



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #786

Nonresident Tuition Remission for Certain Undocumented Persons (UW System and Wisconsin Technical College System)

[LFB 2005-07 Budget Summary: Page 505, #27 and Page 529, #7]

CURRENT LAW

A UW System student or a 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 pays resident tuition, rather than nonresident tuition.

GOVERNOR

Require the UW System and WTCS to provide a nonresident tuition remission for a person who is a citizen of another country, if that person meets all of the following requirements: (a) graduated from a Wisconsin high school or received a high school graduation equivalency from this state; (b) the person was continuously present in this state for at least three years following the first day of attending a high school in this state; and (c) enrolls in a UW System institution and provides the 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. The language proposed in AB 100 is similar to language to provide undocumented immigrants resident tuition in the eight states that have passed similar laws (California, Illinois, Kansas, New York, Oklahoma, Texas, Utah, and Washington). Most of the laws generally require that a student must sign an affidavit pledging to seek permanent residence in the United States, must have graduated from a high school in the state or earned a general-equivalency diploma, and must

have been continuously present in the state for two to three years. The UW System Board of Regents passed a resolution in June, 2004, supporting a change in Wisconsin law that would expand the current exemptions from nonresident tuition to include undocumented persons meeting the criteria established in the Governor's provision.

2. The number of undocumented nonresident students that would be eligible for the nonresident tuition remission is unknown. Among the state's that permit some undocumented immigrant students to qualify for in-state tuition, only Texas, Kansas, and Washington have counted the number of students. According to the Chronicle of Higher Education, Washington, a state similar in size to Wisconsin, had 123 students enrolled under the program. Based on 2004-05 tuition rates, the difference between in-state and out-of-state tuition for a full-time undergraduate would range from \$5,904 to \$12,363 at WTCS districts and \$10,046 to \$14,000 at UW System campuses. The undocumented students would not be eligible for state or federal financial aid.

3. Currently, UW System institutions may utilize available institutional financial aid resources, including the remission of nonresident tuition consistent with state law to provide financial support for nonresident students. However, the number of undocumented students admitted either at the UW System or WTCS is unknown.

4. A federal law addressing illegal immigration that was passed in 1996 limits the authority of states to offer in-state tuition rates to undocumented immigrants (8 US Code s. 1623). However, it is unclear whether a court would find the existing state laws and the proposed Wisconsin law in compliance with the federal law provisions. According to the Congressional Research Service, there is disagreement about the meaning of the federal provision and there is no guidance on its implementation provided in congressional report language or in federal regulations. Supporters of state laws allowing undocumented immigrants to be eligible for in-state tuition argue that the laws conform to the federal law, since eligibility for in-state 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.

5. In an effort to accommodate the federal law regarding illegal immigrants, the proposal would treat similarly situated persons differently based on the classification of US citizenship. Under AB 100, a person who is a citizen of a country other than the United States who graduated from a Wisconsin high school or received a high school graduation equivalency in Wisconsin and who was continuously present in this state for at least three years following the first day of attending a Wisconsin high school would remain eligible for in-state tuition even if they moved to another state after high school graduation. However, a US citizen who attended and graduated from a Wisconsin high school and subsequently moved to and was residing in another state would not be eligible for in-state tuition. If the language was broadened to require residency for three years prior to enrollment it may violate the federal law related to in-state tuition for undocumented immigrants because the eligibility would then be based on residency.

ALTERNATIVES

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

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