

AT ISSUE



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CALENDAR

- 11/2/15** **Senate and House Preservation of the HOPE Scholarship Program Study Committees**
Armstrong Center Auditorium, Savannah | 10:00 a.m.
- 11/3/15** **Senate Annexation, Deannexation, and Incorporation Study Committee**
450 CAP | 9:00 a.m.
- 11/4/15** **Joint Coastal Greenway Study Committee**
Coastal Regional Commission, Darien | 1:30 p.m.
- 11/9/15** **Consumer and Provider Protection Act Senate Study Committee**
450 CAP | 9:00 a.m.
- 11/9/15** **Tax Reform Subcommittee**
Senate Mezz | 1:30 p.m.
- 11/9/15** **Senate Women's Adequate Healthcare Study Committee**
450 CAP | 2:00 p.m.
- 11/10/15** **Preventing Youth Substance Use Disorders Senate Study Committee**
450 CAP | 10:00 a.m.

A Message from Senator Shafer



Throughout the nation, annual college tuition increases have become the norm and student debt levels have reached record levels. Here in Georgia, the Board of Regents has approved tuition increases in each of the last four years, some approaching double digits. In this edition of *At Issue*, we examine these alarming trends and look at what other states are doing to keep higher education costs at an affordable level.

We also take a look at a pending Supreme Court case, *Evenwel v. Abbott*, in which a Texas woman argues that states be allowed to use the number of eligible voters in apportioning legislative districts, as opposed to the total population counts from the federal census. The census is a “head count” of all inhabitants, including large numbers who are not eligible to vote either because they are not citizens or do not meet age or other requirements of voting laws. We lay out both sides of the question

of whether electoral districts should be drawn based on total population or the number of those actually eligible to vote in the election.

This edition of *At Issue* concludes with a review of the regulations recently proposed by the State Board of Community Health. These proposed regulations make significant changes to the regulatory system for hospitals and have sparked discussion both as to the merits of the proposed changes and the appropriate use of the rulemaking process.

If you have comments or suggestions, feel free to email me directly.

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Higher Education

The Cost of a College Degree

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In February 1970, Harvard University announced to parents and students that annual tuition and fees would increase by \$200 – to \$2,600. It was the first time since 1949 that the school, which was chartered in 1650, had boosted tuition two years in a row. “It used to be that once in an undergraduate career tuition would increase,” Acting Dean John T. Dunlop told the *The Crimson*, the student newspaper. “But from now on, unless inflation is halted, there’s no choice in the matter but to continue raising tuition.” In 1981 after Harvard University again raised its tuition price, the university cited “steady inflation and rising energy costs.” Harvard maintained that “families will still allocate about the same percentage of income in real dollars” because college charges have only paralleled the inflation in the nation’s disposable personal income. *(continued on page 2)*

More than 40 years later, tuition at American colleges and universities continues to surge ahead – much faster than the inflation, Acting Dean Dunlop cited. Tuition at Harvard University in the fall of 2014 was \$45,278, more than 17 times the cost in 1971. If annual increases had simply tracked the inflation rate since 1971, tuition would be \$15,189 this year.

It is not just the tuition costs at elite universities like Harvard that are outpacing the government’s Consumer Price Index (CPI). Between 2013-14 and 2014-15, the national tuition average increased by 2.9% for in-state students in public four-year institutions, by 3.3% for out-of-state students in public four-year institutions, and by 3.7% at private nonprofit four-year institutions.

These increases are higher than the 2.0% increase in the CPI between July 2013 and July 2014. With many family incomes unable to meet tuition costs, coupled with varying federal and state funding, and fluctuating need-based grant aid, students are dependent on working during school, enrolling part-time, and taking on more and more debt to pay for college, which often leads to fewer students enrolling, persisting, and graduating. Employers are more often looking for college graduates, who bring training and skills into America’s workforce, helping our economy grow and stay competitive.

According to the National Conference for State Legislatures (NCSL), reasons for tuition increases differ among states and institutions; however, some reasons include diminished state funding from the recession, enrollment growth – which requires more building capacity and additional faculty, as well as the need to compete for students – which may require upgraded amenities, scholarships, and better athletic venues.

