



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #750

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

[LFB 2011-13 Budget Summary: Page 502, #14 and 535, #9]

CURRENT LAW

A person who is the citizen of another country is exempted 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 UW System institution or Wisconsin technical college and provides the institution or college with proof 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.

This provision was established in 2009 Act 28 (the 2009-11 budget).

GOVERNOR

Delete the current law provision exempting certain undocumented persons from nonresident tuition. 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. The UW System does not track the number of undocumented persons who have been exempted from nonresident tuition under this provision. However, the number of students who may be receiving nonresident tuition exemptions under this provision can be estimated using

data provided by students on their admission forms. Students applying for admission at UW institutions are asked if they are U.S. citizens and, if not, if they are refugees, resident aliens, visa holders, or if they intend to apply for a student visa. Students who are not U.S. citizens may also indicate that they do not belong to any of these categories by checking "other." These students may be undocumented persons. In fall, 2010, there were 66 undergraduate students and 1 graduate student enrolled in UW institutions who had checked "other" on the admission form and were charged resident tuition. This is an increase from fall, 2009, the first semester during which certain undocumented persons were eligible for nonresident tuition exemptions, when there were 19 enrolled undergraduate students who had checked "other" and were charged resident tuition. WTCS staff have indicated that five students received nonresident tuition exemptions under this provision in 2010-11.

2. UW System indicates that prior to fall, 2009, it did not track the number of students who checked "other" on the admission form. Without knowing how many undocumented students may have enrolled prior to the inclusion of this provision in state law, the change in tuition revenues attributable to this provision cannot be calculated. 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 enrolled in the UW institutions due to financial barriers prior to the inclusion of this provision in state law. If no undocumented persons enrolled in UW institutions prior to fall, 2009, any tuition paid by these students could be viewed as an increase in tuition revenue for UW institutions. Assuming that these students enrolled full-time, tuition and segregated fee revenues generated by these students could have totaled as much as \$240,000 in fall, 2010.

3. However, if there were undocumented students enrolled in UW institutions prior to the inclusion of this provision in state law, UW tuition revenues could have decreased. This decrease in tuition revenues would have been equal to the difference between resident and nonresident tuition multiplied by the number of undocumented persons who were enrolled. Assuming that additional undocumented students enrolled after the law change, tuition revenues generated by these additional students would have to be subtracted from the estimated decrease in revenues to determine the net change in tuition revenues attributable to the law change.

4. In fall, 2010, over a third of students who checked "other" and were charged resident tuition enrolled at UW-Milwaukee. Full-time undergraduate tuition at UW-Milwaukee in fall, 2010, was \$3,635 for resident students and \$8,499 for nonresident students (\$7,269 and \$16,998 annually). If, for example, six of the 26 students presumed to be undocumented who enrolled at UW-Milwaukee in fall, 2010, enrolled prior to fall, 2009, or would have enrolled even if they were charged full nonresident tuition, then UW-Milwaukee generated an estimated \$29,200 ($6 \times \$4,864$) less in tuition revenues due to the law change. However, if the other 20 presumed undocumented students would not have enrolled if they were charged full nonresident tuition, then UW-Milwaukee would have generated \$72,700 ($20 \times \$3,635$) more in tuition revenues for a net increase in tuition revenues of \$43,500. If the number of students who would have enrolled even if they were charged full nonresident tuition was estimated to be higher than six, the net increase in tuition revenues would be less; if the number of students who would have enrolled even if they were charged full nonresident tuition was estimated to be less than six, the net increase in tuition revenues would be greater.

5. Resident tuition at UW System institutions is set at an amount that is less than the full cost of educating a student. In 2008-09, resident undergraduate tuition covered between 52% and 68% of instructional costs depending on the institution. In contrast, nonresident undergraduate tuition is set at an amount that is more than the full cost of educating a student. In 2008-09, nonresident undergraduate tuition covered between 108% and 164% of costs. Instructional costs not covered by resident tuition are funded with state GPR funds and nonresident tuition revenues.

6. The UW System is not funded on a per student basis, meaning that state support for the UW System does not automatically increase when enrollments increase. If enrollments increase and additional state support is not provided, the amount of state 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 total UW enrollments and the relatively low number of students estimated to have been charged resident tuition under this provision, it is unlikely that the provision has or will cause measurable increases in resident tuition.

7. Wisconsin is one of twelve states that have laws permitting 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. Other states with such laws include California, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington.

8. Previous budget papers prepared on this topic noted that the provision may violate federal 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 residency. While no lawsuits have been brought challenging this provision in Wisconsin, court cases challenging such laws in other states 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. This ruling was overturned by the California Supreme Court in November, 2010; the plaintiffs in that case have filed an appeal to the U.S. Supreme Court. Both the Kansas and Texas laws have been challenged in federal court; however, both of those cases were 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. In addition, proposed legislative changes at the federal level may make legal concerns related to this provision moot.

ALTERNATIVES

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

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