



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #812

### Nonresident Tuition Exemptions for Certain Undocumented Persons (UW System and WTCS)

[LFB 2009-11 Budget Summary: Page 600, #2 and Page 682, #7]

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#### CURRENT LAW

Any UW System student or Wisconsin Technical College System (WTCS) student who has been a bona fide Wisconsin resident for the 12 months preceding the beginning of a semester or session for which the student registers is charged resident tuition. All other students are charged nonresident tuition.

#### GOVERNOR

Provide that a person who is a citizen of another country is exempt from nonresident tuition if that person meets all of the following requirements: (a) the person graduated from a Wisconsin high school or received a high school graduation equivalency declaration from this state; (b) the person was continuously present in this state for at least three years following the first day of attending a Wisconsin high school or immediately preceding the receipt of a declaration of equivalency of high school graduation; and (c) the person enrolls in a technical college or a UW System institution and provides the college or institution with an affidavit that the person has filed or will file an application for a permanent resident visa with the U.S. Citizenship and Immigration Services as soon as the person is eligible to do so. Specify that this provision would first apply to persons who enroll for the semester or session following the bill's effective date.

#### DISCUSSION POINTS

1. Based on estimates from the Pew Hispanic Center, there were approximately 12

million undocumented persons living in the United States in 2005, the most recent year for which data is available. Of this number, an estimated 1.8 million are children. Under a 1982 U.S. Supreme Court decision, undocumented persons may not be denied access to primary and secondary education based on their legal status. Although actual numbers are unknown, it is estimated that 65,000 undocumented students graduate from high school each year. Based on these estimates, it is estimated that between 400 and 650 undocumented students graduate from Wisconsin high schools annually.

2. Under current law, undocumented students may enroll in UW institutions and Wisconsin technical colleges, however, these students are charged nonresident tuition and are not eligible for state or federal financial aid. Undocumented students attending UW System institutions may be eligible for institutional financial aid and could receive remissions of nonresident tuition under certain current law provisions. Under AB 75, undocumented students would continue to be ineligible for state financial aid programs.

3. Ten states currently have laws that permit undocumented students to be charged only the resident portion of tuition by either exempting certain undocumented students from paying nonresident tuition or considering certain undocumented students to be state residents for tuition purposes. These states are California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington. Generally, to be charged only the resident portion of tuition under these laws, an undocumented student must have graduated from a high school or earned a general-equivalency diploma in the state, have been continuously present in the state for two or three years, and have signed an affidavit pledging to seek permanent residence in the United States. The language in AB 75 would exempt certain undocumented students from paying nonresident tuition on the basis of similar criteria.

4. The value of a nonresident tuition exemption is equal to the difference between the resident and nonresident tuition rates. This would vary based on the system, institution, and program in which a student enrolls. For example, at WTCS institutions, the value of such an exemption would have been \$14,916 for a student enrolled in a vocational-adult program and \$7,022 for a student enrolled in a collegiate transfer program based on 2008-09 annual tuition rates. However, another provision of the budget bill that has already been approved by the Committee would set nonresident tuition at technical colleges at 150% of resident tuition. If this provision were to become law, the value of nonresident tuition exemptions would be significantly less, \$1,456 for a student enrolled in a vocational-adult program and \$1,972 for a student enrolled in a collegiate transfer program based on 2008-09 tuition rates. At UW System institutions, the value of such an exemption would have ranged from \$14,250 for an undergraduate student enrolled at UW-Madison to \$6,984 for an undergraduate student enrolled at a UW Colleges campus based on 2008-09 tuition levels. The value of nonresident tuition exemptions granted to graduate students could be greater. Under AB 75, the UW System and WTCS district boards would forego this nonresident tuition revenue.