Georgia

This June, the Board of Regents approved a 2.5% tuition increase for 20 of the 30 University System of Georgia (USG) schools for the 2015-2016 school year - the fourth year in a row that USG has approved tuition increases; ten USG institutions will have varying tuition rate increases. For example, Georgia Tech, the University of Georgia, Atlanta Metropolitan State College, and Middle Georgia State University will all see a 9% increase in tuition.

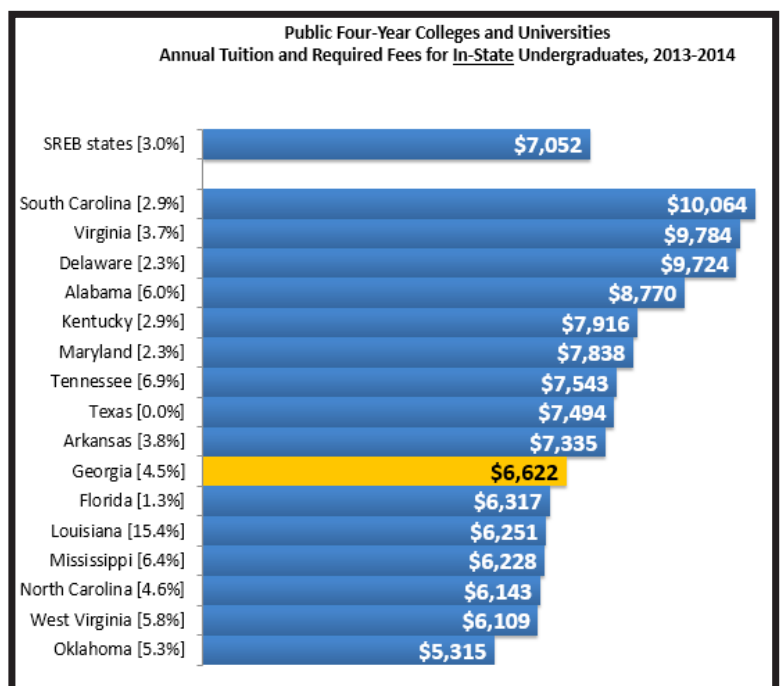
The 20 USG institutions with a tuition increase of 2.5% are:

- Abraham Baldwin Agricultural College
- Albany State University
- Armstrong Atlantic State University
- Bainbridge State College
- Clayton State University
- College of Coastal Georgia
- Columbus State University
- Dalton State College
- Darton State College
- East Georgia State College
- Fort Valley State University
- Georgia Highlands College
- Georgia Perimeter College
- Georgia Southern University
- Georgia Southwestern State University
- Gordon State College
- Savannah State University
- South Georgia State College
- University of West Georgia
- Valdosta State University

USG officials have stated that tuition hikes are needed for a variety of reasons, mostly involving resources to reduce class sizes, to retain and recruit quality faculty, and to cover ongoing operation expenses on the campuses. Research institutions, which include Georgia Tech and the University of Georgia, generally require more investment in order to provide the academic programs, offerings, and student services that are essential in leading and nationally-ranked research universities. In 2015, both schools were ranked in the top 20 public institutions according to the *U.S. News & World Report* and in the top 20 best values by *Kiplinger*.

Rates for the 10 USG institutions with varying tuition percentage increases are:

- Atlanta Metropolitan State College – 9.0%
- Georgia College and State University – 3.0%
- Georgia Gwinnett College – 8.3%
- Georgia Institute of Technology – 9.0%
- Georgia Regents University – 5.5%
- Georgia State University – 5.5%
- Kennesaw State University – 4.4%
- Middle Georgia State University – 9.0%
- University of Georgia – 9.0%
- University of North Georgia – 5.0%



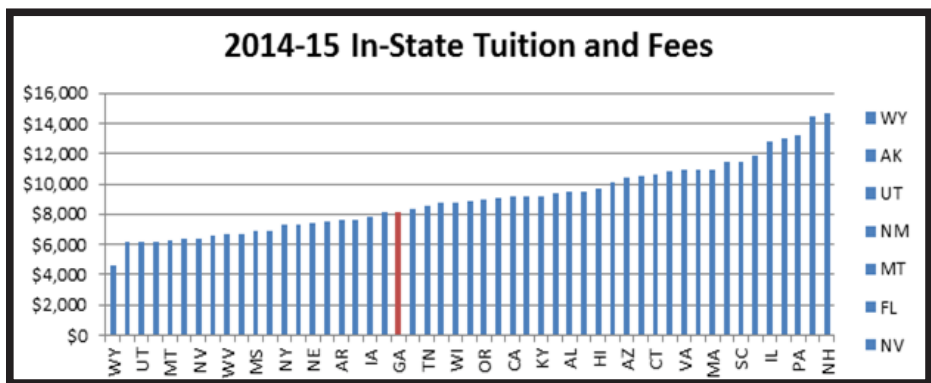
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Georgia is also one of a selected few states to have two or more of its institutions ranked among the top 20 national public colleges and universities. Georgia Tech ranked #13, and the University of Georgia ranked #16 on the *Business Journal's* top 2015 rankings of public colleges and universities.

