents *within one year after discharge* (1) evidence that the veteran attended a high school in Maryland for at least three years; and (2) documentation that the veteran graduated from a Maryland high school or received the equivalent of a high school diploma 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.

Other States

Since 2001, laws that allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education have been enacted in 11 states: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington, and Wisconsin; bills with similar intentions have been introduced in several other states. Oklahoma has amended its law to give the Oklahoma Board of Regents authority to set the state's policy. Currently, the Board of Regents allows undocumented students who meet the statutory requirements to pay in-state tuition. 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 eight of the states that have passed laws providing in-state tuition benefits to undocumented immigrants have since considered repealing the laws.

In late 2010, California's Supreme Court unanimously upheld a state statute allowing some undocumented students to pay in-state tuition at public colleges and universities, overturning an earlier decision by an appellate court. 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 such as currently unresolved suits in Nebraska and Texas.

Federal Law

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.

Federal legislation called the Development, Relief and Education for Alien Minors Act of 2009 – or the DREAM Act – would have created a path to citizenship for certain immigrants who entered the United States illegally when they were younger than 16 and would have allowed those students to receive in-state tuition. In December 2010, the U.S. House of Representatives passed the DREAM Act; however, in the U.S. Senate it failed to get the necessary supermajority of 60 required to force a final vote on the legislation.

Maryland Tuition Rates

Proposed fall 2011 in-state and out-of-state tuition and fee rates for full-time undergraduates at the State's public four-year institutions are shown in **Exhibit 1**.

Exhibit 1
In-state and Out-of-state Tuition and Mandatory Fees
Proposed Fall 2011 Rates

	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
USM Institutions			
Coppin State	\$5,491	\$15,096	\$9,605
UM Eastern Shore	6,482	14,263	7,781
Bowie State University	6,309	16,850	10,541
Salisbury University	7,332	15,678	8,346
Frostburg State University	7,128	17,020	9,892
Towson University	7,906	19,418	11,512
University of Baltimore	7,495	17,446	9,951
UM College Park	8,655	25,795	17,140
UM Baltimore County	9,467	19,870	10,403
UM University College	5,869	11,989	6,120
Other Public Four-year Institutions			
Morgan State University	6,929	16,340	9,411
St. Mary's College	14,039	25,774	11,735

Source: Morgan State University, St. Mary's College, University System of Maryland; rates are pending final approval

The differences between the rates average more than \$10,000. Fall 2010 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 2
In-county, Out-of-county, and Out-of-state Tuition and Fees at Community Colleges
Based on 30 Credit Hours Per Year
Fall 2010

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$3,414	\$6,054	\$7,194
Anne Arundel	3,010	5,440	9,340
Baltimore City	3,030	3,030	6,690
Baltimore County	3,402	6,132	8,982
Carroll	3,624	5,244	7,368
Cecil	2,940	5,640	6,990
Chesapeake	3,544	5,614	7,924
College of Southern MD	3,874	6,752	8,745
Frederick	3,621	7,221	9,621
Garrett	3,315	7,095	8,265
Hagerstown	3,320	5,000	6,500
Harford	2,755	5,215	7,675
Howard	4,063	6,553	7,903
Montgomery	4,272	8,304	11,184
Prince George's	4,045	6,175	8,815
Wor-Wic	2,898	6,138	7,518

Source: Maryland Association of Community Colleges

State Revenues: The bill grants in-state tuition to undocumented students who do not currently qualify for in-state tuition rates. Public four-year institutions have considerable autonomy over admissions and generally maintain fairly stable proportions of in-state and out-of-state students. The bill does not affect that autonomy. Therefore, despite the differences in tuition levels for in-state and out-of-state students, tuition revenues at most institutions will not be materially affected. As long as there are no major adjustments to the proportion of students who qualify for in-state tuition, institutions can adjust admissions to avoid any significant loss of tuition revenues.

The bill requires that undocumented students receiving the equivalent of resident tuition be counted as out-of-state students for the purposes of determining the proportion of undergraduate students enrolled at each public four-year institution. The University System of Maryland (USM) Board of Regents Policy on Undergraduate Admissions (III-4.00) limits out-of-state undergraduate enrollment to no more than 30% of each

institution's total undergraduate enrollment, excluding University of Maryland University College (UMUC) and students enrolled exclusively in distance education programs. The impact of this provision is a potential loss of the difference between in-state and out-of-state tuition and fee revenue for each undocumented student enrolled at a USM institution (except UMUC). At most USM institutions, out-of-state students make up no more than 10% of undergraduates so the impact of the bill will not be significant.

