

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 672
 Appropriations

(Delegate Jones, *et al.*)

Education, Health, and Environmental Affairs

Maryland College Education Export Act of 2015

This bill authorizes the Maryland Higher Education Commission (MHEC) to enter into the State Authorization Reciprocity Agreement (SARA), and it exempts an institution that participates in SARA from being required to register with MHEC within three months of enrolling the first Maryland student in a fully online distance education program.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: Assuming MHEC enters into SARA in FY 2017, special fund revenues from certificate of approval and registration fees from out-of-state institutions that currently need to be approved or register with MHEC directly decrease by an estimated \$365,400 in FY 2017. Future years reflect a steady decrease in certificate of approval and registration fees. However, this loss in special fund revenue may be partially or fully mitigated by SARA fees charged by MHEC to Maryland institutions that choose to participate in SARA (not shown). General fund expenditures increase by \$58,900 for MHEC to hire a full-time educational specialist to verify institutions for SARA and address additional student complaints. Out-year expenditures reflect annualization, regular salary increases, and inflation. Public four-year institutions and Baltimore City Community College have the option to join SARA, which may increase or decrease their required registration fees.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	\$0	(\$365,400)	(\$415,400)	(\$473,900)	(\$532,400)
GF Expenditure	\$58,900	\$74,400	\$77,900	\$81,600	\$85,400
Net Effect	(\$58,900)	(\$439,800)	(\$493,200)	(\$555,400)	(\$617,800)

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

Local Effect: Local community colleges that offer distance education courses to students outside of Maryland have the option to join SARA, which may increase or decrease their required registration fees.

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.

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.

An institution of higher education that is subject to MHEC program review or that participates in the Southern Regional Education Board’s (SREB) Electronic Campus is not required to register with MHEC to offer a fully online distance education program in the State.

According to the Code of Maryland Regulations, 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. 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, “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: SARA is an agreement among member states, districts, and territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs. It is intended to make it easier for students to take online courses offered by postsecondary institutions based in another state. SARA is overseen by a national council and administered by four regional education compacts, including SREB to which Maryland belongs.

SARA membership is voluntary. States may choose to join SARA through the regional compact to which they belong. The National Council for SARA will maintain a list of SARA member states and institutions operating under SARA. Indiana became the first state to join SARA in February 2014.

SARA participation is by institution, so the institutions in a state system, or those with common ownership but which operate separately, must apply separately. An independently accredited entity must apply to SARA separately. A branch campus that operates under the accreditation of a main campus is not considered a separate institution for purposes of SARA. Thus, even if a state belongs to SARA, each college or university must decide for itself whether to operate under SARA. However, before operating under SARA, an institution must be authorized by its home state, by the appropriate body. In Maryland, MHEC is the appropriate authorizing body.

As shown in **Exhibit 1**, the National Council for SARA has established an annual fee structure based on enrollment to belong to SARA. To start, annual fees will range from \$2,000 to \$6,000 per institution. These annual fees will be paid to the national council, which will distribute them to the four regions under a formula system.

Exhibit 1
Annual Institutional Participation Fee for
State Authorization Reciprocity Agreement (SARA)
November 2013

<u>Enrolled Full-time Equivalent Students</u>	<u>Annual Institutional Participation Fee</u>
Under 2,500	\$2,000
2,500 to 9,999	\$4,000
10,000 or more	\$6,000

Note: Fees may be revised by the National Council for SARA as needed beginning in 2016.

Source: National Council for State Authorization Reciprocity Agreement

MHEC reports that there are currently 176 out-of-state institutions offering online courses registered in Maryland. MHEC did not indicate whether it plans to join SARA.

As of March 2015, 19 states have been approved by SARA, additional states have pending approval to join SARA.

State Revenues: Special fund revenues from registration fees from out-of-state institutions that currently need to register directly with MHEC decrease by an estimated \$365,400 in fiscal 2017, assuming MHEC enters into SARA in fiscal 2017, escalating to \$415,350 in fiscal 2018. The following information and assumptions were used in this estimate.

- Assuming it takes a year for SARA to approve MHEC as a member, this estimate assumes that MHEC joins SARA July 1, 2016 (fiscal 2017).
- MHEC advises that there are currently 51 out-of-state institutions offering online programs that are required to have a certificate of approval from MHEC due to offering programs that trigger physical presence in the State. According to COMAR, each of these institutions is required to pay MHEC an annual program review fee of \$7,500 for two programs and \$850 for each additional program.
- Of the out-of-state institutions with a certificate of approval, eight are in states that have joined SARA and eight are in states that have pending approval to join in 2015. Assuming that all eight institutions in current SARA-approved states register with SARA, these institutions do not have to register with MHEC for the 2016-2017

academic year (fiscal 2017). Thus, MHEC loses \$264,450 special fund revenue from these institutions in fiscal 2017. It is assumed that four institutions in the states with pending SARA approval join in fiscal 2017 and the remaining four join in fiscal 2018. Thus, MHEC loses an estimated additional \$35,950 in fiscal 2017 and \$35,950 in fiscal 2018. For a total revenue decrease from certificate of approval institutions of \$300,400 in fiscal 2017 and \$336,350 in fiscal 2018.

