

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 272
Appropriations

(Delegate Queen, *et al.*)

Higher Education - Public Institutions of Higher Education - Sanctuary Campus
Status

This bill requires public institutions of higher education in the State to take numerous actions to provide protections and services for students.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: Higher education expenditures by public institutions of higher education increase, potentially significantly, to the extent that students are eligible for the protections established by the bill. **This bill establishes an entitlement program beginning in FY 2018.**

Local Effect: Local community college expenditures increase, potentially significantly, to the extent that students are eligible for the protections established by the bill. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The governing body of each public institution of higher education in the State must ensure, to the fullest extent consistent with federal law, that the institution:

- refrains from releasing information regarding the immigration status of any student attending or of any individual employed by the institution;

- refuses to allow officers or employees of U.S. Immigration and Customs Enforcement (ICE) to enter the campus on official business unless ICE provides to the chief executive officer of the campus at least 10 business days prior to the proposed entry a written description of the nature of the official business and the necessity for entering the campus;
- provides stipends for health care for any student who is not eligible for Medicaid and cannot afford to pay for health insurance provided through the institution;
- during the period between any academic term, offers on-campus housing, or a stipend to cover the cost of off-campus housing, to any student who faces a significant risk of being unable to return to campus to resume studies if the student travels to the student's family residence during the academic break;
- provides access to legal services without cost to any student who faces a significant risk of being unable to complete the student's studies because of possible actions by ICE or other federal agencies or authorities; and
- in the event the federal Deferred Action for Childhood Arrivals (DACA) policy is reversed, provides that (1) funding is made available to any student to whom the DACA policy was applicable so that the student may continue to receive financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research and other education projects, and any other benefits formerly received by the student and (2) office space and designated staff are made available to assist, on a strictly confidential basis, any student formerly covered by the DACA policy and any other student who may face similar issues under the policy that places at risk the student's ability to continue the student's educational program.

Current Law/Background: Following the 2016 Presidential election, numerous colleges and universities, fearing changes in the nation's immigration policies, have declared themselves as "sanctuary campuses." For example, the University of Pennsylvania has instituted a sanctuary campus policy that includes prohibiting ICE agents onto the campus without a warrant. However, there is no universal definition to the term "sanctuary campus," as it does not involve a legal concept that is recognized under federal law. The University of Maryland President recently rejected student demands to designate the university as a sanctuary campus, stating that many of the protections demanded were already provided. For example, the Family Educational Rights and Privacy Act generally prohibits schools from releasing a student's personal information without a student's (or parent's) consent absent a valid legal subpoena, warrant, or court order.

ICE currently has in place a “sensitive location” policy, which states that immigration enforcement actions at sensitive locations should generally be avoided and require either prior supervisory approval or exigent circumstances. Locations covered by the policy include colleges and universities, as well as other schools, places of worship, public demonstrations, and religious or civil ceremonies or observances.

In 2012, the U.S. Department of Homeland Security issued the DACA policy (pursuant to an executive order) to allow young unauthorized immigrants who are low enforcement priorities to remain in the country. DACA does not grant an individual legal immigration status or provide a pathway to citizenship, but it does provide individuals with a temporary lawful status. To be eligible for DACA, an individual must meet specified requirements including (1) being younger than age 31 as of June 15, 2012; (2) having arrived in the United States prior to the age of 16; and (3) either being currently in school or having graduated or obtained a certificate of completion from high school, having a GED, or having been honorably discharged from the Coast Guard or Armed Forces. Individuals eligible for DACA must not have been convicted of a felony, significant misdemeanor, three or more other misdemeanors, or otherwise pose a threat to national security or public safety.

Chapter 191 of 2011 exempted individuals who attended and graduated from Maryland high schools from paying out-of-state tuition and out-of-county tuition under specified circumstances at public institutions of higher education in the State, if the individual begins postsecondary education at a community college. The exemption applies regardless of residency status and includes undocumented students.

State and Local Expenditures: Higher education expenditures at institutions of higher education and local community college expenditures increase, potentially significantly, to the extent that students are eligible for the protections established by the bill. An exact expenditure impact cannot be reliably estimated beforehand, as it will depend on the number of students who would qualify for each of the new protections established by the bill, as well as how the provisions are interpreted. For example, the bill requires stipends for “health care” for any student who is not eligible for Medicaid and cannot afford health insurance provided through the institution. Except for limited payments related to emergency room care, undocumented immigrants, including individuals with DACA status, are not eligible for Medicaid. Although some undocumented individuals may already be covered by private insurance or be able to afford insurance otherwise provided through the colleges or universities, it is likely that some may not. The bill also does not provide detail as to the extent of “health care” for which a stipend must be provided, which will be a significant factor in determining the magnitude of any potential expenditures. The Department of Legislative Services notes that individuals may be ineligible for Medicaid for reasons unrelated to citizenship status (*e.g.*, exceeding income thresholds); however, as

written, the provision could be construed to apply to *any* student who is not eligible for Medicaid, regardless of the reason.

Furthermore, decisions made at the federal level regarding immigration policy and priorities for enforcement will impact the magnitude of any expenditures. Expenditures may increase further for any institutions to cover the cost of housing for any students who face “significant risk” of being unable to return to campus once the student travels to the student’s family residence during the academic break and leaves the designated sensitive location of the institution. Any expenditures related to this provision will depend on the housing arrangements of affected students and whether the institution has on-campus housing available during the academic break, as well as the extent to which federal immigration policies are altered to subject individuals to a “significant risk” of being unable to return to campus if traveling, as specified.

Expenditures increase further to the extent that students facing a “significant risk” must be provided with access to free legal services. Due to the complexity of federal immigration policy and law, it is assumed that existing legal staff of public institutions of higher education will not be able to absorb any additional workload related to this impact. Accordingly, expenditures may increase to provide required legal assistance. However, the Department of Legislative Services notes that given the high interest surrounding this issue, it is possible that institutions may be able to secure attorneys on a pro bono basis to meet this requirement, thus mitigating some potential expenditures.

Additional protections must be afforded to students if DACA is reversed. Depending on the number of students impacted at any particular institution, expenditures may increase to fund additional designated staff and provide office space to assist students, as required by the bill. However, although the bill requires institutions to ensure that funding is available for students to *continue* to receive specified benefits, such as financial aid and exemption from nonresident tuition fees, individuals with DACA status are not eligible for financial aid, and provisions in State law related to nonresident tuition fees are not dependent on the federal DACA policy. While some fellowship stipends and research funding may be available *specifically* to DACA students through private funding streams, such benefits may continue to be available to undocumented individuals even if DACA is reversed.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; U.S. Department of Homeland Security; National Conference of State Legislatures; U.S. Department of Education; University of Pennsylvania; *The Washington Post*; American Council on Education; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2017
fn/hlb

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510