The impact may be significant at those campuses with out-of-state enrollment of 20% or more: Towson University; University of Maryland, College Park; and University of Maryland Eastern Shore. For these institutions, tuition revenues may decrease significantly depending on how many undocumented students enroll and pay in-state tuition. However, to the extent undocumented students would not have otherwise enrolled because they could not afford to pay out-of-state tuition, or the institutions increase undergraduate enrollment overall, the impact may be minimal.

As amended, the bill limits the potential impact on public four-year institutions because students must first attend a community college no earlier than the 2010 fall semester and receive an associate's degree or 60 credits before becoming eligible for in-state tuition at a public four-year institution. Any loss of tuition revenues, therefore, is not expected to start until fiscal 2013.

State Expenditures: General fund expenditures for the Senator John A. Cade funding formula increase beginning in fiscal 2014. 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 2011 (fiscal 2012) increases spending for the formula in fiscal 2014.

There is little information available on the number of additional students who might qualify for resident tuition, thus the general fund expenditure increase cannot be reliably estimated. However, it is assumed that at least 366 FTE students are added to the Cade formula enrollment count in fiscal 2014, with Cade funding expected to be approximately \$2,100 per FTE student in fiscal 2014. Under the current statutory formula, general fund expenditures increase by at least \$778,400. This amount increases in future years as more students qualify for resident tuition. By fiscal 2016, the additional general fund expenditures resulting from the bill may exceed \$3.5 million. The following information and assumptions were used to calculate this estimate.

- Montgomery College has a policy of allowing students who graduated from a Montgomery County high school within three years of enrolling to qualify for in-county tuition regardless of immigration status. However, Montgomery

College does not collect information on how many undocumented immigrants attend the college.

- Montgomery College reports that, in fiscal 2010, 732 of its students received in-county tuition, but they were not included in the FTE count to receive funding from the Cade formula.
- Credit hours at a community college may be ineligible to receive Cade funding for a number of reasons. According to regulations, a community college may not receive Cade funding for continuing education courses that have not received approval from MHEC, for recreational courses, for students who are younger than age 16 enrolled in continuing education courses, or for dually enrolled high school students. In addition, a community college may lack full documentation of a student's residency status for a variety of reasons.
- Therefore, many of the credit hours that Montgomery College did not submit for Cade funding could be attributable to U.S. citizens or legal immigrants. In addition, the bill sets a relatively high threshold to qualify for the exemption from paying out-of-state rates. It is assumed for the purposes of this estimate that approximately half of the students, or 366 FTE students, are undocumented immigrants who will qualify for the exemption.
- It is unknown how many students at other community colleges in the State may be undocumented immigrants. Community college policies toward these students vary from Montgomery College's policy to the Community College of Baltimore County's policy of not admitting undocumented immigrants. The Maryland Association of Community Colleges advises that most, if not all, colleges, except Montgomery College, charge out-of-state tuition rates to students who cannot legally establish Maryland residency. It is also unknown how many additional undocumented immigrants would choose to enroll knowing they would receive in-county tuition.
- Therefore, it is assumed that at least 366 additional students will qualify for in-county tuition in future years.

General fund expenditures will increase more (less) than \$778,400 in fiscal 2014 if more (fewer) than 366 additional FTE students qualify for resident tuition in fall 2011 (fiscal 2012). For each additional FTE student who qualifies under the bill and enrolls in a community college during the 2011-2012 academic year, general fund expenditures increase by approximately \$2,100 beginning in fiscal 2014. 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 2011-2012 academic year, expenditures for the current BCCC formula in statute increase by an estimated \$6,200 in fiscal 2014. The number of additional qualifying students attending BCCC is not expected to be large.

Looking at this another way, Montgomery College's audited financial statements for fiscal 2009 reported that 11,540 credit hours, or approximately 385 FTES, were attributable to noncounty residents who paid in-county tuition rates in the 2008-2009 academic year, the most recent year for which information is available. The data provide an alternative information source to estimate the fiscal impact of the bill and suggest that Legislative Services' assumption of 366 FTES from Montgomery College in the first year is not unreasonable.

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, community college expenditures to meet student needs may also increase.

Beginning in fiscal 2014, 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 \$778,400 in fiscal 2014 and at least \$3.5 million by fiscal 2016.

Additional Information

Prior Introductions: HB 612 of 2009, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken by the committee. 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: HB 470 (Delegate Hixson, *et al.*) – Ways and Means.

Information Source(s): Maryland Higher Education Commission, Morgan State University, University System of Maryland, Maryland Association of Community Colleges, Baltimore City Community College, Montgomery College, Community

College of Baltimore County, National Conference of State Legislatures, *Los Angeles Times*, *Inside Higher Ed*, judicialwatch.org, Department of Legislative Services

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