

SUBJECT: Eliminating in-state tuition for undocumented resident students

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 5 ayes — Swinford, Paxton, B. Cook, Flynn, Parker
0 nays
4 absent — Van Arsdale, Christian, Farrar, Veasey

WITNESSES: For — Christopher Richey, Young Conservatives of Texas; (*Registered, but did not testify*: Tom Aldred, Texas Conservative Coalition)

Against — Rebecca Acuna, Ken Tran, Ana Yanez Correa, Texas Criminal Justice Coalition; Erika Barrera, Liliana Castillo, John Contreras, Aura Espinosa, Cesar Espinosa, Beatriz Rodriquez, Homero Roman, Jovenes Immigrantes Por Un Futuro Mejor; Gustavo Cedillo, Texas Association of Chicanos in Higher Education; Sylvia Gonzalez, Mary L. Ramos, LULAC; Bill Hammond, Texas Association of Business; and 43 individuals; (*Registered, but did not testify*: Rebecca Bernhardt, American Civil Liberties Union of Texas; Karina Gil, National Council of La Raza; Elizabeth Ibarra, Marcelo Tafoya, Diana Castro, LULAC; Richard Sookiasian, Texas Association of Mexican American Chambers of Commerce; and 41 individuals)

On — Jane Caldwell, Texas Higher Education Coordinating Board

BACKGROUND: In 2001, Texas became the first state to enact legislation that allows undocumented immigrants to pay in-state college tuition at any public institution. Under Education Code, sec. 54.052, an out-of-state student may qualify for residency status for college tuition purposes after residing in Texas continuously for one year. A person also may qualify for in-state tuition rates if the person graduated from a public or private high school in Texas and maintained a residence continuously in the state for the three years preceding graduation and the year preceding the academic term in which the person enrolled, and as applicable, if the person declared an intention to seek status as a legal resident as soon as the student was eligible. According to the Texas Higher Education Coordinating Board (THECB) estimates, there were about 6,000 such students enrolled in

Texas higher education institutions in the fall of 2006, out of a population of about 1.2 million students.

DIGEST: HB 159 would eliminate provisions allowing a person to be classified as a resident for purposes of college tuition on the basis of having graduated from a public or private high school and having maintained a residence in Texas continuously for the three years preceding graduation.

Only those who had lived in Texas for one year prior to the academic term in which they were enrolled in a higher education institution and whose parents had lived in Texas for one year prior to the academic term in which the dependent was enrolled would be classified as a resident for tuition purposes.

The bill also would eliminate the option for persons who were not citizens or permanent U.S. residents to submit as information required to establish resident status an affidavit stating that the person would apply to become a permanent resident of the United States upon becoming eligible to apply.

Public higher education institutions would be permitted to reclassify resident students as nonresident students if they had qualified for residency status under the provisions being eliminated by the bill, if the student was not otherwise eligible to be classified as a resident.

The bill would take effect September 1, 2007.

SUPPORTERS SAY: HB 159 would be a step in the right direction to right a wrong that current law allows. Granting resident tuition to undocumented immigrants provides an incentive for illegal behavior. There is no other circumstance in the United States where people are rewarded for breaking the law.

The current law is in violation of sec. 1623 of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C.) and needs to be repealed. Offering in-state tuition to undocumented immigrants violates federal law because it discriminates against U.S. citizens and those who are legal immigrants. Under the law, states are not permitted to treat non-residents who are U.S. citizens worse, with respect to college benefits, than it treats illegal immigrants who are physically present in the state. As a result, many illegal immigrants are paying in-state tuition rates to attend Texas colleges and universities, while U.S. citizens who do not reside in Texas are required to pay higher, out-of-state

tuition rates. Such laws circumvent federal requirements by simply not asking students whether they are in the United States legally.

This benefit was extended in spite of a budget shortfall, when funds could have been better used for other state services for citizens and legal residents. It is unfair to allocate limited state resources to illegal immigrants at a time when many American citizens cannot afford to attend college. Allowing undocumented students to pay in-state tuition rates at Texas colleges and universities encourages illegal behavior.

The fundamental structure in the United States is the rule of law, and policy makers chip away at that structure when they reward illegal behavior. Until the federal government decides to protect the nation's borders, we should not provide incentives for illegal immigration.

