

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does 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: 03/12/03 HB \_\_\_\_\_  
 SHORT TITLE: Amending the Definition of Resident Student to  
Include Certain Undocumented Aliens SB 909/SECS/aSF#1  
 ANALYST: Williams

### APPROPRIATION \*

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$5,345.0	Recurring-escalates over time; see text	General Fund--- formula
			\$3,244.0	Recurring-escalates over time; see text	General Fund— Non-resident Tuition Waiver
			See text	Recurring - escalates over time; see text	General Fund— State Financial Aid
			566.0	Recurring-escalates over time; see text	Lottery Scholarship Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

*\*Does not include an estimate for possible pent-up demand for post-secondary education opportunities by this group which could be significant; estimate focuses on potential annual eligible cohorts.*

Relates to HB 789

### SOURCES OF INFORMATION

LFC Files  
 Commission on Higher Education (CHE)  
 New Mexico State University  
 University of New Mexico  
 Association of Community Colleges  
 Albuquerque TVI

State Department of Education (SDE)  
National Conference of State Legislatures (NCSL)  
United States Census 2000  
University of New Mexico Bureau of Business and Economic Research Data Bank  
United States Immigration and Naturalization Service (INS)

## **SUMMARY**

### Synopsis of SFI Amendments

The Senate Floor amendment adds the word “athletics” to narrow the scope of the bill. With this change, the bill no longer expands eligibility for resident tuition to any student receiving a scholarship at a state post-secondary institution.

The bill expands eligibility for resident tuition to undocumented aliens graduating from a New Mexico high school or receiving a General Education Development (GED) in any state and who have been residing in New Mexico for at least a year.

### Synopsis of SEC Substitute Bill

The Senate Education Committee Substitute for Senate Bill 909 expands the qualification for resident tuition to any student receiving a scholarship for a post-secondary institution in New Mexico. Further, the bill expands eligibility for resident tuition to undocumented aliens graduating from a New Mexico high school who have been New Mexico residents for at least a year.

### 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 document and without complying with U.S. Immigration and Natural Service (INS) procedures.

Federal laws entitles undocumented immigrants, regardless of status, access to public schools in the United States, but prohibits 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.

CHE reports inconsistent practices by public post-secondary institutions across the state with respect to admissions policies and assessment of resident tuition. For example, “most two-year institutions have an “open door” policy and citizenship is not required unless a student is requesting financial aid. Since undocumented immigrants are unable to demonstrate U.S. citizenship or legal state residency, if they are enrolled, they do not request financial aid.”

NCSL reports nineteen states have introduced bills either to provide in-state tuition or to study the effects of this legislation in the last two years, with at least eight states considering similar bills in the 2003 legislative session. At least four states have enacted legislation to extend eligibility for in-state tuition to these students, and Texas extended access to state financial aid as well. Currently, at least two states are considering explicit assessment of out-of-state tuition or possible reporting of these students to the INS or other law enforcement agencies.

## FISCAL IMPLICATIONS

Eligible Groups. There are several groups which would meet the qualifications in this bill:

- 1) Students already attending post-secondary institutions - estimated to be about 50 at New Mexico State University and the University of New Mexico, with perhaps a few more at Western New Mexico University. 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 residency requirement.
- 3) Individuals receiving a GED in New Mexico and meeting the residency requirement.
- 4) Individuals receiving a GED in any state and living in New Mexico for a year, without meeting CHE regulatory criteria for establishing residency for tuition purposes. *Data is not available to estimate the number of individuals receiving GEDs out-of-state, then moving to New Mexico and seeking benefits. This amount could be significantly large.*

Availability of Data and Key Assumptions. 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. Therefore, the fiscal estimate is based on assumptions on the potential number of eligible students.

*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. The INS estimate adjusts for the 2000 Census undercount and utilizes INS administrative databases. A distribution of these individuals by age is not available.

