

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 401 (Delegate McDonough, *et al.*)
 Ways and Means

Public Institutions of Higher Education - Tuition - Undocumented Aliens

This bill prohibits a public institution of higher education from classifying an individual as a resident of the State eligible to receive in-state tuition unless the individual provides the institution with documentation certifying that the individual is lawfully present in the United States. If the individual is an alien, the institution must use the federal Systematic Alien Verification for Entitlements (SAVE) Program to verify that the individual is lawfully present in the United States. The governing board of each public institution of higher education must adopt appropriate policies to implement the bill.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Higher education expenditures at public four-year institutions of higher education increase by approximately \$144,400 beginning in FY 2012 for the University System of Maryland (USM) to hire two full-time administrative specialists to use the SAVE program to verify that an individual is lawfully present in the United States; however, the increased costs can be offset by raising application fees. Likewise, Baltimore City Community College (BCCC) expenditures increase by approximately \$3,500 beginning in FY 2012 to use the SAVE program to verify that an individual is lawfully present in the United States; however, the increased costs can be offset by raising application fees. Future year expenditures reflect the enrollment growth, annualization, regular salary increases, and inflation.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Higher Ed Rev.	\$147,800	\$166,800	\$173,000	\$179,500	\$186,300
Higher Ed Exp.	\$147,800	\$166,800	\$173,000	\$179,500	\$186,300
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: Community college expenditures increase by approximately \$60,300 collectively in FY 2012 to use the SAVE program to verify that an individual is lawfully present in the United States; however, the increased costs can be offset by raising application fees.

Small Business Effect: None.

Analysis

Current Law: The Board of Regents for USM sets tuition policies for USM institutions, including the determination of which students are eligible for resident tuition. USM policies require individuals to have the legal ability under federal and Maryland law to live permanently in Maryland in order to qualify for in-state tuition rates. In general, these individuals qualify for in-state tuition when they can document that they have lived continuously in Maryland for at least 12 consecutive months.

The Board of Regents of Morgan State University and the Board of Trustees of St. Mary's College of Maryland set tuition policies for the institutions. The policies for the institutions are very similar to the USM policy. Both institutions require one year of residency in Maryland to qualify for in-state tuition rates.

Tuition policies at community colleges are set by State regulations and the boards of trustees for the colleges. There are three levels of tuition at community colleges: in-county, out-of-county, and out-of-state. In general, there is a three-month residency requirement for community colleges. Community college students who are considered Maryland residents for tuition purposes are included in the enrollment counts used to determine State aid to the colleges.

Because of their inability to establish permanent residency, many immigrants, both documented and undocumented, are considered nonresidents for tuition purposes regardless of how long they have lived in Maryland. Undocumented students are not eligible for federal student aid or loans as well as most State financial aid since they cannot legally establish State residency.

Background: HB 253 of 2003 would have extended in-state tuition benefits to undocumented and other immigrants who attended and graduated from Maryland high schools. The bill passed the General Assembly but was vetoed by the Governor. In his veto letter, Governor Ehrlich gave several policy reasons for vetoing the bill. First, the Governor stated that granting in-state status to undocumented immigrants violates the spirit of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and would reward illegal behavior. Second, the Governor raised concerns that

the fiscal cost to the State was indeterminate and could be potentially large. He noted that additional community college students included in the enrollment counts would increase the State's obligations under the Senator John A. Cade funding formula. Finally, the Governor raised concerns that the bill would allow undocumented immigrants to take in-state slots from legal Maryland residents.

Other States

Since 2001, laws that allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education have been enacted in 10 states: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington; bills with similar intentions have been introduced in several other states. A November 2005 article in the *Boston Globe* reported that public four-year colleges in Texas have realized a sizable increase in the number of undocumented immigrants attending the schools since the enactment of the legislation, but that other states have seen only modest increases in the numbers. A report from the National Conference of State Legislatures notes that at least four of the states that have passed laws providing in-state tuition benefits to undocumented immigrants have since considered repealing the laws.

In late 2010, California's Supreme Court unanimously upheld a state statute allowing some undocumented students to pay in-state tuition at public colleges and universities, overturning an earlier decision by an appellate court. Under the California law, known as AB 540, documented and undocumented immigrant students qualify for in-state tuition if they attended a California high school for three years, graduated from a California high school, and sign an affidavit saying they will apply for permanent residency as soon as they are eligible. In the 2006-2007 school year, 1,639 University of California undergraduate and graduate students received in-state tuition under AB 540. About 70% of those students were in the United States legally, the remaining 30% were potentially undocumented, in the process of obtaining residency, or their status could not be determined. While the California decision is not binding in other states, it may be a litmus test for future legal challenges such as currently unresolved suits in Nebraska and Texas.

Federal Law

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 immigration 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.

Federal legislation called the Development, Relief and Education for Alien Minors Act of 2009 – or the DREAM Act – would have created a path to citizenship for certain immigrants who entered the United States illegally when they were younger than 16 and would have allowed those students to receive in-state tuition. In December 2010, the U.S. House of Representatives passed the DREAM Act; however, the U.S. Senate failed to get the necessary supermajority of 60 required to force a final vote on the legislation.