- MHEC advises that there are currently 216 out-of-state institutions offering online courses registered with MHEC. Of the registered institutions, 52 are in states that have joined SARA and 27 are in states that have pending approval to join in 2015. Assuming that all 52 institutions in current SARA-approved states register with SARA, these institutions do not have to register with MHEC for the 2016-2017 academic year. Thus, MHEC loses \$52,000 in special fund revenue from these institutions. It is assumed that 13 institutions in the states with pending SARA approval join in fiscal 2017 and the remaining 14 join in fiscal 2018. Thus, MHEC loses an estimated additional \$13,000 in fiscal 2017 and \$14,000 in fiscal 2018. For a total decrease from registered institutions of \$65,000 in fiscal 2017 and \$79,000 in fiscal 2018.
- MHEC assumes that it loses 15% of the remaining 35 current certificate of approval institutions (5 institutions) per year and 15% of the remaining 137 registered institutions (21 institutions) beginning in fiscal 2019; thus, special fund revenues decrease by an estimated total of \$473,850 in fiscal 2019 and \$532,350 in fiscal 2020.

However, under SARA, a state may gain fee revenue from its own institutions that participate in SARA if the state chooses to establish a SARA participation fee. Thus, the loss in special fund revenue from out-of-state registration fees may be partially or fully mitigated by SARA fees charged to Maryland institutions that choose to participate in SARA. MHEC did not indicate if it will charge this fee.

State Expenditures: General fund expenditures increase by \$58,875 in fiscal 2016 for MHEC to hire a full-time educational specialist to verify institutions for SARA and address additional student complaints. This estimate reflects a 90-day start-up delay following the bill's July 1, 2015 effective date. The estimate includes a full-time salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

MHEC reports that, for a Maryland institution to participate in SARA, MHEC must (1) verify that the institution is accredited; (2) verify that private institutions have a federal financial responsibility rating of 1.5 (or 1.0 with justification); and (3) verify that the institution's programs comply with the Council of Regional Accrediting Commission's *Interregional Guidelines for the Evaluation of Distance Education*.

	<u>FY 2016</u>	<u>FY 2017</u>
New Position	1	
Salary and Fringe Benefits	\$54,151	\$73,805
Start-up/Operating Costs	<u>4,724</u>	<u>591</u>
Total Expenditures	\$58,875	\$74,396

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

Institutions of higher education in the State will be able to choose whether to participate in SARA. In general, an institution that offers online or other distance education courses to students in several states may benefit from operating under SARA because that institution may have less paperwork and fewer fees to pay. An institution that only offers courses to students in one or two other states may opt to work directly with those states to obtain the necessary authorization rather than joining SARA. As shown in Exhibit 1, annual institutional fees for joining SARA will range from \$2,000 to \$6,000, based on the enrollment of the institution. In addition, MHEC may also choose to charge Maryland institutions a SARA participation fee to offset expenditures and lost registration fee revenues. State-granted approvals to operate out-of-state distance education programs range in cost from \$750 (California) to \$25,000 (Georgia).

The University System of Maryland, St. Mary's College of Maryland, Morgan State University, and Baltimore City Community College did not provide information on whether they are currently registered to offer distance education in other states or whether they would choose to register with SARA; thus, a more accurate estimate on their expenditures under the bill cannot be determined.

Local Expenditures: Local community colleges that offer distance education courses have the option to join SARA, which may increase or decrease their required registration fees. It is unknown if any local community colleges currently offer distance education courses to students outside of Maryland.

Additional Comments: Private institutions of higher education are also able to choose whether to participate in SARA under the bill. In general, an institution that offers online or other distance education courses to students in several states may benefit from operating under SARA because that institution may have less paperwork and fewer fees to pay. An institution that only offers courses to students in one or two other states may opt to work directly with those states to obtain the necessary authorization rather than joining SARA.

Additional Information

Prior Introductions: SB 823 of 2014 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: SB 496 (Senator Rosapepe, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): University System of Maryland, Baltimore City Community College, Maryland Higher Education Commission, National Council for State Authorization Reciprocity Agreements, Department of Legislative Services

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min/rhh

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