

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 843 (Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

**Institutions of Postsecondary Education - Fully Online Distance Education
Programs - Registration**

This bill requires an institution of postsecondary education that enrolls Maryland students in a fully online distance education program to file an application to register with the Maryland Higher Education Commission (MHEC) within three months of enrolling its first Maryland student and register within six months. An institution required to register with MHEC must be accredited by an accrediting body recognized and approved by the U.S. Department of Education and also meet a number of specified financial conditions and business practices, including complying with the student refund policy and procedures established by MHEC. An institution required to register with MHEC must pay a fee to be set in regulation by MHEC, and may be required to furnish a bond or other form of financial guarantee to the State, to be used to reimburse any student who is entitled to a refund of tuition and fees due to the institution's breach of agreement or contract with the student or the State.

MHEC must make public and post on its website (1) a list of registered institutions of postsecondary education that offer fully online distance education programs in the State; and (2) the names of institutions for which MHEC denied or revoked registration. MHEC may impose various penalties on institutions that fail to comply with the bill's requirements.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues may increase due to the fees charged to institutions that offer fully online distance education programs and expenditures may also increase to reimburse affected students who attend fully online distance education programs. Special fund expenditures increase by \$121,300 beginning in FY 2013 for MHEC to hire staff to

address legal matters, interface with the registering institutions, manage paperwork for the Guaranty Fund, and create and maintain the registration system. It is assumed any costs associated with public four-year institutions transferring transcript-level data to the Maryland Longitudinal Data System will be attributed to the cost of developing the system. Future years reflect annualization and inflation.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$121,300	\$152,200	\$162,600	\$170,300	\$178,300
SF Expenditure	\$121,300	\$152,200	\$162,600	\$170,300	\$178,300
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: It is assumed any costs associated with community colleges transferring transcript-level data to the Maryland Longitudinal Data System will be attributed to the cost of developing the system.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Distance education” is defined as course work taught by an institution of postsecondary education through electronic distribution of instruction to a site other than the principal location of the institution and advertised or described as leading to the formal award of a certificate or degree.

“Fully online distance education program in the State” is defined as a program in which:

- 100% of the program is offered through electronic distribution of instruction to one or more sites other than the principal location of an institution; or
- 51% or more of the program is offered through electronic distribution of instruction to one or more sites other than the principal location of an institution and MHEC has determined that the portion of the program offered at a location in the State, if any, does not require a certificate of approval for the institution to operate in the State.

An institution of postsecondary education that enrolls Maryland students in a fully online distance education program in the State must file an application to register with MHEC within three months of enrollment, unless the program has been approved or received a favorable recommendation from MHEC under the current program approval process.

An institution that has enrolled Maryland students before obtaining registration may continue to operate without a registration while MHEC considers the institution's application, conducts a hearing concerning the institution's application, or participates in judicial review regarding an institution's application. However, an institution that continues to operate without a registration must furnish a performance bond or other form of financial guarantee to the State in an amount set by regulation that is in addition to and separate from a performance bond or other form of financial guarantee required to obtain a registration from MHEC.

Academic and Business Requirements

An institution required to register with MHEC must be accredited by an accrediting body recognized and approved by the U.S. Department of Education. Every two years, an institution must submit to MHEC a financial statement reviewed by an independent accountant retained by the institution. An institution must also submit an affidavit from the president or chief executive officer of the institution affirming (1) that the institution has not filed for bankruptcy protection during its existence; and (2) the willingness of the president or the chief executive officer to abide by the provisions of the bill. An institution is required to submit to MHEC proof of good business standing in the state in which the central administration of the institution is incorporated. An institution must also submit proof of good academic standing submitted by the regulatory higher education entity in the state in which the central administration of the institution is located. If the state in which the institution is located does not have a regulatory higher education entity, then the accrediting body that accredited the institution must submit the proof of good academic standing.

An institution must promptly notify MHEC of a change in ownership or a change in majority control. An institution must also comply with the principles for good practice for distance education established by MHEC through regulation.

