

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 537

(Senator Lam, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

Higher Education - Tuition Rates - Exemptions

This bill expands 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 from four to six years the time by which an individual must register as an entering student after graduating from high school or receiving the equivalent qualification in the State; (3) reducing the amount of time an individual must have attended a high school in the State from three years to any amount of time, although the individual still must have graduated from a Maryland high school or received the equivalent of a high school diploma in the State; and (4) altering the time period in which the individual or the individual's parent or legal guardian must have filed a Maryland income tax return. Finally, the bill grandfathers in individuals who, on or after June 15, 2012, were exempt from paying the out-of-state or out-of-county tuition rate at a public institution of higher education. **The bill takes effect July 1, 2019.**

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, to receive in-state or in-county tuition under the bill beginning July 1, 2019, an individual (other than students who are grandfathered in) must provide to the public institution of higher education 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 tuition rate exemption would apply. For students who are grandfathered in by the bill, in order to retain this tuition status an individual or their parent or guardian must use an address in the State on their Maryland income tax return each year until the individual is awarded a degree.

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 – Public 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

Current policies regarding in-state tuition are discussed in detail in the **Appendix – Maryland Tuition and Fees**.

Background: Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to enroll 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, 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.

Following a brief hiatus in 2018, the federal government is again accepting renewal applications from DACA participants, which must be filed every two years. In a bid to end the DACA program, the Trump administration has urged the U.S. Supreme Court to hear appeals of a lawsuit that prevented the shutting down of DACA. However, as of January 22, 2019, the U.S. Supreme Court has not decided to hear the case. This means that the Supreme Court will not make a decision on whether or not to end DACA before June 30, 2019, and the two lower court rulings that allows DACA holders to renew their status still stand. The Supreme Court may decide to hear the DACA case in mid-February for the October 1, 2019 term. In that case, a decision would likely not be made until early 2020.

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. An individual 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 January 2019, 21 states, including Maryland, offer in-state tuition to undocumented immigrant students; 16 have done so by state legislative action and 5 by state university systems. The laws that grant in-state tuition typically require attendance at and graduation from 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. In 2018, Connecticut amended the law again to essentially allow individuals who are eligible to apply for DACA status to be eligible for in-state tuition.

Since having DACA status has been interpreted by some as granting 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 attending the institution to be eligible for in-state tuition.

As of August 2018, approximately 8,500 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 2017 semester, 509 students at community colleges and 34 students at public four-year institutions received in-state tuition under Maryland's Dream Act (Education Article § 15-106.8). Slightly fewer community college students (461) received in-state tuition in the spring 2018 semester, while slightly more public four-year students (42) received in-state tuition during the same term.

Maryland Tuition Rates

Proposed fall 2019 in-state and out-of-state tuition and fee rates for full-time undergraduates at public four-year institutions are shown in **Appendix – Maryland Tuition and Fees**.

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, the impact on general fund expenditures cannot be reliably estimated. However, for each additional FTES who qualifies for and attends a local community college in the 2019-2020 academic year, general fund expenditures increase by approximately \$3,600 in fiscal 2022. Likewise, each additional FTES who qualifies for and attends BCCC in the 2019-2020 academic year increases general fund expenditures by approximately \$8,800 in fiscal 2022. 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. In addition, BCCC has been receiving hold harmless grants under its formula for several years, so there is likely no impact on general fund expenditures until fiscal 2023 at the earliest.

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 University System of Maryland institution, Morgan State University, or

St. Mary's College of Maryland. In fiscal 2018, the public four-year institutions reported a loss of approximately \$365,000 in tuition revenues due to enrolling Dream students.

At most public four-year institutions except the University of Maryland University College, 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 20% 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: Coppin State University, UMCP, and Morgan State University. 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 \$2.2 million in tuition revenues during fiscal 2018 due to the students affected by Maryland's Dream Act.

Additional Information

Prior Introductions: HB 1536 of 2018 passed the House and received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, SB 546 of 2018, received a favorable with amendments report from the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 262 (Delegate Luedtke, *et al.*) - Appropriations.

Information Source(s): Maryland Higher Education Commission; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Baltimore City Community College; Maryland Association of Community Colleges; U.S. Citizenship and Immigration Services; National Conference of State Legislatures; *Washington Post*; Department of Legislative Services

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Appendix – Maryland Tuition and Fees

Tuition Residency Requirements

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, [USM Board of Regents Policy on Student Classification for Admission and Tuition Purposes \(VIII-2.70\)](#), 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.

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 the University of Maryland University College (UMUC) and students enrolled exclusively in distance education programs.

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

Public Four-year Tuition and Fees Proposed for Fall 2019

Proposed fall 2019 in-state and out-of-state tuition and fee rates for full-time undergraduates at public four-year institutions are shown in **Exhibit 1**. Using the simple average, in-state tuition and fees for fall 2019 are approximately \$9,700. The difference between in-state and out-of-state for fall 2019 tuition ranges from more than \$26,000 for the traditional nursing program at the University of Maryland, Baltimore Campus (UMB) and the University of Maryland, College Park Campus (UMCP), to \$4,800 at UMUC. The difference between the rates at each campus, using the simple average, is almost \$13,800.

Exhibit 1
In-state and Out-of-state Undergraduate Tuition at Public Four-year Institutions
Proposed Fall 2019 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	\$10,807	\$36,918	\$26,111
University of Maryland, Baltimore Campus ¹	11,213	38,060	26,847
Bowie State University	8,421	19,112	10,691
Towson University ²	10,198	24,334	14,136
University of Maryland Eastern Shore ³	8,468	18,878	10,410
Frostburg State University ²	9,410	23,510	14,100
Coppin State University	6,716	13,113	6,397
University of Baltimore	9,096	21,456	12,360
Salisbury University ²	10,044	20,428	10,384
University of Maryland University College ^{4,5}	7,176	11,976	4,800
University of Maryland Baltimore County	12,046	28,151	16,105
Other Public Four-year Institutions			
Morgan State University	7,926	18,530	10,604
St. Mary's College of Maryland	15,132	31,209	16,077

¹Reflects tuition and fees for the traditional nursing program. Other undergraduate programs at the University of Maryland, Baltimore Campus have different tuition and fees.

²Towson 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.

³The University of Maryland Eastern Shore has a separate, lower regional rate for non-Maryland students residing in Delaware and the eastern shore of Virginia.

⁴Towson 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.

⁵Based 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

Community College Tuition and Fees Fall 2018

Fall 2018 in-county, out-of-county, and out-of-state tuition rates for community colleges are shown in **Exhibit 2**. The exhibit shows that in-county tuition and fees are approximately \$4,500. As a State institution, BCCC has one in-state rate. Generally out-of-state rates at community colleges are two to three times the in-county 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 2018

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$4,230	\$7,590	\$9,300
Anne Arundel	4,160	7,370	12,230
Baltimore City	3,196	3,196	7,276
Baltimore County	4,896	8,166	11,736
Carroll	5,160	7,481	10,448
Cecil	4,500	7,710	9,210
Chesapeake	4,760	6,830	9,140
College of Southern MD	4,781	8,325	10,725
Frederick	4,457	8,777	11,627
Garrett	4,430	8,420	9,920
Hagerstown	4,080	6,150	7,950
Harford	4,644	7,360	10,075
Howard	4,919	7,559	9,059
Montgomery	5,178	9,966	13,602
Prince George's	4,700	7,550	10,610
Wor-Wic	4,050	7,800	9,630

Source: Maryland Association of Community Colleges
