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FISCAL AND POLICY NOTE
First Reader

Senate Bill 546 (Senator Conway)
Education, Health, and Environmental Affairs

Higher Education - Tuition Rates - Exemptions

This bill alters the circumstances under which an individual is exempt from paying the out-of-state tuition rate under the Maryland Dream Act by (1) removing the requirement that an individual earn an associate's degree or 60 credits at a community college prior to receiving in-state tuition at a public four-year institution; (2) extending the time from four to six years by which an individual must register as an entering student after graduating from high school or receiving the equivalent qualification; and (3) altering and removing the requirement that the individual or the individual's parent or legal guardian file a Maryland income tax return to receive in-county or in-state tuition as specified. Finally, the bill grandfathers in individuals who meet specified requirements between June 5, 2012, and March 5, 2018, such that specified individuals will be eligible to receive in-state or in-county tuition if the address used on their Maryland tax income tax return is an address in the State during a specified period of time. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: General fund expenditures may increase – to the extent the number of full-time equivalent students (FTES) who qualify for in-state tuition at a community college, including Baltimore City Community College (BCCC), is not offset by fewer FTES attending community college due to the bill. Tuition revenues at public institutions of higher education may be affected, as explained below.

Local Effect: State aid for local community colleges may increase, as explained below. Local community college tuition revenues may be affected, as explained below.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill removes the requirement that the individual or the individual's parent or legal guardian file a Maryland income tax return to receive in-state tuition at a *public four-year* institution.

The bill allows an individual to receive *in-county* tuition at a community college if the individual attends a community college supported by the county in which an address in the county is listed on the Maryland income tax return – of the student or the student's parent or guardian – of the calendar year prior to the academic year in which the rate would apply.

For individuals who meet the *new* requirements to receive in-state or in-county tuition as specified in the bill between June 5, 2012, and March 5, 2018, they are eligible for in-state tuition until they are awarded a degree as long as they or their parents (or legal guardians) use an address in the State on their Maryland income tax return each year that the students attend an institution and receive in-state tuition.

Current Law:

Dream Act Overview

Chapter 191 of 2011, known as the Dream Act, was petitioned to referendum and approved by Maryland voters in November 2012. Under the Dream Act, an individual who attended a Maryland high school for at least three years and graduated from a Maryland high school or received the equivalent of a high school diploma in the State may pay the same tuition rates that resident students pay. To qualify, students must begin at a Maryland community college, subject to several requirements and conditions. After completing at least 60 credits at a community college, qualifying students may enroll at a public four-year higher education institution and pay the equivalent of in-state tuition.

Dream Act Community Colleges

Specifically, to qualify for the exemption from paying out-of-state tuition at a community college in the State and out-of-county tuition if the college is supported by the county in which the student last attended or graduated from high school, a student must:

- beginning with the 2005-2006 school year, have attended a public or nonpublic secondary (high) school in the State for at least three years;
- beginning with the 2007-2008 school year, have graduated from a high school in the State or received the equivalent of a high school diploma (*e.g.*, a general education diploma (GED)) in the State;

- register as an entering student at a community college in the State no earlier than fall 2011;
- provide documentation that the student or the student's parent or legal guardian has filed a Maryland income tax return annually for the three years while the student attended high school in the State, during any period between high school graduation and registration at the community college, and during the period of attendance at the community college; and
- register at a community college within four years of high school graduation.

The Dream Act also requires a student who qualifies for an exemption and is not a permanent resident to provide an affidavit stating that the student will file an application to become a permanent resident within 30 days after becoming eligible to do so. In addition, a student who qualifies for an exemption and is required to register with the Selective Service System must provide documentation of the required registration. (The bill does not alter these requirements.)

Dream Act Four-year Institutions

To be eligible to pay a rate equivalent to the resident tuition rate at a public four-year institution in the State, a student must meet all of the requirements to qualify for the community college tuition rate and:

- have attained an associate's degree or achieved 60 credits at a community college in Maryland;
- provide documentation that the student or the student's parent or legal guardian has filed a Maryland income tax return annually while the student attended a community college, during any period between graduation from or achieving 60 credits at a community college and registration at a public four-year institution, and during the period of attendance at an institution; and
- register at a public four-year institution within four years of graduating from or achieving 60 credits at a community college.

Students qualifying under the bill for tuition rates equivalent to the resident tuition rates at four-year institutions may not be counted as in-state students for the purposes of determining the number of Maryland undergraduates enrolled at the institutions.

In-state Tuition

For institutions within the University System of Maryland (USM), the Board of Regents sets tuition policies, including the determination of which students are eligible for resident (*i.e.*, in-state) tuition. The basic policy requires students to be identified as permanent

residents of Maryland to qualify for resident tuition, meaning they have lived continuously in the State for at least 12 months immediately prior to attendance at a USM institution. An individual who is residing in Maryland primarily for the purpose of attending an educational institution is not considered a permanent resident. The Board of Regents of Morgan State University and the Board of Trustees of St. Mary's College of Maryland set tuition policies for those institutions. The policies for the institutions are very similar to the USM policies. Both institutions require one year of residency in Maryland to qualify for in-state tuition rates.