On its website, an institution must post and make public whether the institution is registered in Maryland and the process by which to make complaints against the institution. An institution required to register with MHEC is subject to complaint investigation by the Office of the Attorney General or MHEC or both.

Refund Policy and Procedures

An institution required to register with MHEC must comply with the student refund policy and procedures established by MHEC. The refund policy and procedures established by MHEC must allow for (1) at least two weeks of required orientation or preenrollment instruction in a fully online distance education program at no charge for a student who has completed less than 24 credits of college-level learning from an

accredited institution *and* prorated refund methodology that provides a refund to a student who has completed 24 credits or more of college-level learning from an accredited institution who has completed 60% or less of a course, term, or program within the applicable billing period; or (2) a prorated refund methodology that provides a refund to any student who has completed 60% or less of a course, term, or program within the applicable billing period.

Fees

MHEC must require the payment of a fee set by regulation as a condition of registration with the State. The fees charged must be a fixed amount for all institutions regardless of type, location, or student enrollment and set to cover the approximate cost of implementing a system of registration.

List of Registered Institutions

MHEC must make public and post on its website a list of registered institutions of postsecondary education that offer fully online distance education programs in the State as well as, if MHEC denies or revokes the registration of an institution, the name of the denied or revoked institution.

Initial Registration with MHEC/Written Notice of Deficiencies

If MHEC believes that an institution of postsecondary education that is required to register does not meet the conditions or standards necessary for the issuance of the registration, MHEC must give the institution written notice of the specific deficiencies within six months after receipt of an application for registration. Within 20 days after receipt of a notice of deficiencies, the institution may request a hearing before MHEC. Within 60 days after receipt of the request for a hearing, MHEC must hold a hearing to determine if the registration should be issued.

If, after six months from the date on which the application for registration was submitted to MHEC, the institution has received neither a registration nor written notice of deficiencies, the institution may request a hearing within 20 days before MHEC. Within 60 days after receipt of the request for a hearing, MHEC must hold a hearing to determine if the registration should be issued. After a hearing, MHEC must render a decision within 30 days.

Guaranty Fund

MHEC is authorized to create a separate and distinct Guaranty Fund to reimburse Maryland students who attend a fully online distance education program.

The fully online distance education fund must be used to reimburse any student at any of the institutions required to register who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student or failed to comply with any provision of the Education Article.

After three years of claims history during which no claim against the fund has been sustained on behalf of a student participating in a fully online distance education program offered in the State by a registered institution, MHEC must exempt that institution from the requirement to contribute to the fund. If a claim against the fund is sustained on behalf of a student participating in a fully online distance education program offered in the State by an institution, then the institution must be required to contribute to the fund. A student who takes courses from an institution exempted from contribution to the fund may make a claim against the fund.

MHEC must determine the amount of the fee based on the probable amount of money needed for the fund for each fiscal year. If the money in the Guaranty Fund is insufficient to satisfy duly authorized claims, the participating institutions may be reassessed and must pay the additional amounts required.

MHEC may not issue registration to, and must revoke any registration previously issued to, an institution that fails to pay any annual fee or reassessment. MHEC must deposit into the appropriate fund any penalty assessed against an institution of postsecondary education required to register.

The State Comptroller is responsible for maintaining the fund and may deposit the assets of the fund in any manner that is consistent with the purpose of the fund. All interest or other return on fund investment must be credited to the fund. MHEC, through the Attorney General, may enforce any claim.

MHEC Reporting Requirements

By December 1 each year, MHEC must report to the Governor and the General Assembly on (1) the number of institutions of postsecondary education that apply for registration; (2) the type and size of the institutions that apply; (3) the number of institutions approved for registration; (4) the number of institutions denied registration; and (5) the number of Maryland students enrolled in institutions required to register.

By December 1 each year, MHEC also must report to the Governor and the General Assembly on (1) the number of claims made against each guaranty fund; (2) the type, size, and program of the institutions against which the claims are made; (3) the number of claims that are approved and the associated payouts from the funds; and (4) the number of claims that are denied.

