

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

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**SUBJECT**

Legislation to amend Idaho Code Section 33-3717, Idaho Code relating to tuition at State Institutions

**APPLICABLE STATUTE, RULE OR POLICY**

Idaho Code §33-3717

**BACKGROUND**

This item is proposed legislation that would eliminate the prohibition from charging tuition for full-time resident students attending Boise State University, Idaho State University and Lewis Clark State College. The University of Idaho is not included because the tuition prohibition for the University of Idaho is detailed in the corporate charter of the University that is incorporated into the Idaho constitution and cannot be changed by statute.

Idaho law provides a clear distinction between “tuition” and “student fees.” Tuition is defined as the cost of instruction at the college and universities. Thus, it includes the cost of faculty salaries and other items related directly to the delivery of education to the students. Excluded from that definition are non-instructional costs. Specifically, the cost of the maintenance and operation of the physical plant, institutional support and student services. Examples include the grounds keeping, parking, registrar services, financial aid operations, and other items that are necessary and complementary to, but are not a direct part of, the delivery of the instruction. The matriculation fee, and other student fees, are used to cover only these types of costs.

**DISCUSSION**

The legislation would allow the State Board of Education to set fees, including tuition fees, at the three institutions. The current fee structure requires that fees collected from students can only be used for designated purposes. The legislative proposal is that fees for tuition could also be used to support educational and instructional costs. This allows a direct link between what the students are paying and the education they receive. It also allows the universities to be responsive to the academic needs and demands of students to deliver the courses and programs that they want to take.

**IMPACT**

Approval of this amendment by the legislature would permit the Board to authorize tuition at Boise State University, Idaho State University, and Lewis-Clark State College.

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

---

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff offers no comments or recommendations at this time.

**BOARD ACTION**

A motion to approve the endorsement of the legislation to remove the tuition prohibition from Idaho Code Section 33-3717.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_ No \_\_\_

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

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LEGISLATURE OF THE STATE OF IDAHO  
Fifty-eighth Legislature First Regular Session – 2005

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO.

BY

AN ACT

RELATING TO INSTITUTIONS OF HIGHER EDUCATION, REPEALING SECTION 33-3717, IDAHO CODE; AMENDING CHAPTER 37, TITLE 33, IDAHO CODE BY THE ADDITION OF A NEW SECTION 33-3717, IDAHO CODE, TO AUTHORIZE FEES FOR THE UNIVERSITY OF IDAHO; AMENDING CHAPTER 37, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-3717A, IDAHO CODE, TO AUTHORIZE FEES, INCLUDING TUITION FEES, FOR STATE COLLEGES AND UNIVERSITIES OTHER THAN THE UNIVERSITY OF IDAHO; AMENDING CHAPTER 37, TITLE 33 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-3717B, IDAHO CODE, TO ESTABLISH RESIDENCY REQUIREMENTS, PREVIOUSLY CONTAINED IN SECTION 33-3717, IDAHO CODE; AMENDING SECTION 33-3717A, IDAHO CODE, TO RENUMBER AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 33-3720, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-3717, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 37, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-3717, Idaho Code, and to read as follows:

33-3717. Fees at University of Idaho -- Tuition not allowed – Exceptions. (1) The state board of education and board of regents of the University of Idaho may prescribe fees, but not tuition, for all full-time, resident students enrolled in the University of Idaho.

(2) The state board of education and board of regents of the University of Idaho may prescribe tuition for:

- (a) Nonresident students enrolled in the University of Idaho; or
- (b) Resident students enrolled in the University of Idaho who are:

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

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- (i) In a professional program, college, school, or department approved by the state board of education and board of regents of the University of Idaho;
- (ii) Taking extra studies; or
- (iii) Part-time students at the institution.

(3) For purposes of this section, tuition shall be defined as payment for the cost of instruction.

(4) Fees which may be prescribed under this section include matriculation fees, defined as the fees charged to students for all educational costs other than the cost of instruction including, but not limited to, costs associated with the construction, maintenance, and operation of buildings and facilities, student services, and institutional support, which are complementary to, but not a part of, the instructional program. The state board of education and board of regents of the University of Idaho also may prescribe fees for all students for any additional charges, other than payment for the cost of instruction, that are necessary for the proper operation of the institution.