Typically, there is a three-month residency requirement for community colleges.

Background: Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept undocumented immigrants. In its decision, the court contended that denying an education to the children of undocumented immigrants would “foreclose any realistic possibility that they will contribute...to the progress of our Nation.” However, since 1996, federal law has prohibited undocumented immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain. To get around the federal law, states that have passed in-state tuition benefits for undocumented immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status. Maryland enacted such legislation in 2012 after Chapter 191 of 2011, known as the Dream Act, was petitioned to referendum and approved by Maryland voters.

Undocumented Students

In 2012, the U.S. Department of Homeland Security issued the federal deferred action for childhood arrivals (DACA) policy (pursuant to an executive order) to allow young unauthorized immigrants who are low enforcement priorities to remain in the country. The future of the program is uncertain. In 2017, the Trump administration announced that the program was going to end, leading to a lawsuit. Due to a ruling of a judge in the lawsuit, as of February 13, 2018, individuals in the DACA program continue to be covered by the legal protections granted by DACA; however, the judge declined to extend the program for new applicants. As reported in the *Washington Post*, the judge stated that the administration indisputably has the right to end the program; however, the administration used a flawed legal position to do so.

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 U.S. Coast Guard or U.S. 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.

According to the National Conference of State Legislatures, as of July 2015, 20 states, including Maryland, offer in-state tuition to undocumented immigrant students, 16 by state legislative action and 4 by state university systems. The laws that grant in-state tuition typically require attendance and graduation at state high schools, acceptance at a state college or university, and a promise to apply for legal status as soon as eligible. In 2015, Connecticut reduced the number of high school years an undocumented immigrant must attend in the state from four to two.

Since DACA status has been interpreted by some to grant individuals with DACA status legal status, many institutions of higher education, including the [University of Maryland, College Park Campus](#) (UMCP), have allowed some individuals eligible for DACA status for the 12 consecutive months prior, to be eligible for in-state tuition.

As of September 2017, approximately 8,100 individuals in Maryland had active DACA status. It is unknown how many of those individuals are receiving in-state tuition based on their DACA status, but they do not qualify for in-state tuition under the Maryland Dream Act.

During the fall 2016 semester, approximately 500 students at community colleges and 45 students at public four-year institutions received in-state tuition under Maryland's Dream Act (Education Article § 15-106.8). Slightly fewer such students received in-state tuition in the spring 2017 semester.

Maryland Tuition Rates

Proposed fall 2018 in-state and out-of-state tuition and fee rates for full-time undergraduates at public four-year institutions are shown in **Exhibit 1**. The difference between in-state and out-of-state for fall 2018 tuition ranges from almost \$24,600 at UMCP, to almost \$6,200 at the University of Maryland University College (UMUC). The difference between the rates, using the simple average, is almost \$12,300.

The USM Board of Regents Policy on Undergraduate Admissions (III-4.00) limits out-of-state undergraduate enrollment to no more than 30% of each institution's total undergraduate enrollment, excluding UMUC and students enrolled exclusively in distance education programs.

Exhibit 1
In-state and Out-of-state Undergraduate Tuition at Public Four-year Institutions
Proposed Fall 2018 Rates

<u>Institution</u>	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
University System of Maryland Institutions			
University of Maryland, College Park Campus	\$10,595	\$35,216	\$24,621
Bowie State University	8,234	18,874	10,640
Towson University ¹	9,940	21,651	11,711
University of Maryland Eastern Shore ²	8,203	18,409	10,206
Frostburg State University ¹	9,130	23,340	14,210
Coppin State University	6,625	12,896	6,271
University of Baltimore	9,090	21,208	12,118
Salisbury University ¹	9,824	19,526	9,702
University of Maryland University College ^{3,4}	9,270	15,420	6,150
University of Maryland Baltimore County	11,794	26,888	15,094
Other Public Four-year Institutions			
Morgan State University	7,892	18,159	10,267
St. Mary's College of Maryland	14,815	31,118	16,303

¹Towson University, Salisbury University, and the University of Maryland University College have separate, lower out-of-state rates for students enrolled at the University System of Maryland at Hagerstown.

²The University of Maryland Eastern Shore has a separate, lower regional rate for non-Maryland students residing in Delaware and the eastern shore of Virginia.

³Towson University, Salisbury University, and the University of Maryland University College have separate, lower out-of-state rates for students enrolled at the University System of Maryland at Hagerstown.

⁴Based on 30 credit hours.

Note: Rates are pending final approval.

Source: Morgan State University; St. Mary's College of Maryland; University System of Maryland; Department of Legislative Services

Fall 2017 in-county, out-of-county, and out-of-state tuition rates for community colleges are shown in **Exhibit 2**. The exhibit shows that out-of-state rates at community colleges are, generally, two to three times the in-county tuition rates.

