

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Nava DATE TYPED 2/28/04 HB _____

SHORT TITLE Denial of College Benefits to Immigrants SB 582/aSFC

ANALYST Williams

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Text	Recurring	General Fund --- - higher education funding formula
			See Text	Recurring	General Fund – State Student Financial Aid
			\$220.0 to \$600.0	Recurring impacts begins in FY06; escalates over time; see text	Lottery Scholarship Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to numerous student financial aid and lottery scholarship program bills

SOURCES OF INFORMATION

- LFC Files
- Commission on Higher Education (CHE)
- State Department of Education (SDE)
- National Conference of State Legislatures (NCSL)
- United States Immigration and Naturalization Service (INS)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment deletes eligibility similar to residents for scholarships, loans or other post-secondary education benefits, and instead substitutes state-funded fi-

nancial aid. This language would limit financial aid for the eligible group to state-based sources.

Synopsis of Original Bill

The bill would enact a new section of statute. The bill indicates a public, post-secondary institution may not deny admission to students on the basis of immigration status. All students who have attended a New Mexico high school for at least one year and graduated would be eligible for tuition, scholarships, loans or other educational benefits available to residents. As well, these benefits would be available to anyone receiving a general education development certificate (GED) in New Mexico.

Significant Issues

According to NCSL, non-documented immigrants or illegal aliens are defined as non-U.S. citizens who have entered the United States without proper documentation and without complying with U.S. Immigration and Natural Service (INS) procedures.

Federal laws entitle undocumented immigrants, regardless of status, access to public schools in the United States, but prohibit granting financial aid and in-state tuition at post-secondary educational institutions. In the 1980's, the Attorney General of the State of New Mexico which was interpreted that these students might be assessed in-state tuition. The CHE requested an opinion from the Attorney General regarding status of federal regulation and in-state tuition in 2001, but a new opinion has not been issued. In 2003, the Attorney General sent correspondence to the Commission on Higher Education on its authority to change regulations on the issue.

The legislation would make higher education more affordable and accessible for immigrant students meeting residency requirements as well as offer associated economic opportunities. Due to their immigration status, these students do not qualify for most financial aid. The bill could lower drop-out rates. Further, some institutions already admit these students at in-state tuition rates, and this legislation would clarify this practice at the state's higher education institutions and would treat all students in the state equally regardless of their immigration status.

Statutes to provide in-state tuition rates have enacted in several states, including Texas, California, Utah New York, Illinois, Oklahoma and Kansas. Notably Texas expanded eligibility to state student financial aid programs as well. Similar legislation has been considered in more than 20 states. Legislation to restrict access to higher education to these students has been introduced in Alaska, Arizona, North Carolina and Virginia

An update from www.finaid.org on legal issues and potential United States Supreme Court and federal congressional action is attached.

FISCAL IMPLICATIONS

Eligible Groups. There are several groups which would meet the qualification specified in Section B including:

- 1) Students already attending post-secondary institutions - estimated to be between 50 and 250 at state universities. The number of these students at community colleges is not clear, but is thought to be considerably higher.

- 2) Students receiving high school diplomas in New Mexico and meeting the high school attendance test, and
- 3) Individuals receiving a GED in New Mexico and meeting the high school attendance test.

There is a significant lack of data on number of undocumented individuals living in New Mexico; INS estimates do not include breakdown of age cohorts of children. In *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, the Immigration and Naturalization Service (INS) estimates 39,000 people living in New Mexico as unauthorized residents in 2000, nearly double the amount of 20,000 in the state in 1990. NCSL estimates approximately 50,000 to 60,000 undocumented aliens graduate from high schools in the United States annually; state-by-state estimates are not available. Data on the number of undocumented aliens in public schools and post-secondary institutions in New Mexico is not compiled and is not available. Data on the number of undocumented aliens in Adult Basic Education or GED programs is not compiled and is not available. The SDE Data Collection and Reporting Unit in its *High School Graduates by Ethnicity* indicates 8,116 Hispanic children graduated from New Mexico public high schools in the 2003-2004 school year. Using the methodology utilized for a fiscal analysis of similar legislation in Texas, one might estimate 10 percent of the 8,116 Hispanic high school students, or 812 high school graduates, might be eligible. *This represents just 4.5 percent of total New Mexico high school graduates.* According to the *SDE Accountability Report*, only 69 percent of New Mexico high school graduates apply to post-secondary institutions. This analysis assumes these students would attend universities and community colleges in the same proportion, resulting in 560 high school graduates eligible annually. SDE reports 377 Spanish GEDs were administered in 2004. Clearly, Spanish GEDs would be requested by both citizens and non-citizens. New Mexico citizens might prefer taking the examination in Spanish, while some undocumented aliens may prefer taking the examination in English. However, assuming 50 percent of the Spanish GEDs were awarded to undocumented residents and using SDE data reflecting 59 percent of all GEDs intend to continue to a post-secondary institution, an estimated 111 additional individuals might be eligible each year.

