

**Department of Legislative Services**  
Maryland General Assembly  
2013 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 510

(Senator Pinsky)

Education, Health, and Environmental Affairs

Appropriations

**Institutions of Higher Education - Fully Online Distance Education Programs -  
Regulation**

This bill alters the type of institution that is required to register with the Maryland Higher Education Commission (MHEC) before enrolling Maryland students in fully online distance education programs such that institutions of *higher* education rather than institutions of *postsecondary* education must register. The grace period of three months for an institution to operate without registration if it had applied to register with MHEC is repealed. An institution of higher education that is subject to program review by MHEC or participates in the Southern Regional Education Board's Electronic Campus (SREB-EC) is not required to register. At least twice a year, MHEC must peruse federal databases and other information sources to determine whether Maryland students are enrolled in a fully online distance education program offered by an institution of higher education that is required to register with MHEC but that has failed to register with MHEC.

The bill takes effect July 1, 2013.

**Fiscal Summary**

**State Effect:** MHEC special fund expenditures increase beginning in FY 2014 due to the requirement for MHEC to, at least twice a year, peruse federal databases and other information sources for institutions in violation of the registration requirement; the additional workload due to more institutions registering to avoid the penalty provisions; and prosecuting violators. Special fund revenues from enhanced compliance and any necessary fee increases are assumed to, likewise, increase to cover costs.

**Local Effect:** None.

**Small Business Effect:** None.

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## **Analysis**

**Bill Summary:** In addition to current reporting requirements, by December 1 of each year, MHEC must report (1) the results of its search of federal databases for unregistered institutions that should be registered; (2) the number of institutions found to be in violation of the requirement-to-register law; (3) any fines imposed, and in what amounts, on situations that violate the registration law; and (4) any fine revenues collected from institutions for violation of the registration law.

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

**Current Law:** Chapters 595 and 596 of 2012 (SB 843/HB 1223) established registration requirements for institutions of postsecondary education that enroll Maryland students in a fully online distance education program. 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 it 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 registration requirements.

“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” means a school or other institution that offers an educational program in the State for individuals age 16 or older who have graduated or left elementary or high school. It does not include adult education, apprenticeships, or similar programs. An “institution of higher education” is a postsecondary institution that generally limits enrollment to high school graduates and awards associate, baccalaureate, or graduate degrees.

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*

In addition to being accredited by an accrediting body recognized and approved by the U.S. Department of Education, every two years, an institution subject to the registration requirement 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 registration law. 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 *either* (1) at least two weeks of required orientation or pre-enrollment 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 as well as a prorated refund methodology that provides a refund to any other 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 fee 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 a 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 registration law, 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.

Chapters 595 and 596 may not be construed to affect the ongoing interpretation of other law regarding whether instruction through correspondence, noninteractive learning, credit for prior learning, cooperative education activities, practica, internships, 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.

**Background:** Chapters 595 and 596 authorized MHEC to charge a fee, in an amount to cover the approximate cost of implementing a system of registration, as a condition of registration. MHEC reports it is currently collecting a fee of \$1,000 per institution regardless of the number of programs offered by the institution. Statute requires that the fee be the same for every institution regardless of type or number of programs offered. MHEC has collected an estimated \$122,000 in fees thus far in fiscal 2013, from approximately 122 institutions. Of the currently registered institutions only two participate in the SREB-EC. MHEC advises that exempting SREB-EC institutions will allow numerous SREB-EC institutions to enroll Maryland students.

**State Fiscal Effect:** Although the bill limits the types of institutions required to register, this analysis assumes that any impact on MHEC finances from those exclusions is more than offset by enhanced compliance from institutions still required to register. Thus,

beginning in fiscal 2014, MHEC special fund expenditures increase due to the requirement for MHEC to, at least twice a year, peruse federal databases and other information sources for institutions in violation of the registration requirement; the additional workload due to more institutions registering to avoid the penalty provisions; and prosecuting violators. MHEC reports it will need a part-time (60%) assistant Attorney General and full-time administrative assistant beginning in fiscal 2015 at a total cost of \$114,053 annually (excluding any start-up costs). The Department of Legislative Services advises that the increased workload *may* only be temporary and likely begins in fiscal 2014, as all existing institutions come into compliance with the registration requirement. MHEC may need to increase its registration fees, at least temporarily to cover increased costs, assuming that the increased workload can be directly attributed to the registration process. Thus, special fund revenues may also increase beginning in fiscal 2014, due to enhanced compliance and any need to raise the amount of the registration fee.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City Community College, Maryland Higher Education Commission, Morgan State University, University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2013  
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Analysis by: Caroline L. Boice

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