

BILL ANALYSIS

H.B. 159
By: Zedler
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2001, Texas became among the first states to give in-state tuition rates to illegal aliens by passing House Bill 1403. Providing yet another public benefit as a result of breaking the law is an example of how Texas unintentionally provides incentives for illegal behavior.

The monetary difference, which varies, can be more than \$12,000 per student. This windfall was given despite the need for additional funding in Texas higher education. In 2001, the Texas House Research Organization reported that allowing in-state tuition for illegal aliens would decrease general revenue by \$17.4 million in FY 2004 and could exceed \$22.2 million by FY 2006.

Federal law (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."

When Congress passed this law and President Clinton signed it in 1996, there was no misunderstanding about what this law meant. Conference Report 104-828 stated, "this section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education."

Universities have circumvented this federal law by the "loophole" of simply not asking or documenting whether student applicants are legally in this country. This practice has also made it difficult to calculate the actual loss in general revenue since 2001.

As the statute is currently written, Texas is in violation of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and is providing an incentive for illegal behavior. House Bill 159 repeals the provision in House Bill 1403 (77th Regular) that provides in-state tuition rates for illegal aliens bringing state law into compliance with federal immigration policy.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 159 amends the Education Code to delete language that added illegal aliens to the list of persons considered residents of this state for tuition purposes. The bill deletes language that allowed illegal aliens to establish resident status at an institution of higher education.

Notwithstanding Subchapter B, Chapter 54, Education Code, a public institution of higher education in this state may, for any semester or academic term, before the beginning of that semester or academic term, reclassify as a nonresident a student classified as a resident of this state by the institution or another public institution of higher education in this state under Section 54.052(a)(3), Education Code, as that section existed before amendment by this Act, if the student is not otherwise eligible to be classified as a resident of this state under Subchapter B, Chapter 54, Education Code.

EFFECTIVE DATE

September 1, 2007.

H.B. 159 80(R)