Fiscal Cost. An informal survey of university registrars indicates if documentation such as a high school diploma or a GED is issued by the state of New Mexico, then acceptance at in-state tuition rates is occurring in practice. In previous years, CHE reported inconsistent practices by public post-secondary institutions across the state with respect to admissions policies and assessment of resident tuition. *As a result of these practices, the net impact from a surge in eligible students on the general fund is not significantly large. In this case, the effective incremental cost of the amended bill stems from extending eligibility to the lottery scholarship program.*

Further, in November 2004, the CHE revised its residency regulation (5.7.18 NMAC). One of the changes approved was to delete the former section 5.7.18.9 D. which defined “Non-U.S. Citizen”. The language that was deleted from the regulation read as follows: ““Non-U.S. citizen” means persons and their children who are not citizens of the United States shall be classified as residents or non-residents on the same basis as citizens of the United States if they are lawfully in the United States and have obtained permanent resident status from the Immigration and Naturalization Service (INS). Non-citizens on other visas (e.g. diplomatic student, visitors or visiting scholars) shall be classified as nonresidents. Service in the armed forces of the United States shall entitle the noncitizen to be classified as nonresident or resident on the same basis as a citizen.” The impact of this change was to provide institutions with broader discretion in determining the residency status of prospective students according to the overall residency policy.

(In the absence of these practices, in theory the legislation could increase General Fund appropriations by roughly \$5.8 million in FY08 due to the higher education formula funding which pays for each enrolled student. As each successive class enters the higher education system, costs would have increased exponentially. Formula-driven FY11 general fund costs would have been estimated at roughly \$19.3 million.)

The cost to the Lottery Tuition Scholarship Fund is estimated from \$220 to \$600 thousand in the first full year of implementation, since students enrolling in Fall 2005 would be eligible to receive the lottery scholarship. The associated cost to the lottery tuition scholarship fund could grow to approximately \$3.7 million in FY09. While data on the numbers of these students is not available, this projection uses the methodology and data discussed above and is intended to provide illustrative scenarios.

Finally, General Fund appropriations support other state student financial aid programs. This legislation would result in additional claims for state student financial aid and/or the need to supplement current funding levels over time.

This analysis assumes the CHE would not interpret the legislation as a non-resident tuition waiver. There is no assumption for increases in the number of undocumented residents over time, i.e. no significant increases in undocumented immigration to the state for any reason. This analysis assumes individuals moving to New Mexico to receive GEDs would not be eligible unless they had attended a New Mexico high school for one year. This assumption is critical to the cost impacts.

TECHNICAL ISSUES

This bill utilizes the basis of immigration status to approach this issue. It would be important for this bill to be tightly interpreted to avoid potential unintended consequences from Paragraph B. Institutional revenues are significantly impacted by tuition payments from out-of-state and international students.

In states considering offering resident tuition to certain undocumented immigrants, the following criteria are typically included in proposed legislation:

- Student resides with his/her parent, guardian or conservator
- Reside in the state for a number of years, most frequently specified in law as three years
- Provide to the institution a signed affidavit stating the individual has filed an application with the INS to legalize their status or will file at the earliest opportunity available

Virginia considered a proposal to require evidence of filing of state income taxes by a student or their parents for at least three years.

The Urban Institute has proposed a methodology for estimating numbers of eligible students based on a five year residency requirement, which would substantially reduce the potential fiscal impact of the bill.

OTHER SUBSTANTIVE ISSUES

To evaluate impacts of potential changes to the lottery tuition scholarship program, the legisla-

ture may wish to consider requiring an annual review and reporting to the Legislative Finance Committee, Legislative Education Study Committee, Department of Finance and Administration and the Office of the Governor by:

- New Mexico Lottery Authority on revenue situation and outlook and
- Commission on Higher Education on
 - a. expenditure situation and outlook
 - b. fund balance situation and outlook
 - c. policy and fiscal impacts of each change to lottery scholarship program enacted by the 2004 legislature

POSSIBLE QUESTIONS

1. Is paragraph B sufficiently narrow to ensure out-of-state and international students do not utilize the GED process as a loophole to avoid out-of-state tuition rates?
2. Under the provisions of this legislation, is it the Legislature's intent to exclude a non-resident tuition waiver for the groups identified in this bill, similar to Texas 135 program in which the General Fund bears the difference between resident and non-resident tuition for every eligible student?
3. How would aliens with a visa permitting permanent residence be classified for residency/tuition purposes at higher education institutions under this bill?
4. Would this language apply to international students attending a New Mexico public, post-secondary institution on a student visa?
5. What potential changes might be made to CHE regulations as a result of enactment of this bill?

AW/yr:lg

Attachment

Financial Aid and Scholarships for Undocumented Students

Source: <http://www.finaid.org/otheraid/undocumented.phtml>

This page contains information about financial aid and scholarships for undocumented students and illegal aliens. (The terms "undocumented student", "illegal alien", and "illegal immigrant" are used interchangeably and intentionally in this page to enable this page to be found by students who are trying to find information about scholarships for undocumented students.)