(5) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(6) Nothing contained in this section shall prevent the state board of education and board of regents of the University of Idaho from waiving fees or tuition to be paid by nonresident students, as defined in section 33-3717C, Idaho Code, who are enrolled in the University of Idaho.

SECTION 3. That Title 33, Chapter 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-3717A, Idaho Code, and to read as follows:

33-3717A. Fees at state colleges and universities other than the University of Idaho. (1) The state board of education may prescribe fees, including tuition fees, for resident and nonresident students enrolled in all state colleges and universities other than the University of Idaho. For purposes of this section, said fees, including tuition fees, may be used for any and all educational costs at the state colleges and universities including, but not limited to, costs associated with:

- (a) Academic services;
- (b) Instruction;
- (c) The construction, maintenance, and operation of buildings and facilities;
- (d) Student services; or
- (e) Institutional support.

The state board of education also may prescribe fees for all students for any additional charges that are necessary for the proper operation of each institution.

(2) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(3) Nothing contained in this section shall prevent the state board of education from waiving fees, including tuition fees, to be paid by nonresident students, as defined in Section 33-3717C, Idaho Code, who are enrolled in the state colleges and universities.

(4) Nothing contained in this section shall apply to community colleges now or hereafter established pursuant to title 33, chapter 21, Idaho Code, or to post-secondary

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA**  
**FEBRUARY 3, 2005**

---

professional-technical schools now or hereafter established not connected to or a part of a state college or university.

SECTION 4. That Title 33, Chapter 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as section 33-3717B, Idaho Code, and to read as follows:

33-3717B. Residency requirements. (1) For any public institution of higher education in Idaho, a "resident student" is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho. Domicile, in the case of a parent or guardian, means that individual's true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parent, parents or guardian must have maintained a bona fide domicile in the state of Idaho for at least one (1) year prior to the opening day of the term for which the student matriculates.

(b) Any student, who receives less than fifty percent (50%) of the student's support from a parent, parents or legal guardians who are not residents of this state for voting purposes, but which student has continuously resided in the state of Idaho for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university and who has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(c) Subject to subsection (2) of this section, any student who is a graduate of an accredited secondary school in the state of Idaho, and who matriculates at a college or university in the state of Idaho during the term immediately following such graduation regardless of the residence of the student's parent or guardian.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending a college or university.

(e) A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(f) A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student's parent or guardian is transferred on military orders.

(g) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation.

(h) Any individual who has been domiciled in the state of Idaho, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the state for a period of less than one (1) calendar year and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

---

(i) A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: Members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (i) Coeur d'Alene tribe; (ii) Shoshone-Paiute tribes; (iii) Nez Perce tribe; (iv) Shoshone-Bannock tribes; (v) Kootenai tribe.

(2) A "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of subsection (1) of this section, and shall include:

(a) A student attending an institution in this state with the aid of financial assistance provided by another state or governmental unit or agency thereof, such non-residency continuing for one (1) year after the completion of the semester for which such assistance is last provided.

(b) A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or does not hold "refugee-parolee" or "conditional entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of the law and who does not also meet and comply with all applicable requirements of this section.

(3) The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to the following factors:

(a) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of a state tax or fee is required.

(b) Filing of Idaho state income tax returns.

(c) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho.

(d) Registration to vote for state elected officials in Idaho at a general election.

(4) The state board of education and board of regents of the University of Idaho shall adopt uniform and standard rules and regulations applicable to all state colleges and universities now or hereafter established to determine residence status of any student and to establish procedures for review of that status.

(5) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected college or university is located; an appeal from the district court shall lie as in all civil actions.

(6) Nothing contained herein shall prevent the state board of education and board of regents of the University of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(7) For students who apply for special graduate and professional programs including, but not limited to the WAMI (Washington, Alaska, Montana, Idaho) Regional Medical Program, the WICHE Student Exchange Programs, Creighton University School

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

---

of Dental Science, the University of Utah College of Medicine, and the Washington, Oregon, Idaho (WOI) Regional Program in Veterinary Medical Education, no applicant shall be certified or otherwise designated as a beneficiary of such special program who has not been a resident of the state of Idaho for at least one (1) calendar year previous to the application date.