5. This provision would only result in a decrease in tuition revenue for the UW System and technical colleges if there are undocumented students currently enrolled in these institutions

who are paying nonresident tuition. However, given that undocumented students tend to be lower-income and are ineligible for state or federal financial aid, it is unlikely that many undocumented persons are currently enrolled in UW System and WTCS institutions due to financial barriers. A study by the Urban Institute estimates that in states where undocumented students are charged nonresident tuition only 5% to 10% of undocumented high school graduates go on to enroll in college. As this provision could increase the number of undocumented students who enroll in the technical colleges and UW institutions, there could be a net increase in tuition revenues were this provision to be approved.

6. Resident tuition at the technical colleges and UW System institutions is set at an amount that is less than the full cost of educating a student. At the technical colleges, resident tuition charged for vocational-adult programs was 18.1% of total program costs in 2008-09 and resident tuition for collegiate transfer courses was 37.2% of costs. Similarly, resident undergraduate tuition at UW institutions was 57.3% of total costs on average in 2007-08. Program costs not covered by tuition revenues are funded through a combination of state and federal funds and local property taxes at the technical colleges and state funds at UW institutions. By comparison, nonresident students are charged tuition equal to or in excess of program costs. Nonresident students enrolled in technical colleges are charged 100% of costs by law, while in 2007-08, UW nonresident undergraduate tuition ranged from 111% to 174% of costs depending on the institution.

7. Neither the technical colleges nor the UW System are funded on a per student basis. In other words, state and local support for these institutions does not automatically increase when enrollments increase. If enrollments increase and additional state and local support is not provided, the amount of state and local support per student would decrease and the percentage of total costs paid by the students would increase, possibly leading to increases in resident tuition. However, given current enrollments at UW institutions and the technical colleges and the relatively low number of students who would be affected by this provision, it is unlikely that the provision would result in increased resident tuition rates.

8. By allowing undocumented students to be charged resident tuition, some suggest that this provision might violate federal immigration law. A provision of federal law (8 US Code s. 1623) prohibits states from offering postsecondary education benefits, such as resident tuition, to an undocumented person based on that person's residency in the state unless the state offers the benefit to all legal U.S. residents regardless of state residence.

9. Opponents of the AB 75 provision argue that it may be subject to litigation, as it provides different benefits to similarly situated persons based on citizenship status and could be challenged on equal protection grounds. If the provision is approved, a non-U.S. citizen would be eligible for a nonresident tuition exemption if he or she met the criteria specified by AB 75, even if he or she resided in a different state. However, under the proposal, a U.S. citizen who met the criteria specified by AB 75 but resided in a different state would not receive a nonresident tuition remission under this provision. In this way, AB 75 would create a benefit for non-U.S. citizens that would not be available to U.S. citizens.

10. Proponents of state laws that permit certain undocumented students to be charged only the resident portion of tuition assert that the existing laws conform to the federal law. They argue that since eligibility for resident tuition is not provided on the basis of state residency, but rather on the basis of whether the student attended and graduated from a high school in the state, these laws do not violate federal immigration law.

11. Court cases challenging laws that permit certain undocumented students to be charged only the resident portion of tuition have been brought in both state and federal courts. In September, 2008, a California appeals court ruled that the state's law allowing undocumented students to be exempted from nonresident tuition charges violates federal law. The outcome of this case is currently pending review by the California Supreme Court. However, if the California Supreme Court were to find that the California law violates the federal law, this decision would not be binding on the state of Wisconsin. A federal case, which challenged the Kansas law, was dismissed on the basis that the plaintiffs did not have standing. At present, no federal court has issued a decision regarding the legality of state laws that permit undocumented students to be charged resident tuition.

12. Proposed legislative changes at the federal level may make legal concerns related to this provision moot. A provision of the proposed federal development, relief, and education for alien minors (DREAM) Act would repeal the federal law prohibiting states from offering resident tuition to an undocumented person based on that person's residency in the state unless the state offers the benefit to all legal U.S. residents regardless of state residence. The DREAM Act was first introduced in 2001 and was most recently reintroduced in both the House and the Senate in March, 2009. However, if enacted into law, the DREAM Act would not require states to provide nonresident tuition exemptions to undocumented students.

## **ALTERNATIVES**

1. Approve the Governor's recommendation.
2. Delete provision.

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