Sanctions

In addition to any other sanction imposed, an institution of postsecondary education that is required to register that willfully and knowingly violates the provisions of the bill is subject to revocation of registration and prohibited from enrolling Maryland students in fully online distance education programs in the State. Even so, Maryland students who already attend an institution prohibited from enrolling Maryland students are allowed to complete a fully online distance education program in the State that is in progress.

If an institution is required to register and the institution does not register with MHEC within six months of enrolling its first Maryland student or the institution enrolls additional Maryland students in violation of the bill, the institution is subject to a maximum fine of \$20,000.

In imposing any sanctions, MHEC must consider:

- the seriousness of the deficiency;
- the harm caused by the deficiency;
- the good faith of the institution and any corrective actions taken;
- any history of previous deficiencies; and
- other pertinent circumstances.

An institution that is aggrieved by an order of MHEC has the right to judicial review. The decision of MHEC must be presumed correct and the institution has the burden of proving otherwise. The Secretary of Higher Education may at any time following written notice of the deficiencies and prior to MHEC's final decision seek an injunction or other judicial remedy, if the Secretary determines that the public interest requires enforcement. If a court grants relief prior to a hearing that was requested on a timely basis, MHEC must schedule a hearing in regard to the notice of deficiencies within two weeks of the issuance of the court's order, unless the institution requests a delay.

Maryland Longitudinal Data System

Institutions of postsecondary education that are required to register must transfer student-level enrollment data, degree data, and financial aid data for all Maryland residents to the Maryland Longitudinal Data System in accordance with the existing data security and safeguarding plan. In addition to student-level data, local school systems, community colleges, and four-year public institutions of higher education are required to transfer transcript-level data for all Maryland residents to the Maryland Longitudinal Data System.

The bill may not be construed to affect the ongoing interpretation of current law regarding whether instruction through correspondence, noninteractive learning, credit for prior learning, cooperative education activities, practice, internship, externships, apprenticeships, portfolio review, departmental examinations, or challenge examinations requires a certificate of approval from MHEC to operate, do business, or function in the State.

Current Law:

Types of Institutions of Higher Education

Current law differentiates between public, private nonprofit, and for-profit institutions of higher education; institutions of postsecondary education; private career schools; and regional higher education centers. Out-of-state institutions are addressed in the Code of Maryland Regulations (COMAR).

Certificate of Approval

Most postsecondary education institutions 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. These institutions are either under 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.

If MHEC believes that an institution of postsecondary education does not meet the conditions or standards on which its certificate of approval, or any other approval issued by MHEC or the Secretary of Higher Education, was based, MHEC must give the institution written notice specifying the deficiencies. MHEC may reprimand the institution or suspend or revoke the institution's certificate of approval or any other approval issued by MHEC or the Secretary. Instead of or in addition to reprimanding a private career school, or suspending or revoking any approval issued to a private career school, MHEC may impose a penalty of up to \$5,000 for each violation. MHEC must deposit any penalty assessed against a private career school into the Guaranty Fund for private career schools.

Background: Online learning is rapidly growing in both availability and popularity. Many institutions of postsecondary education offer online courses in addition to traditional face-to-face courses, and some institutions only offer online courses. From 2009 to 2010, the number of college students taking at least one online course increased by 1.0 million, from 4.6 million to 5.6 million students.

MHEC reports that approximately 1,300 institutions offer online postsecondary higher education in the United States. This figure includes public, private nonprofit, and for-profit institutions of postsecondary education. It is unknown how many institutions worldwide offer online courses.

In 2010, the U.S. Department of Education released a new regulation that would affect online learning. The regulation, referred to as the “state authorization rule,” requires that a college must have legal approval to operate in every state in which it has students. This regulation would affect all institutions that have online programs that enroll students from several states. An institution not in compliance with the regulation would risk losing federal financial aid. The rule was scheduled to go into effect July 1, 2011, but a U.S. District Court struck down the provision because the U.S. Department of Education did not give institutions sufficient time to review and comment on the rule.