OPPONENTS
SAY:

In 2001, the Texas Legislature, with the support of the governor, recognized that it was good public policy to further the education of immigrants who already were integrated into local communities and wanted to contribute to the Texas economy. While recognizing that immigration is an emotional issue, it is still good policy to support education. The cost of not helping the residents would be greater than the cost of helping them attend higher education institutions.

Most children of undocumented immigrants are in the United States to stay, so society benefits by providing them access to higher education that results in increased earnings and taxes and in lower crime and poverty rates. Denying in-state tuition to undocumented students would not curtail the population of illegal immigrants. The law encourages them to change their status from illegal to legal, which is a step in the right direction.

Claims that the law violates federal immigration laws because it does not offer the same tuition rates to U.S. citizens and nationals who live outside Texas are unfounded. Under Texas law, undocumented students must graduate from a Texas high school and live in Texas for at least three years before applying to college. Other residents establish Texas residency in only one year, so the requirements imposed on undocumented students are more stringent. Nine other states have enacted similar laws.

Opponents of a similar law in Kansas sued the state, saying the law violated federal immigration law. They claimed it was designed to ensure that any state that offered discounted, in-state tuition rates to illegal

immigrants must offer the same rates to all U.S. citizens and nationals, regardless of the state in which they live. U.S. Dist. Judge Richard D. Rogers, in *Day v. Sebelius*, 376 F. Supp. 2d. 1022 (D. Kan. 2005), ruled that the plaintiffs did not have standing to challenge the Kansas provision and that the plaintiffs could show no potential harm or injury to themselves because their own non-resident status would not change whether or not resident tuition applied to undocumented immigrants. The ruling is being appealed.

The 1982 U.S. Supreme Court decision in *Plyler v. Dow*, 457 U.S. 202, 228-30 (1982), ensured a free K-12 education regardless of immigration status. It concluded that because no substantial state interest was served by denying undocumented children a free public education, charging them a fee would be unconstitutional, paving the way for undocumented children to reap the benefits of public education. Taxpayers already have made significant investments. According to the Texas Education Agency, it costs about \$100,000 to educate one student from kindergarten through 12th grade. The investment is lost if these students cannot go on to college once they graduate from high school.

While federal law prohibits illegal immigrant students from receiving federally backed financial aid, undocumented students in Texas are eligible for state financial aid under the same conditions as other students, except that undocumented students cannot qualify for work study or the “B-on-Time” program, which offers interest-free loans for students who recently graduated from high school. Loans to students who graduate “on time” from a four-year university with at least a 3.0 GPA are forgiven.

Until Congress addresses the complex issues surrounding immigration, young people are caught in the crossfire, and allowing them to have access to higher education through affordable tuition rates should continue. If HB 159 were enacted, an entire class of law-abiding high school students would graduate high school without being able to plan for the future. Without the opportunity to qualify for in-state tuition, many undocumented immigrants could not obtain an affordable college education because they are not eligible to receive federal financial aid. Undocumented immigrants who have grown up in the U.S. and graduate from U.S. high schools should not be punished for the actions of parents who brought them illegally to this country.

OTHER
OPPONENTS
SAY:

The bill as written could negatively affect permanent residents of Texas and legal U.S. citizens because students who are legally living in Texas with other family members, such as grandparents, who may not be legal guardians, would find themselves losing their claim to residency. Likewise, if a student's family moved out of state, and the student wanted to stay in Texas to attend college, the student would lose a claim to residency because minors are dependent on their parents and cannot establish residency on their own. Even those who may have lived in Texas their entire lives would be faced with having to pay out-of-state tuition.

NOTES:

According to the Legislative Budget Board, THECB estimates that 4,145 full-time student equivalents would be affected by the bill in 2007. It further assumes that 99 percent of such students at universities and health-related institutions would choose not to enroll, while 60 percent of students at Texas State Technical Colleges and 40 percent of community college students would choose not to enroll. On this basis, the potential number of students who would not enroll would equal 2,417 in fiscal 2010. Although some tuition losses would be offset by increased tuition paid by those students who continued their education, net losses in tuition are estimated to be about \$3 million in fiscal 2008, about \$3 million in fiscal 2009, with a similar loss in succeeding years.