The chart below explains the 10 varying tuition increases.

Institutions	Recommended % Increase	Comments
Georgia Institute of Technology	9.0%	U.S. News and World Report ranks Georgia Tech #7 among public universities in the United States, yet Georgia Tech's tuition has remained lower than peer institutions, such as the University of Texas in Austin and the University of California in Los Angeles. To continue offering degrees and academic programs that are ranked high for their quality and students' return on investment, Georgia Tech must continue to invest in faculty, course offerings and smaller class sizes. The recommended tuition increase continues efforts to bring tuition in line with the average of its public peer institutions
Georgia Regents University	5.5%	Georgia Regents University was formed by the consolidation of Georgia Health Sciences University and Augusta State University. During consolidation, the USG recognized the need for additional investment in GRU to create a true research university based on national standards. The strategic plan included a phased seven year plan to move tuition to that of a research university (similar to the level of Georgia State University). The additional funds from a 5.5% tuition increase will allow GRU to continue to grow as a research institute with needed faculty and research capabilities.
Georgia State University	5.5%	Georgia State University's tuition increases have been kept low for the past several years. Through expanded student support programs, Georgia State has increased its graduation rate 22 percentage points in the last decade. Georgia State has become a nationally-recognized leader in improving student success, and the additional funds will allow Georgia State to continue to invest and expand programs for student success.
University of Georgia	9.0%	Increased tuition funding will allow UGA to invest in its academics, programs and services to better support students, which will also help the flagship institution retain its Top 20 ranking of public universities nationally. The funding will help retain and hire additional faculty and help reduce class size. Kiplinger's "100 Best Values in Public Colleges" ranked UGA #10 this year. UGA's tuition is lower than more than half of the flagship institutions' tuition in the Southern Regional Education Board.
Kennesaw State University	4.4%	Kennesaw State University tuition will increase by the 2.5% (the amount for all USG institutions) plus an additional 1.8%. The additional 1.8% is the result of creating a blended tuition rate following the consolidation of Kennesaw and Southern Polytechnic State University - an institution that had a slightly higher rate.
Georgia College and State University	3.0%	Georgia College and State University is the state's liberal arts college and a half percentage point increase over the other USG institutions at 2.5% is recommended. The recommended increase has been kept to a minimum to help balance the need for additional investment in faculty and academics while continuing to keep tuition as affordable as possible.
Middle Georgia State College	9.0%	To provide university-level courses, while expanding bachelors and masters degrees, it will cost Middle Georgia more to operate as a university, which is reflected in the higher tuition rate.
University of North Georgia	5% for Bachelor Degree Seeking Students and 2.5% for Access	The University of North Georgia has the 3rd or 4th highest average SAT scores of incoming Freshmen in the USG from year to year. To support and advance the growth of the consolidated university, increased tuition funding will enable UNG to address critical staffing needs and recruit and retain faculty across its campuses.
Atlanta Metropolitan State College	9.0%	AMSC currently charges the same amount as other associate dominant two-year institutions; however, AMSC offers and serves a growing number of bachelor degree-seeking students. The proposed increase of 9% will allow AMSC to charge the same tuition rate as other Baccalaureate Degree granting institutions to address the higher costs associated with these degree offerings.
Georgia Gwinnett College	8.3%	Georgia Gwinnett College has become primarily a four-year degree institution; however, its tuition has been similar to two-year access institutions. The 8.2% adjustment, 5.8% greater than the 2.5% USG increase, addresses the difference in cost-of-service to students between four-year and two-year institutions.

According to College Board data, Georgia's published tuition and fee rates are below average nationally and rank 21st lowest of the 50 states. Demonstrated in the chart below, the state with the lowest tuition rates for in-state students is Wyoming, and the state with the highest tuition rates for in-state students is New Hampshire.