According to the National Conference of State Legislatures, about 30% of institutions that offer online courses have yet to apply for approval in any state; many are waiting to see if the federal regulation will be upheld. One survey of institutions that offer online courses found that 59% of institutions probably will not accept students from states that have a costly and burdensome process to offer online courses to students who live in that state. Massachusetts is one of the most expensive states to offer online courses; it charges \$10,000 per application plus \$2,000 per each degree program, as well as a \$4,000 annual fee for the first five years. Wyoming charges a \$100 authorization fee. Other states currently have no policy regarding institutions offering online courses in the state.

State Revenues: Special fund revenues increase due to the creation of the Guaranty Fund for fully online institutions. The magnitude of the increase is dependent on the size of fund MHEC believes is required to cover the risk of students who attend a fully online distance education program in the State. Since the Guaranty Fund may be used to reimburse any student (not just Maryland residents) who is entitled to a refund of tuition and fees due to the institution’s breach of agreement or contract with the student or the State, MHEC may take total enrollment into account when setting the fee. The exact payment structure for the Guaranty Fund for institutions that offer a fully online distance education program in the State depends on how MHEC evaluates the risk of institutions that offer a fully online distance education program closing without refunding students’ tuition. However, most accredited institutions that offer online courses are unlikely to go bankrupt, so the risk may be determined to be low.

Special fund revenues also increase by \$121,319 in fiscal 2013 due to MHEC charging a registration fee to institutions that offer a fully online distance education program in the State. It is assumed that registration fee revenues will fully cover MHEC’s costs to administer the registration program. Since it is unknown how many institutions will

register, it is difficult to determine a registration fee. However, due to the estimated expenditures associated with the program, if MHEC estimates 25 institutions will register each year, then registration fees will be approximately \$4,900 per institution in fiscal 2013. If MHEC estimates that 100 institutions will register each year, then registration fees are estimated to be \$1,200 per institution in fiscal 2013. It may be difficult to determine the fee because institutions may be deterred from registering if the fee is too high.

State Expenditures: Special fund expenditures from the Guaranty Fund increase when a fully online distance education program in the State closes without refunding tuition to students.

Special fund expenditures also increase by \$121,319 in fiscal 2013 for MHEC to hire one full-time staff specialist, one part-time administrative specialist, and one part-time assistant Attorney General to create and maintain the registration system, manage paperwork for the Guaranty Fund, interface with the registering institutions, and address legal matters associated with requiring out-of-state and perhaps foreign institutions of postsecondary education to register to enroll Maryland students. The estimate reflects a 90-day start-up delay from the bill's July 1, 2012 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Salaries and Fringe Benefits	\$111,963	\$151,055	\$161,439
Operating Expenses	867	1,166	1,179
Start-up Costs	<u>8,489</u>	<u>0</u>	<u>0</u>
Total	\$121,319	\$152,221	\$162,618

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Comments: Institutions that offer fully online distance education programs in the State may have to pay a registration fee and annual fee into the Guaranty Fund. The amount of the potential fee is unknown, but it is assumed that it will operate in a similar manner as the Guaranty Fund for private career schools and for-profit institutions of higher education. The exact payment structure for the Guaranty Fund for institutions that offer a fully online distance education program in the State depends on how MHEC evaluates the risk of institutions that offer a fully online distance education program closing without refunding students' tuition.

Under the bill, an institution may continue to operate without registration while MHEC considers the institution's application, conducts a hearing concerning the institution's application, or participates in judicial review regarding an institution's application. Such

an institution must furnish a performance bond or other form of financial guarantee to the State in an amount set by regulation that is in addition to and separate from a performance bond or other form of financial guarantee required for a certificate of approval or registration.

The Maryland Independent College and University Association (MICUA) reports that its member institutions have never implemented an academic program that did not receive a favorable recommendation from MHEC and its member institutions intend to continue that practice. Hence, neither the fees nor the Guaranty Fund costs will affect MICUA institutions.

Additional Information

Prior Introductions: None.

Cross File: HB 1223 (Delegate Guzzone) - Appropriations.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Maryland Independent College and University Association, Judiciary (Administrative Office of the Courts), University System of Maryland, National Conference of State Legislatures, National Association of State Higher Education Executive Officers, Department of Legislative Services

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