

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1508  
Ways and Means

(Delegate Hixson, *et al.*)

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Higher Education - Tuition Rates - Exemptions

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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) altering the time periods under which Maryland income tax returns must be filed to be eligible; (2) 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; and (3) altering the address requirement to receive in-county tuition at a community college. Finally, the bill requires, notwithstanding any other provision of the Education Article, an individual, who has been granted federal deferred action for childhood arrivals (DACA) status, to remain eligible to pay a rate that is equivalent to the resident tuition rate until the individual is awarded either an associate's degree from a community college or a bachelor's degree from a public four-year higher education institution.

The bill takes effect July 1, 2017.

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Fiscal Summary

**State Effect:** Grandfathering in DACA individuals to receive in-state tuition based on being granted DACA status may violate the federal Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and, thus, *potentially* jeopardize federal funds, as explained below. General fund expenditures increase, depending on the number of full-time equivalent students (FTES) who qualify for in-state tuition at a community college, including Baltimore City Community College (BCCC) that 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:** Grandfathering in DACA individuals to receive in-state tuition based on being granted DACA status may violate IIRIRA and, thus, *potentially* jeopardize federal

funds received by community colleges, as explained below. State aid for local community colleges may increase minimally, as explained below. Local community college tuition revenues may be affected, as explained below.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** Specifically, under the bill, an individual must only provide documentation that the individual or the individual's parent or legal guardian has filed a Maryland income tax return annually for the three-year period *before* the academic year in which the exemption would apply.

The bill also 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 used 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. Thus, an individual who attended high school in the State for at least three years and graduated from high school in the State is eligible for the in-county tuition rate at the local community college if the individual moves to another county in the State.

### **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. Therefore, 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 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.

#### *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:**

#### *Undocumented Students*

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 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 *Baltimore Sun*, approximately 740,000 individuals have been approved for the program nationwide.

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 promising 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. However, following the 2016 Presidential election, the future of the DACA program is uncertain. Prior to the election, President Trump promised to discontinue the program, a step that can be taken without Congressional approval.

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 IIRIRA 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.

During the fall 2015 semester, approximately 450 students at community colleges and 60 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 2016 semester.

As of September 2016, approximately 16,840 individuals in Maryland were granted 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.

### *Maryland Tuition Rates*

Proposed fall 2017 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 2017 tuition ranges from almost \$23,200 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 \$11,600.

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.

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**Exhibit 1**  
**In-state and Out-of-state Undergraduate Tuition at Public Four-year Institutions**  
**Proposed Fall 2017 Rates**

<u>Institution</u>	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
<b>University System of Maryland Institutions</b>			
University of Maryland, College Park	\$8,481	\$31,672	\$23,191
Bowie State University	5,427	16,016	10,589
Towson University	6,692	18,684	11,992
University of Maryland Eastern Shore	5,207	14,951	9,744
Frostburg State University <sup>1</sup>	6,468	19,816	13,348
Coppin State University	4,468	10,616	6,148
University of Baltimore	6,742	19,356	12,614
Salisbury University	6,982	16,020	9,038
University of Maryland University College <sup>2</sup>	8,690	14,970	6,280
University of Maryland Baltimore County	8,368	22,511	14,143
<b>Other Public Four-year Institutions</b>			
Morgan State University	5,264	15,330	10,066
St. Mary's College of Maryland	11,646	26,634	14,988

<sup>1</sup>Frostburg State University has a separate, lower, out-of-state rate for non-Maryland students from within 120 miles of campus.

<sup>2</sup>Based 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

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Fall 2016 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.

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**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 2016**

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$3,835	\$7,165	\$8,515
Anne Arundel	4,010	7,010	11,780
Baltimore City	3,638	3,638	8,333
Baltimore County	4,432	7,852	11,602
Carroll	4,812	6,972	9,744
Cecil	3,600	6,300	7,650
Chesapeake	4,700	6,770	9,080
College of Southern MD	4,539	7,860	10,148
Frederick	4,255	8,455	11,215
Garrett	3,780	7,196	8,316
Hagerstown	3,930	5,910	7,650
Harford	4,176	6,786	9,396
Howard	4,694	7,184	8,534
Montgomery	4,902	9,474	12,894
Prince George's	4,550	7,190	10,100
Wor-Wic	3,690	7,620	9,270

Source: Maryland Association of Community Colleges

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**State Fiscal Effect:**

*Federal Revenues and Federal Deferred Action for Childhood Arrivals Status*

Under section 505 of IIRIRA, states are barred from providing “postsecondary education benefits” to aliens who are “not lawfully present,” based on their residence in the state, unless all U.S. citizens are eligible for such benefits, regardless of their residence. Thus, the Office of the Attorney General advises that grandfathering in DACA individuals to receive in-state tuition based on the individual having been granted DACA status may violate federal law. It is unclear what the federal government may do if the bill is found to be in violation of federal law, as no specific penalties are listed. However, the federal government could withhold federal funds from the State or issue an order that directs the State to comply with the law. One option would be to withhold approximately

\$715.8 million in federal financial aid to all students at public four-year institutions of higher education and BCCC. Federal financial aid includes Pell grants and federal student loans.

It is unknown how many students currently qualify for in-state tuition at public four-year institutions or BCCC, due to their DACA status. If DACA is revoked, students who qualify for in-state tuition based on their DACA status no longer qualify for in-state or in-county tuition, unless the individual also qualifies for in-state or in-county tuition under the Maryland Dream Act.

### *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 who may qualify for resident tuition at community colleges will qualify due to altering the years for which tax returns must be filed and altering the address requirement. However, 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 also 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 and attends a local community college in the 2017-2018 academic year, general fund expenditures increase by approximately \$2,900 in fiscal 2020. Likewise, each additional FTES who qualifies and attends BCCC in the 2017-2018 academic year increases general fund expenditures by approximately \$7,800 in fiscal 2020. 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 altering the years for which tax returns must be filed and altering the address requirement; however, this may be partially offset due to students directly enrolling in public four-year institutions rather than BCCC. As stated above, there is little information on the number of FTES affected.

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 DACA and undocumented students who were not 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 undocumented student who lived in Maryland and enrolls at a USM institution (except UMUC), Morgan State University, or St. Mary's College of Maryland. At most USM institutions, out-of-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 DACA or undocumented students who would have not otherwise have qualified for in-state tuition. However, to the extent DACA or undocumented 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:** As explained above, federal financial aid revenues received by community colleges *may* be jeopardized by the bill. State aid for local community colleges, through the Cade funding formula, may increase minimally due to additional FTES qualifying as a result of altering the years for which tax returns must be filed and altering the address requirement; however, this may be partially offset due to students directly enrolling in public four-year institutions rather than attending local community colleges first. As stated above, there is little information on the number of FTES affected.

Likewise, local community college 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 a local community college; this may be partially offset by DACA and undocumented students who were not eligible for in-state tuition under the Dream Act enrolling at community college.

## Additional Information

**Prior Introductions:** None.

**Cross File:** Although designated as a cross file, SB 1000 (Senators Conway and Zucker - Education, Health, and Environmental Affairs) is not identical.

**Information Source(s):** Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Comptroller's Office; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Congressional Research Service; National Conference of State Legislatures; Department of Legislative Services

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