However, according to a recent presentation made by USG on college affordability, while the average cost of attendance in the 2013/14 fall and spring semesters at a USG institution was roughly between \$16,000 and \$23,000 per year, there were anywhere between 41% to 61% of students borrowing, and graduating with approximately \$22,000 - \$25,000 worth of debt. Student debt, coupled with lower tuition reimbursement payments from the HOPE Scholarship in recent years, affects the ability of students to finish college in the state and retain

those that do graduate. The Senate and House HOPE Scholarship Preservation Study Committees are examining ways to preserve the HOPE Scholarship program, including finding additional revenue streams, because we need to keep the best and brightest students in Georgia.

Our state faces a substantial skills gap between its future job needs and its available, qualified workforce. By the year 2020, more than 60% of the jobs in Georgia will require a career certificate or college degree. Currently, only 4% of Georgia's young adults have a college education (a career certificate, an associate's degree, or a bachelor's degree or higher), and the retention rates at Georgia colleges and universities are declining.

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How a Pending Supreme Court Decision Could Change the Way We Draw State Legislative Districts

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“Fair is fair. This is who we are. These are our numbers.”

This uttered by the fictional Mr. Willis of Ohio, the widower of a deceased congresswoman on “The West Wing.” In his only appearance on the show, Mr. Willis took over his wife’s seat in Congress and a key committee just in time to land himself in the middle of a debate over the use of sampling as a component of the upcoming decennial census. After some wrangling in the Roosevelt Room between the President’s staff and committee members, we see Mr. Willis ultimately buck his colleagues and indicate his support for a bill that allows sampling.

The episode, “Mr. Willis of Ohio,” aired in November 1999. Earlier that year, the Supreme Court ruled in *U.S. Dept. of Commerce v. U.S. House of Representatives* that sampling could not be used as part of the conduct of the 2000 Census, as the Clinton Administration (much like the fictional Bartlet Administration) had proposed as a way of better including hard-to-count urban and minority populations in the final population totals that would be used to apportion legislative districts. The Court ruled instead that a traditional headcount was required by the Census Act for purposes of legislative apportionment.

The headcount generated by the decennial census remains a widely used tool, including in the reapportionment and redistricting process undertaken each decade by state legislatures. However, one Texas citizen thinks questions remain as to whether the raw population number generated by the census is always the proper figure to use when determining how many people to include in state legislative districts. The Supreme Court has chosen to hear her out. The case is called *Evenwel v. Abbott*, and the U.S. Supreme Court will consider it after its term commences in October. A ruling will be made by next June.

Total Population or Total Number of Eligible Voters?

Sue Evenwel is a resident of Senate District 1 in Texas (Greg Abbott is the Governor of Texas). Evenwel contends that, rather than apportioning state legislative districts based on the total number of people residing in the state, the Constitution may, in some circumstances, require states to apportion districts based on some calculation of the total number of eligible voters in the state. Evenwel, along with another Texas voter, have challenged the state Senate map drawn in 2013 by the legislature, arguing that the uneven distribution of eligible voters among districts violates their right to the equal protection of laws.

The Supreme Court’s 1962 *Baker v. Carr* decision and its progeny established the “one person, one vote” rule by requiring that legislative districts contain roughly equal populations and that redistricting efforts follow this standard. This standard was specifically applied to apportionment in state legislatures in the 1964 case *Reynolds v. Sims*. There, the Warren Court ruled that “as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.”

A state’s apportionment plan can be challenged under the Equal Protection Clause by alleging that the plan does not achieve substantial equality of population among districts. While the Fourteenth Amendment specifies that apportionment for the purposes of congressional districts is to be based on the “whole number of persons in each State,” the Court has never held that a particular population metric must be used in apportioning state legislative districts. In the 1966 *Burns v. Richardson* decision, the Court held that states were not required to use “total population figures derived from the federal census as the standard by which substantial population equivalency is to be measured.” Instead, the Warren Court indicated that the chosen population metric must not be the result of a discriminatory choice and that the federal courts should respect the state legislature’s prerogative in selecting this method so long as it is not “constitutionally forbidden.” The Court noted that the apportionment plan under review in *Burns* satisfied the Equal Protection Clause only because it “produced a distribution of legislators not significantly different from that which would have resulted” from the use of total population as the apportionment metric. *Burns* may be of limited precedential value because the Court specifically limited its holding to the facts of the case, and as recently as 2001, members of the Court had suggested that clarity on this issue was needed. In *Chen v. City of Houston*, Justice Thomas urged the Court to decide “what measure of population should be used for determining whether the population is equally distributed among the districts.”