Financial aid is generally not available for undocumented students and illegal aliens. The majority of all student aid, including Federal student aid, requires the recipient to be a US citizen or permanent resident (green card holder) or an eligible non-citizen. There are, however, a few states that allow undocumented students to qualify for in-state tuition rates. There are also several private scholarships available to undocumented students.

In-State Tuition

There is a conflict between Federal and State law regarding the eligibility of undocumented students for in-state tuition rates.

Federal law passed in 1996 prohibits illegal aliens from receiving in-state tuition rates at public institutions of higher education. Specifically, Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ([Title 8, Chapter 14, Sec. 1623](#)) states: "an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State ... for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."

Several states -- Texas, California, New York, Utah, Illinois, Washington, Oklahoma, and Kansas -- have passed state laws providing in-state tuition benefits to illegal aliens who have attended high school in the state for three or more years. Similar legislation is pending in Colorado, Connecticut, Florida, Hawaii, Maryland (legislation passed, but awaiting governor's signature), Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Oregon, South Carolina, Tennessee and Virginia. (Wisconsin also passed such a law, but the governor vetoed it.) Also, some schools in Georgia provide in-state tuition benefits to illegal aliens. The Texas law also allows illegal aliens to receive state student financial aid.

These state laws attempt to circumvent the federal law by simply not asking students whether they are in the US legally. (The California law, [AB 540](#), requires the student to file an affidavit that he/she has filed an application to legalize his/her immigration status or intends to file an application as soon as he/she is eligible to do so. So California doesn't even attempt to maintain the fiction that the school is unaware of the student's immigration status.) They also circumvent the law by basing eligibility for in-state tuition on attendance of an in-state high school and not on state residence.

Virginia passed a law barring illegal aliens from receiving in-state tuition, but it was vetoed by the governor. The state attorney general then stated that existing state law requires state colleges and universities to charge illegal aliens higher tuition. Legislation to ban in-state tuition for illegal aliens is pending in Alabama, Alaska, Florida, Mississippi, and North Carolina.

The heart of the controversy concerning in-state tuition for illegal immigrants is a conflict between pragmatism, compassion and fairness. On the one hand, why should children of illegal immigrants be punished for violations of immigration law by their parents or for delays caused by INS bureaucracy? Denying illegal aliens in-state tuition rates denies most of them access to a higher education. Many of these students will eventually become legal residents. One can also argue that the cost of not helping these students pursue a higher education is greater than the cost of helping them. Education increases tax revenues and decreases spending on welfare, health care and law enforcement. It seems inconsistent to provide illegal aliens with a free public elementary and secondary school education, only to deny them access to a postsecondary education. This effectively limits them to a life of indentured servitude. On the other hand, why should law-abiding US citizens have to pay higher public college tuition rates than illegal aliens? They too can be helped by lower in-state tuition rates, providing future benefits to the state and the nation. To the extent that in-state tuition rates are intended to provide a benefit to state taxpayers

whose tax dollars support state colleges, the tuition breaks for illegal aliens (most of whom do not pay taxes, since they are not legally allowed to work in the US) are inconsistent. Yet the Federal government also lacks a consistent and enforceable immigration policy, nor the will to devote sufficient resources to enforce existing immigration law.

This controversy is unlikely to be resolved until the US Supreme Court hears a case concerning it. (The most likely test case will be a [lawsuit](#) filed on July 19, 2004 to challenge the Kansas law.) Most likely the decision will focus on the Equal Protection Clause of the 14th amendment of the US Constitution, as did the decision in [Plyler v. Doe, 457 US 202 \(1982\)](#). It will also likely overturn state laws, regardless of whether they provide in-state tuition to illegal immigrants or ban it, since the authority to regulate immigration belongs exclusively to the federal government. It might also find that offering reduced in-state tuition to state residents is unconstitutional.

There is pending legislation in the House and Senate that would repeal the Federal restriction and make college more affordable for illegal aliens. The Senate version of the bill is known as the Development, Relief and Education for Alien Minors (DREAM) Act ([S 1545](#)). The House version of the bill is known as the Student Adjustment Act ([HR 1684](#)). The DREAM Act would permit states to determine state residency for higher education purposes by repealing Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. It would also provide a mechanism for undocumented students of good moral character to become legal permanent residents and to qualify for Federal student aid.

Scholarships

Another potential source of financial aid is private scholarships. There are a few private scholarships for undocumented students that do not require the student to be a US citizen or resident or have a social security number in order to apply. Information about such scholarships can be found in the [FastWeb scholarship search](#). Other good resources include the [Mexican American Legal Defense and Educational Fund \(MALDEF\)](#) (see especially the [MALDEF List of Scholarships for Undocumented Students](#) and the [MALDEF Scholarships](#)) and the [Hispanic Scholarship Fund](#).