

IN-STATE TUITION Q&A
S 1036 (Ronald Rice and Sandra Cunningham)
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Q: What does the proposed bill do?

This bill would allow certain undocumented students to qualify for in-state tuition rates at public institutions of higher education in New Jersey provided the following conditions are met:

- (1) The student resided with his or her parent or guardian while attending a public or nonpublic high school in this state;
- (2) The student graduated from a public or nonpublic high school in this State or received the equivalent of a high school diploma in this state;
- (3) The student attended school in this state for at least three years prior to graduation or receipt of a high school equivalency diploma;
- (4) The student registers as an entering student in a public institution of higher education not earlier than the fall semester of the 2003-2004 academic year, except that the in-state tuition rate may be extended to students who entered prior to the 2003-2004 academic year; and
- (5) In case of a student who is not a citizen or permanent resident of the United States, he or she provides the institution of higher education with an affidavit stating that he or she will file an application to become a permanent resident of the United States at the earliest opportunity he or she is eligible to do so.

The bill specifically excludes students who are “nonimmigrant aliens” within the meaning of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. s. 1101(a)(15) (for example, international students on student visas).

Q: If this bill becomes law, wouldn't we be rewarding “illegal” behavior?

No. This is not “rewarding” illegal behavior because in order for these students to pay in-state tuition, they would first have to be accepted into a college or university, which means that they must have had to work as hard as our other college-bound students. Besides, this bill affects students who have grown up in our public school systems because they were brought to this country by their parents, who in many instances came here fleeing political and economic instability in their countries of origin. It is not the students who made the actual decision of coming to the United States, their parents did. Nevertheless, despite facing many obstacles, these students have worked hard and succeeded in school, and New Jersey should reward them for their hard work, their initiative, and their desire to pursue higher education to become productive members of our communities.

Q: Isn't offering in-state tuition to undocumented students unfair to students who attend New Jersey schools and have valid visas?

Students who attend New Jersey schools on visas (most often F-1 visas for international students) are considered non-immigrants under the law. Under federal immigration laws, a “non-immigrant” is an individual who, at the time of applying for his or her visa, has established to the satisfaction of a consular officer that he or she does not intend to permanently reside in the United States. Therefore, international students and other non-immigrant visitors to the United States who enroll in schools, come to the U.S. with the specific intention of attending school and returning to their home countries. However, the students who would benefit from this bill are students who consider New Jersey their home. Many have lived here for the majority of their lives and were brought here by their parents who wanted to give them a better life in the United States.

Q: Does this mean that U.S. citizens will be denied spaces so that these undocumented students can attend school?

No. This bill would make the students eligible for in-state tuition *after* they have already been accepted to school. Therefore, in the 4-year college system, these students will be competing on pure merit with any other applicant—except that they will not be eligible for scholarships or student loans. In the community college system, which generally has open enrollment, these students will not be displacing any U.S. citizen students. Moreover, these students already have attended K-12 together with U.S. citizen students. They are our children's best friends. This bill has tremendous support among U.S. citizen high school and college students who do not want to see their friends left behind after graduation.

Q: Would this bill violate federal law?

No. Opponents of this bill believe that the law violates a provision of federal law that outlaws post-secondary benefits to immigrants based on residency unless those same benefits are available to residents of other states of the U.S. (8 U.S.C. sec. 1623). However, that provision is not violated because the bill does not condition the students' eligibility for benefits on “residency,” but on attendance and graduation from a New Jersey high school.

Q: Wouldn't this be expensive?

No, as fiscal impact analyses performed here and in other states that have passed similar laws show that there was virtually no fiscal impact from this legislation. Furthermore, New Jersey should consider the long-term benefits to its economy as a consequence of this legislation. The benefits of having a highly educated population are widely known, as better education pays leads to better jobs and increased tax income over time.

Q: Why is this bill important?

This bill is a small change that will fulfill the dreams of students that have been in our schools K-12, who are best friends with our children, and want nothing more than to pursue a higher education and contribute to our community.

The bill will promote family unity, a primary objective of our immigration laws. Many immigrant families come from “mixed status” families. This can mean that one child is undocumented because her parents brought her to the U.S. when she was 2, but her little brother who was born here 2 years later is a U.S. citizen. This bill will remove intrafamilial inequities.

As stated above, the bill will help New Jersey’s economy, by producing a better educated and more productive workforce. Many of the children covered by this bill are bilingual, a skill shortage that both private and governmental employers contend with.

Lastly, the U.S. Supreme Court, in its decision *Plyler v. Doe*, held that the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution requires that public schools, K-12, be open to all students in the United States, regardless of immigration status. In its holding, the Court recognized that young children who have played no part in their parents’ decision to immigrate to the United States should not be penalized by states and deprived of an education. The same logic and spirit that informed the U.S. Supreme Court should inform the New Jersey legislature. Although immigration status is a matter of federal law and not for the state of New Jersey to regulate, providing undocumented students the opportunity to pay in-state tuition rates is just one small step our state can take towards recognizing the achievements of these hardworking students.

Q: What have other states done?

Similar legislation has passed in eleven states: California, Illinois, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Kansas, Washington and Wisconsin. New Jersey has a substantial immigrant population. According to the 2000 census, approximately 15 percent of New Jersey’s population is foreign born. These statistics place New Jersey in the top five states in terms of foreign-born population, trailing California, New York, and Texas. Four of these states—California, Texas, Illinois, and New York—rank alongside Florida and New Jersey as the top six states with the largest foreign born populations in the country.¹ Of the six, only New Jersey and Florida has yet to pass such a law. We believe it is time for New Jersey to join the other states that have recognized the achievements of their immigrant students.

It is also important to note that this legislation has had strong bi-partisan support. The bill has been passed by Republican governors in several states, such as Governor Rick Perry of Texas, Governor George Pataki of New York, and Governor Michael O. Leavitt of Utah. Related federal legislation, known as the DREAM Act, is sponsored in the Senate by Orrin Hatch (R-UT).

¹ Migration Policy Institute, MPI Data Hub, “States Ranked by Percent Foreign-Born,” http://www.migrationinformation.org/datahub/files/MPIDataHub_ACS_2007-NumberForeignBorn.xls

Q: Who supports this bill in New Jersey?

A large coalition of advocacy organizations, educators, non-profit organizations, community-based organizations, religious institutions, labor unions, educational institutions, and private individuals support this bill.