Evenwel does not argue that states should be barred in all cases from using the total population count in drawing new districts. Instead, she argues that relying solely on the census is unfair when it results in the kind of eligible-voter disparity that she believes has resulted in Texas. According to the Project on Fair Representation, a group supporting Evenwel’s suit, each Texas Senate district has roughly 811,000 residents. However, according to her brief, Evenwel’s district contains roughly 573,895 eligible voters based on a metric known as citizen voting-age population (CVAP) while another district contains only 372,420 eligible voters, based on CVAP.

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According to Nathaniel Persily of Stanford Law School, the heart of Evenwel's argument is that "ensuring voting rights for all must mean that districts should have equal numbers of eligible voters—not just residents." As Persily noted for *Politico Magazine* in June, Evenwel believes that "otherwise...voters in an area with a large noncitizen population are given an unfair advantage." Eligible voters who live in districts with large noncitizen populations or with large populations of individuals who are not eligible to vote "have much greater power to elect their representative than those in other districts." Persily notes that Evenwel is essentially arguing that "one person, one vote" should really mean "one voter, one vote."

Calculating the Total Number of Eligible Voters

Georgia is among the states that rely exclusively on official data from the decennial census in apportioning state legislative districts. The Georgia Constitution currently places very limited restrictions on the General Assembly's reapportionment and redistricting powers. Article III, Section II, Paragraph II provides the General Assembly with the power to apportion state legislative districts and requires that such districts "be composed of contiguous territory." Apportionment must be changed by the General Assembly "as necessary after each United States decennial census."

The census establishes an official count of how many individuals reside in a given area. Because the census asks information about the age of respondents, it also yields a count of the voting-age population (VAP) at the time it is taken. This is the total population minus anyone under the age of 18. However, the census questionnaire does not inquire about respondents' citizenship or immigration status or whether the respondent or anyone in the household has lost the right to vote. As a result, it does not tell us whether a voting-age respondent is otherwise eligible to vote and does not yield a total headcount of eligible voters.

Leah Libresco of the website *FiveThirtyEight.com* asserts that the census survey is "short and uncontroversial" and that such inquiries are left out "in order to get an accurate count" without excessively inconveniencing the respondents or making them fear any collateral consequences of answering truthfully. The focus of the census is thus on generating an inclusive headcount, not on mining data about respondents beyond very basic demographic information. Joseph Fishkin, a University of Texas law professor, recently told *The Wall Street Journal* that as a result of the census's simplicity, data subsets drawn from the census other than those based on responses to the questionnaire would "have to be based on estimates rather than actual counts," raising a number of issues for states to confront in making apportionment decisions.

Adding to this complexity, states do not handle the issue of voting rights for felons and other persons uniformly. In Georgia, for instance, felons' rights to vote are reinstated immediately and automatically upon completion of the felony sentence (although they must register in order to be permitted to cast a ballot). However, as Libresco notes, some other states permanently bar felons from voting, others require good behavior during a probationary period, and some require a former felon to apply for reinstatement. Additionally, Libresco notes that many states take away a person's voting rights when he or she is declared mentally incompetent. Georgia is among these states.

If a state was required to make apportionment decisions based on the eligible-voter population, and the federal census questionnaire was not modified to request this type of information, Libresco argues that states that do not maintain continually updated records regarding individuals who have lost their right to vote may have difficulty in accurately adjusting census VAP data to account for these individuals. On the other hand, asking for additional information on the census questionnaire, including sensitive data about a person's citizenship or immigration status, criminal record, or mental competence might further limit the census bureau's ability to obtain an accurate headcount.

