



## Legislative Fiscal Bureau

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June 5, 2007

Joint Committee on Finance

Paper #828

### **Nonresident Tuition Remission for Certain Undocumented Persons (University of Wisconsin System and Wisconsin Technical College System)**

#### *Bill Agency*

[LFB 2007-09 Budget Summary: Page 577, #21 and Page 594, #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 non-resident tuition.

#### **GOVERNOR**

Require the UW System and WTCS district boards to provide a nonresident tuition remission to each person who is a citizen of another country, 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 from this state; (b) the person was continuously present in this state for at least one year, in the case of a UW System institution, or three years, in the case of a WTCS institution, following the first day of attending a high school in this state; and (c) the person enrolls in a UW System or WTCS institution and provides that 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. 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, 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 SB 40 would exempt certain undocumented students from paying nonresident tuition on the basis of similar criteria.

2. Of the states that permit certain undocumented students to be charged only the resident portion of tuition, Washington is closest in size to Wisconsin in terms of total population. A 2003 Washington law modified the definition of residency for the tuition purposes such that certain undocumented students may be eligible for resident tuition. According to legislative staff in that state, 479 students were granted resident tuition as the result of this change in definition in 2005-06. Of these students, 338 were presumed to be undocumented. The majority of the other students who received resident tuition as a result of this definition change were visa holders who also met the criteria specified by the law.

3. The number of undocumented students that would be eligible for nonresident tuition remissions under the SB 40 provision is unknown. Although the experience in Washington State is cited, the number of students who receive nonresident tuition remissions under this provision may be more or less than the number of students receiving resident tuition under the Washington law due to differences in the size of the undocumented population in the two states and differences in the Washington law and the language proposed in SB 40.

4. The value of a nonresident tuition remission varies based on the system, institution, and program in which a student enrolls. For example, at WTCS institutions, the value of such a remission would be \$13,479 (\$16,089 nonresident versus \$2,610 resident) for a student enrolled in a vocational-adult program and \$6,269 (\$9,806 nonresident versus \$3,537 resident) for a student enrolled in a collegiate transfer program based on annual 2006-07 tuition rates. At UW System institutions, the value of such a remission ranges from \$14,000 (\$20,000 nonresident versus \$6,000 resident) for an undergraduate student enrolled at UW-Madison to \$6,984 (\$11,252 nonresident versus \$4,268 resident) for an undergraduate student enrolled at a UW Colleges campus. The value of nonresident tuition remissions granted to graduate students is greater. Under SB 40, the UW System and WTCS district board would have to forego this nonresident tuition revenue. However, if no undocumented students are currently enrolled and paying nonresident tuition, then the amount of forgone tuition under the bill would be zero.

5. 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. Undocumented students are not eligible for state and federal financial aid under current law; if the provision in SB 40 were approved, undocumented students would continue to be ineligible for these financial aid programs.

6. Federal immigration law might prohibit states from charging undocumented students resident rather than nonresident tuition. A federal immigration reform law passed in 1996 (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. 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. Both courts have upheld these laws, however, the rulings in both cases have been appealed. In the federal case, which challenges the Kansas law, no court has ruled on the merits of the case.

7. However, 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. Likewise, the language proposed in SB 40 would also provide nonresident tuition remissions on this basis and not on the basis of residence. If the language were to be broadened to require residency for three years prior to enrollment, rather than subsequent to the first day of attending a Wisconsin high school, it would violate the federal law.

8. Opponents of the SB 40 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 remission if he or she met the criteria specified by SB 40 even if he or she resided in a different state. However, under the language of the provision, a U.S. citizen who met the criteria specified by SB 40 but resided in a different state would not receive a nonresident tuition remission under this provision. In this way, SB 40 would create a benefit for non-U.S. citizens that would not be available to U.S. citizens.

9. The language in SB 40 would require an undocumented student to have been continuously present for one year after the first day of attending a Wisconsin high school to receive a nonresident tuition remission at a UW System institution but for three years to receive a nonresident tuition remission at a WTCS institution. According to DOA staff, the intention was to require undocumented students to be continuously present for at least three years following the first day of attending a high school in the state to be eligible for nonresident tuition remissions at both systems. To provide a consistent treatment of this provision in SB 40, the Committee could modify SB 40 to require that a student be continuously present for three years after the first day of attending a Wisconsin high school to receive a nonresident tuition remission at either system.

## **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to specify that a person must have been continuously present in this state for at least three years following the first day of attending a Wisconsin high school to qualify for a remission at either a UW System or a WTCS institution. As drafted, SB 40 includes a one-year requirement for the UW System and a three-year requirement for WTCS.
3. Delete provision.

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