

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 10
 Appropriations

(Delegates Jones and McIntosh)

Education, Health, and Environmental Affairs

Institutions of Higher Education - Fully Online Distance Education - Definition

This bill alters the definition of “fully online distance education program in the State” to require the Maryland Higher Education Commission (MHEC) to determine whether any portion of the *program* offered at a location in the State requires a certificate of approval from MHEC to operate. If so, the institution of higher education that offers the *program* must obtain a certificate of approval to operate in the State instead of registering the program with MHEC.

The bill takes effect June 1, 2015.

Fiscal Summary

State Effect: Revenues are not likely affected in FY 2015. However, MHEC special fund revenues increase from fees for institutions with programs that are required to obtain a certificate of approval as a “fully online distance education program in the State” by an estimated \$409,300 in FY 2016 due to the bill’s June 1, 2015 effective date and the certificate of approval and registration application cycles. This gain will be slightly offset by a loss in revenue from registration fees of an estimated \$8,500 due to institutions that will be able to exclusively obtain a certificate of approval. Future years reflect new out-of-state institutions triggering physical presence in Maryland and institutions becoming eligible for five-year renewals for certificates of approval. The additional workload can likely be handled with existing staff.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	\$409,300	\$459,500	\$436,300	\$413,000	\$389,800
Expenditure	0	0	0	0	0
Net Effect	\$409,300	\$459,500	\$436,300	\$413,000	\$389,800

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Most institutions of postsecondary education must obtain a certificate of approval from MHEC before they are allowed to operate in the State. However, certain institutions are exempt from obtaining a certificate of approval from MHEC. Exempt institutions are either operating under a charter from the General Assembly or religious institutions meeting certain qualifications. MHEC grants a certificate of approval exemption after an institution demonstrates it meets the requirements to qualify for an exemption.

Institutions of higher education that offer fully online distance education programs in the State and do *not* have a physical presence in the State are required to register with MHEC. This involves the payment of a fee and completion of the registration process. Then MHEC will issue or deny registration.

“Fully online distance education program in the State” is defined as a program originating outside the State offered by an out-of-state institution in which a student domiciled in Maryland enrolls and where 51% or more of the program is offered through electronic distribution.

According to the Code of Maryland Regulations (COMAR 13B.05.01.06), a fully online distance education program seeking to register with MHEC must pay an annual registration fee of \$500 if it has an enrollment of no more than 20 Maryland students, or \$1,000 if it has an enrollment of more than 20 Maryland students. With the exception of an out-of-state institution that is located at and is part of a regional higher education center, an out-of-state institution seeking to obtain a certificate of approval must submit an annual application fee of \$7,500 for up to two degree programs (COMAR 13B.02.01.08). For each additional degree program for which approval is sought, an institution must submit \$850. During or after the fifth year of operation in Maryland and during any subsequent renewal cycle, an out-of-state institution may apply for approval to operate in Maryland for an extended period of time, up to five years.

According to COMAR 13B.02.01.03, “Operate in Maryland” means to (1) establish or provide a location in the State for students to receive synchronous instruction for credit leading to a degree or certificate; (2) require students to physically meet in a location in the State for instructional purposes more than twice during a full-term (quarter or semester) course for a total of more than six hours; or (3) have more than five students in a single

program who are physically present at one or more sites in the State in a supervised internship, practicum, or field experience as a required part of a degree or certificate program.

Background: Chapter 132 of 2014 was amended and passed in such a way that it created gaps in MHEC's authority to regulate out-of-state institutions of higher education that offer fully online distance education *programs* in the State. Prior to the passage of Chapter 132, these institutions with a physical presence in the State were required to obtain a certificate of approval from MHEC rather than only register with MHEC to offer fully online distance education programs. Under Chapter 132, as long as 51% of a program is online, even if the *program* has a physical presence in Maryland (*i.e.*, in the form of weekend seminars, practica, or internships), the institution is not required to obtain a certificate of approval in order to operate in Maryland.

MHEC has less authority to regulate institutions that are only required to register as a "fully online distance education program in the State" than institutions that are required to receive a certificate of approval. In addition, the process is less rigorous since the institutions are primarily regulated by other bodies. Accordingly, the fees for the registration are lower.

New regulations implementing Chapter 132 (COMAR 13B.02.01.03) went into effect November 24, 2014, and alter the definition of "operate in Maryland" in regards to higher education institutions. According to a letter of advice from the Attorney General's Office dated September 2, 2014, "while this definition reduces the number of out-of-state institutions that would be required to obtain a certificate of approval by excluding those with only a small number of students participating in a supervised internship, practicum or field experience, it would also apply to some programs that fall within the definition of 'fully online distance education program in the State' as that term will be defined in statute starting October 1, 2014. In those circumstances, the proposed definition would not override the language of Chapter 132, which allows out-of-state programs that are at least 51% online to register rather than obtain a certificate of approval."

State Revenues: MHEC fee revenues increase beginning in fiscal 2016 from certificate of approval renewals and from institutions that have not previously received a certificate of approval in the State due to the bill's June 1, 2015 effective date and the annual process for registrations and certificates of approval, which are valid for one year beginning July 1 or September 1, respectively. This is offset slightly by the loss of some registration fee revenues from institutions that will now be required to obtain a certificate of approval. This estimate was calculated using the following facts and assumptions.

In fiscal 2015, there were 32 out-of-state institutions offering 210 programs that will need to obtain a certificate of approval under the bill. Based on the actual number of programs offered at each institution and the prevailing certificate of approval fee rates (\$7,500 for up

to two programs and \$850 for each additional program), \$367,500 in annual fees are projected from those 32 institutions. After five years of annual renewals at these rates (assuming that the number of programs remains constant and the institution remains in good standing), institutions become eligible for five-year renewals. MHEC, therefore, assumes that only 80% of the original cohort of 32 institutions will be required to renew in fiscal 2018, 60% in fiscal 2019, and 40% in fiscal 2020. The fees collected will decline accordingly.

In addition, MHEC expects five new institutions will trigger the physical presence in Maryland and require a certificate of approval each year beginning in fiscal 2016. MHEC assumes that these institutions will offer an average of five *programs* each; thus, the resulting fees will be \$10,500 per institution (\$7,500 for up to two programs and \$850 for each additional programs). These institutions will also be required to renew annually over the initial five-year approval period. It is assumed that the number of institutions and programs applying remains constant and that all institutions remain in good standing.

MHEC reports that, under the bill, 12 of the existing 32 certificate of approval institutions are projected be able to exclusively go through the certificate of approval process, since all of their online *programs* trigger physical presence in Maryland. Due to the 12 institutions that will no longer be required to register, there will be an annual loss of \$8,500 in revenue, with 5 institutions no longer paying at the annual rate of \$1,000, and 7 institutions no longer paying at the annual rate of \$500. For the purposes of this estimate, it is assumed that none of these institutions will offer programs that will require them to register.

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Revenue Gain for Certificate of Approval Renewals	\$367,500	\$367,500	\$294,000
Revenue Gain for New Certificates of Approval	50,250	100,500	150,750
Loss in Online Registration Fees	-8,500	-8,500	-8,500
Total	\$409,250	\$459,500	\$436,250

Additional Information

Prior Introductions: None.

Cross File: SB 13 (Senators Conway and Pinsky) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Higher Education Commission, Department of Legislative Services

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