Despite these complications, the National Conference of State Legislatures (NCSL) indicates that a number of states do make some effort to base their redistricting efforts on eligible-voter data rather than the census. According to Wendy Underhill of NCSL, no states adjust census data to account for non-citizens. However, Kansas adjusts based on the student population, Hawaii and Kansas adjust for the non-resident military population, and Delaware, Maryland, and New York adjust for the prison population. When estimates from other data sources suggest that reliance on the census causes proposed legislative districts to have large disparities in eligible-voter population, a decision in Evenwel's favor may require other states to employ these methods or others as part of reapportionment and redistricting efforts. - BV

Health and Human Services

Update on Georgia's CON Program – Proposed Revisions to Rules and Regulations

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The Georgia Department of Community Health (DCH) is responsible for promulgating rules and regulations for Georgia's Certificate

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of Need (CON) program pursuant to OCGA § 31-6-21. During its board meeting on September 10, 2015, DCH proposed revisions to its rules and regulations for short-stay general hospital beds.

The changes would permit a CON-authorized hospital, other than a short-stay general acute care hospital, to seek further CON review and approval for conversion to a short-stay general acute care hospital. This involves adding a new subsection that would allow an existing hospital with less than 100 authorized CON beds the opportunity to request prior CON review and approval for the conversion to a short-stay general acute care hospital. Under these proposed changes to the rules, Cancer Treatment Centers of America (CTCA) could submit a conversion application to reclassify itself from a destination cancer hospital to a short-stay facility. However, CTCA would still need to apply for an additional CON to authorize any increase in “available beds” in its facility. CTCA’s current bed capacity as a destination cancer hospital is limited to 50 beds or less, a requirement under O.C.G.A. § 31-6-2 (13) and echoed in DCH’s current definition for such facilities.

Other proposed changes would allow an existing hospital, other than a short-stay general acute care hospital, an exception from the target service population requirements where the facility meets the terms of the exception; and add an exception to the need methodology provisions and the adverse impact provisions of the rule where an existing hospital other than a short-stay general acute care hospital facility is seeking to convert a short-stay general acute care hospital. DCH understands that some short-stay general acute care hospitals have closed their emergency departments—this was the driving force in its proposal to amend its rules to provide applicants for new, replacement, or expanded hospitals an alternative to documenting a plan for operation of an emergency room in order to meet the requirement of the rule.

According to the procedures for rulemaking by DCH under O.C.G.A. § 31-6-21.1, each member of the House and Senate Health and Human Services Committees is to receive notice of these proposed rule changes. Subsection (b) of this Code section provides that the proposed rule changes “shall be subject to the making of an objection by either such committee within 30 days of transmission” of the notice from DCH. -EH

(The Cost of a College Degree – continued from page 3)

Governor Deal’s priorities include increasing the number of college graduates and the percentage of Georgians who hold postsecondary credentials. To achieve these priorities, the state created the REACH (Realizing Educational Achievement Can Happen) Scholarship in 2012. “The REACH Scholarship continues our state’s ongoing commitment to providing access to higher education for all Georgians, regardless of their income,” said Governor Deal. Students who complete the program requirements will receive a renewable yearly tuition scholarship of \$2,500 to be used at any HOPE eligible institution. This amount will cover the average gap between other needs-based scholarships, such as Pell, and the full cost of attendance.

How Other States Are Addressing Rising Tuition Costs

According to NCSL, several states have enacted limitations on the maximum amounts tuition can increase over the previous year. Missouri implemented one of the strongest limitations in 2008–2009 when it tied tuition increases to inflation measured by the CPI. If institutions exceed the maximum allowed tuition increase, they must return 5% of their state appropriations. Institutions also may receive a waiver to increase tuition more in certain circumstances, such as when state support declines during a recession.

A proposed bill in Texas would have only allowed institutions that met certain target levels on performance measures to increase tuition by the rate of inflation plus 3%; failure to meet those targets should result in the institution’s designated tuition increase being limited to the rate of inflation.

At least six states have laws in place regarding fixed tuition programs: Colorado, Illinois, Minnesota, Oklahoma, Ohio, and Texas. Among these states, Illinois is the only one that requires all institutions to offer a fixed tuition plan. Fixed or guaranteed tuition policies set a single tuition price for each incoming class that cannot increase for a certain period—usually four years. Tuition freezes are fairly common following large tuition increases that tend to occur during recessions. Freezes frequently are informal agreements negotiated during the budget process between institutions and legislatures. In exchange for increasing state support by a certain amount, institutions agree not to raise tuition for a certain period. For example, in June, the Indiana University Board of Trustees voted to freeze undergraduate tuition for the next two years for Indiana residents attending the university’s Bloomington campus.

“To ensure we can continue to offer quality public higher education, we must continue to invest in our institutions,” – USG Chancellor Hank Huckaby. -SNG

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