Exhibit 2
In-county, Out-of-county, and Out-of-state Tuition and Fees at Community Colleges
Based on 30 Credit Hours Per Year
Fall 2017

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$3,940	\$7,240	\$8,620
Anne Arundel	4,100	7,160	12,020
Baltimore City	3,196	3,196	7,276
Baltimore County	4,606	8,086	11,896
Carroll	4,884	7,080	9,888
Cecil	3,660	6,480	7,920
Chesapeake	4,760	6,830	9,140
College of Southern MD	4,613	8,007	10,332
Frederick	4,385	8,645	11,435
Garrett	4,230	7,980	9,180
Hagerstown	3,990	5,910	7,800
Harford	4,553	7,216	9,878
Howard	4,848	7,338	8,688
Montgomery	4,974	9,618	13,110
Prince George's	4,700	7,550	10,610
Wor-Wic	3,750	7,740	9,420

Source: Maryland Association of Community Colleges

State Fiscal Effect:

General Fund Expenditures

Due to the Senator John A. Cade and BCCC funding formulas, general fund expenditures increase for each FTES who qualifies for in-state tuition at a community college that is not offset by fewer FTES attending community college. It is unknown how many additional FTES may qualify for resident tuition at community colleges due to altering the years for which tax returns must be filed (and showing an address in the State) and grandfathering in students who previously did not qualify under the Dream Act. Conversely, fewer students may choose to attend a community college prior to attending a public four-year institution since the bill allows them to enroll directly at a four-year institution.

There is little information available on the number of additional students who may qualify for resident tuition at a community college, or the number who will be accepted to and enroll in a public four-year institution instead of attending community college; thus, general fund expenditures cannot be reliably estimated. However, for each additional FTES who qualifies for and attends a local community college in the 2018-2019 academic year, general fund expenditures increase by approximately \$3,200 in fiscal 2021. Likewise, each additional FTES who qualifies for and attends BCCC in the 2018-2019 academic year increases general fund expenditures by approximately \$8,400 in fiscal 2021. Out-year expenditures depend on the number of additional FTES who qualify due to the bill and the actual per FTES amounts for the Cade and BCCC funding formulas.

Baltimore City Community College

As explained above, State aid for BCCC, through its funding formula, may increase minimally, due to additional FTES qualifying as a result of the bill; however, this may be partially or fully offset due to students directly enrolling in public four-year institutions rather than BCCC.

Likewise, BCCC tuition revenues may decline to the extent that additional individuals qualify for in-state rather than out-of-state tuition, and additional individuals attend public four-year institutions rather than enroll at BCCC first; this may be partially offset by grandfathered students who were not initially eligible for in-state tuition under the Dream Act enrolling at community college.

Public Four-year Institutions

Tuition revenues at public institutions of higher education are likely not materially affected. Public four-year institutions have considerable autonomy over admissions and generally maintain fairly stable proportions of in-state and out-of-state students. The bill does not affect that autonomy. Therefore, despite the differences in tuition levels for in-state and out-of-state students, tuition revenues at most institutions are not materially affected. As long as there are no major adjustments to the proportion of students who qualify for in-state tuition, institutions can adjust admissions to avoid any significant loss of tuition revenue.

The fiscal impact of this bill is a potential loss of tuition and fee revenues equal to the difference between in-state and out-of-state tuition and fees for each eligible student who enrolls at a USM institution (except UMUC), Morgan State University, or St. Mary's College of Maryland. In fiscal 2017, the public four-year institutions reported a loss of approximately \$670,000 in tuition revenues due to enrolling Dream students.

At most USM institutions, out-of-state students (the bill does not alter the Dream Act requirement that eligible students receiving in-state tuition under the Dream Act are not

counted as in-state students) make up no more than 10% of undergraduates, so the impact of the bill is not significant. There may be a minimal impact at campuses with out-of-state enrollment of 20% or more: University of Maryland, Baltimore Campus; UMCP; and University of Maryland Eastern Shore. For these institutions, tuition revenues may decrease if the institutions choose to admit a significant number of eligible students who did not previously qualify for in-state tuition. However, to the extent these students would not have otherwise enrolled because they could not afford or choose not to pay out-of-state tuition, or the institutions increase enrollment overall, the impact may be minimal.

Local Fiscal Effect: State aid for local community colleges, through the Cade funding formula, may increase minimally due to additional FTES qualifying under the bill, as explained above. Likewise, local community college tuition revenues may decline to the extent that additional individuals qualify for resident tuition and additional individuals attend public four-year institutions rather than a local community college; this may be partially or fully offset by eligible students who were not initially eligible for in-state tuition under the Dream Act enrolling at community college. In total, community colleges reported a loss of approximately \$2 million in tuition revenues during fiscal 2017 due to Dream students.

Additional Information

Prior Introductions: None.

Cross File: HB 1536 (Delegate Hixson, *et al.*) - Ways and Means.

Information Source(s): Maryland Higher Education Commission; Baltimore City Community College; Morgan State University; St. Mary's College of Maryland; Department of Legislative Services

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