SECTION 5. That Section 33-3717A, Idaho Code, be, and the same is hereby amended to read as follows:

33-3717AC. Waiving fees or tuition for certain nonresident students. (1) Notwithstanding any other provision of law the state board of education and the board of regents of the university of Idaho may determine when to grant a full or partial waiver of fees or tuition charged to nonresident students pursuant to reciprocal agreements with other states. In making this determination, the state board of education and the board of regents of the university of Idaho shall consider the potential of the waiver to:

- (a) Enhance educational opportunities for Idaho residents;
- (b) Promote mutually beneficial cooperation and development of Idaho communities and nearby communities in neighboring states;
- (c) Contribute to the quality of educational programs; and
- (d) Assist in maintaining the cost effectiveness of auxiliary operations in Idaho institutions of higher education.

(2) Consistent with the determinations made pursuant to subsection (1) hereof, the state board of education and the board of regents of the university of Idaho may enter into agreements with other states to provide for a full or partial reciprocal waiver of fees or tuition charged to students. Each agreement shall provide for the numbers and identifying criteria of students, and shall specify the institutions of higher education that will be affected by the agreement.

(3) The state board of education and the board of regents of the university of Idaho shall establish policy guidelines for the administration by the affected Idaho institutions of any ~~tuition~~-waivers authorized under this section, for evaluating applicants for such waivers, and for reporting the results of the reciprocal waiver programs authorized in this section.

(4) A report and financial analysis of any waivers of ~~tuition~~ authorized under this section shall be submitted annually to the legislature as part of the budget recommendations of the state board of education and the board of regents of the university of Idaho for the system of higher education in this state.

SECTION 6. That Section 33-3720, Idaho Code, be, and the same is hereby amended to read as follows:

33-3720. Professional studies program. (1) It is hereby declared that it is in the public interest to assist Idaho citizens who wish to pursue professional studies in the fields of medicine, dentistry, veterinary medicine, and other health-related areas of study which are not available within the state by (a) entering into compacts or contractual agreements which make such courses of study available to Idaho citizens, and (b) providing a mechanism to provide funds for such Idaho citizens.

**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

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(2) The state board of education is hereby authorized to enter into loan agreements with qualified recipients to participate in qualified programs, which agreements shall include provisions for repayment of the loan on terms agreed to by the board and the qualified recipient; such repayment agreements may include provisions for decreasing or delaying or forgiving the repayment obligation in relationship to the recipient's course of study or agreement to return to Idaho to practice professionally.

(a) A qualified recipient shall be any Idaho student accepted into a qualified program who meets the residency requirements imposed by section 33-3717B, Idaho Code, and the rules of the state board of education.

(b) A qualified program shall be a program enumerated in section 33-3717B(87), Idaho Code, and any other medical, dental, veterinary medicine, or other health-related program in which participation by Idaho residents has been authorized by the legislature and for which funds have been obligated by the board pursuant to subsection (3) of this section.

(3) The state board of education is hereby authorized to transfer, distribute or pay such moneys as are available in the professional studies account to the school, program, or compact providing the course of study pursuant to contracts, agreements, or compacts entered into by the legislature or the state board of education.

(4) The state board of education is hereby authorized to adopt all necessary rules, subject to the provisions of chapter 52, title 67, Idaho Code, for the administration of the professional studies program.



**PLANNING, POLICY & GOVERNMENTAL AFFAIRS AGENDA  
FEBRUARY 3, 2005**

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STATEMENT OF PURPOSE

RS \_\_\_\_\_

The purpose of this legislation is to grant the State Board of Education the authority to set fees, including tuition fees, for all resident and nonresident students attending Boise State University, Idaho State University, and Lewis-Clark State College. The University of Idaho is not included due to the constitutional charter of the University. The purpose of this legislation is not to increase student fees. Rather, it is designed to clarify the purposes for which those funds may be used. The reason this legislation is needed is that the current tuition prohibition sets restrictions on the fees paid by the students and hinders colleges and universities from being responsive to student needs. Since the fees collected from the students cannot be used for instructional costs, the students cannot have their fees used to support core instructional activities, i.e., faculty salaries, additional faculty, library support, etc.

FISCAL IMPACT

There will be no fiscal impact to the General Fund.

CONTACT

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Agency: State Board of Education

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Statement of Purpose/Fiscal Impact

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