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. If New Mexico had an equal share of these graduates, perhaps 1,000 students per year would be eligible. SDE Data Collection and Reporting Unit in its *High School Graduates by Ethnicity* indicates 7,910 Hispanic children graduated from New Mexico high schools in the 1999-2000 school year. Using the methodology utilized for a fiscal analysis of similar legislation in Texas, one might estimate 10 percent of the 7,910 Hispanic high school students, or 791 high school graduates, might be eligible. *This represents just 4 percent of total New Mexico high school graduates.*

According to the most recent data available from 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 546 high school graduates eligible annually.

SDE reports 544 Spanish GEDs were administered in 2001. 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 161 additional individuals would be eligible each year.

These assumptions are conservative in that 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.

Components of Fiscal Impact. The fiscal impact would have two components. The first would likely be a non-recurring surge of cohorts due to pent-up demand for access to higher education opportunities. The second would be a recurring, annual impact of high school graduates and GED recipients moving into the post-secondary system. *The magnitude of the first component is not estimatable, but could be significant. This analysis focuses on the second component.*

The fiscal impact would occur in several areas: 1) General Fund cost of each student per the higher education funding formula; 2) General Fund cost of each student receiving a non-resident tuition waiver if the bill is interpreted such that the General Fund bears the burden of the difference between resident and non-resident tuition rates for every student (as is the case for all current tuition waiver programs such as Texas 135) and 3) Lottery Tuition Scholarship Fund cost of each qualifying student.

This analysis was calculated assuming full-time attendance and using FY03 I&G formula dollars per FTE students for four-year research, four-year comprehensive and two-year post-secondary institutions. Tuition was assumed to increase by 3.5 percent in FY04. Both I&G formula dollars per FTE student and tuition were then conservatively held flat thereafter.

The legislation would increase General Fund appropriations by about \$5,345.0 in FY04 due to the higher education formula funding for each new student. As each successive class enters the higher education system, costs would increase exponentially. Formula-driven FY07 general fund costs are estimated at \$17,728.0. The non-resident tuition waiver component is estimated to cost \$3,244.0 in FY 04 and grow to \$12,307.0 in FY07. The cost to the Lottery Tuition Scholarship Fund is estimated at \$566.0 in FY 04 and would grow to approximately \$3,500.0 in FY07.

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

It should be noted this legislation extends a higher education entitlement program; thus, potential cost would be driven by the number of qualified applicants each year. The legislature might

consider explicit language to allocate a specific amount of funding among qualified applicants as a mechanism to cap annual costs.

### **OTHER SUBSTANTIVE ISSUES**

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 extend this practice to all of the state's higher education institutions and would treat all students in the state equally regardless of their immigration status.

CHE supports legislation to increase post-secondary access to undocumented immigrants residing in New Mexico and graduating from a New Mexico high school.

According to the American Association of State Schools and Colleges and other sources, similar statutes were enacted in Texas, California, Utah and New York. Similar legislation has been introduced in Arizona, Colorado, Florida, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Nebraska, Oklahoma, Oregon and Washington during the 2003 session. Legislation to restrict access to higher education to these students has been introduced in Arizona and Virginia. Federal immigration legislation for students, including a proposal to allow students between the ages of 12 and 21 living in the United States for five years to apply for legal residency upon graduation from high school, was tabled in the wake of the events of September 11.

### **TECHNICAL ISSUES**

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

- Student resides with his/her parent, guardian or conservator
- Receive a high school diploma or a GED exclusively in that state (CHE recommends an amendment to stipulate that the GED diploma must be issued in New Mexico)
- 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

### **POSSIBLE QUESTIONS**

1. Under the provisions of this legislation, is it the Legislature's intent to authorize 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?
2. Under the provisions of this legislation, is it the Legislature's intent to authorize access to state financial aid programs, including lottery tuition scholarships, to the eligible groups identified in this bill?

3. How would aliens with a visa permitting permanent residence be classified for residency/tuition purposes at higher education institutions under this bill?

AW/njw:yr  
Attachments