Maryland Tuition Rates

Proposed fall 2011 in-state and out-of-state tuition and fee rates for full-time undergraduates at the State’s public four-year institutions are shown in **Exhibit 1**.

Exhibit 1
In-state and Out-of-state Tuition and Mandatory Fees
Proposed Fall 2011 Rates

	<u>In-state</u>	<u>Out-of-state</u>	<u>Difference</u>
USM Institutions			
Coppin State	\$5,491	\$15,096	\$9,605
UM Eastern Shore	6,482	14,263	7,781
Bowie State University	6,309	16,850	10,541
Salisbury University	7,332	15,678	8,346
Frostburg State University	7,128	17,020	9,892
Towson University	7,906	19,418	11,512
University of Baltimore	7,495	17,446	9,951
UM College Park	8,655	25,795	17,140
UM Baltimore County	9,467	19,870	10,403
UM University College	5,869	11,989	6,120
Other Public Four-year Institutions			
Morgan State University	6,929	16,340	9,411
St. Mary’s College	14,039	25,774	11,735

Source: Morgan State University, St. Mary’s College, University System of Maryland; rates are pending final approval

The differences between the rates average more than \$10,000. Fall 2010 in-county, out-of-county, and out-of-state tuition rates for community colleges are shown in HB 401/ Page 4

Exhibit 2. The exhibit shows that out-of-state rates at community colleges are generally two to three times the in-county tuition 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 2010

<u>College</u>	<u>In-county</u>	<u>Out-of-county</u>	<u>Out-of-state</u>
Allegany	\$3,414	\$6,054	\$7,194
Anne Arundel	3,010	5,440	9,340
Baltimore City	3,030	3,030	6,690
Baltimore County	3,402	6,132	8,982
Carroll	3,624	5,244	7,368
Cecil	2,940	5,640	6,990
Chesapeake	3,544	5,614	7,924
College of Southern MD	3,874	6,752	8,745
Frederick	3,621	7,221	9,621
Garrett	3,315	7,095	8,265
Hagerstown	3,320	5,000	6,500
Harford	2,755	5,215	7,675
Howard	4,063	6,553	7,903
Montgomery	4,272	8,304	11,184
Prince George's	4,045	6,175	8,815
Wor-Wic	2,898	6,138	7,518

Source: Maryland Association of Community Colleges

USM reports that USM institutions currently determine whether to offer a student in-state tuition based on the answers on the student application form which the student, and if the student is underage, the student's parents or legal guardians, sign, affirming that all information is true and accurate.

State Fiscal Effect: Higher education expenditures at public four-year institutions of higher education and BCCC increase by approximately \$147,800 beginning in fiscal 2012 to use the SAVE program to verify that an individual is lawfully present in the United States; however, the increased costs can be offset by raising application fees. The information and assumptions used in calculating the estimate are stated below.

- There are three fees charged by the U.S. Citizenship and Immigration Services for using the SAVE system. The first is a minimum monthly service fee of \$25. Additionally, there is a charge for an initial electronic verification request and a separate charge for additional verification requests. These verification request charges vary depending on the manner in which they are processed. Assuming the SAVE system is accessed through the use of commercial software and standard Internet access, the initial verification charge is \$0.50 and the additional verification charge is \$0.50. It is assumed that the institutions of higher education will reach the \$25 minimum charge each month, and will therefore only need to pay \$0.50 to check each student.
- It is assumed that USM, Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and BCCC will need to use the SAVE system to verify every student is lawfully present in the United States prior to enrollment. During the 2011-2012 academic year, Legislative Services estimates USM will enroll approximately 113,800 full-time equivalent students (FTES), MSU will enroll approximately 7,000 FTES, SMCM will enroll approximately 2,100 FTES, and BCCC will enroll approximately 7,000 FTES, for a total 2011-2012 enrollment of approximately 129,900 FTES.
- Assuming \$0.50 per accepted student, and assuming all students are full-time, it will cost a total of \$64,900 in fiscal 2012 to use SAVE to check that all 129,900 accepted students at USM, MSU, SMCM, and BCCC are lawfully present in the United States. An additional \$0.50 cost for each part-time student not included in the FTES count is not included in the estimate.
- Due to the large number of students accepted at USM institutions, in order to implement the bill, USM will need to hire two additional administrative specialists to verify accepted students are lawfully present in the United States using SAVE. It will cost approximately \$82,900 in fiscal 2012 to hire two additional full-time administrative specialists.

	<u>FY 2012</u>	<u>FY 2013</u>
New Positions	2	
Salaries and Fringe Benefits	\$73,430	\$100,136
SAVE	64,949	65,653
Operating Expenses	765	1,030
Start-up Costs	<u>8,670</u>	<u>0</u>
Total State Expenditures	\$147,814	\$166,819

Future year expenditures reflect enrollment growth, two full-time salaries with 4.4% annual increases and 3% employee turnover, as well as 1% annual increases in ongoing operating expenses.

Local Fiscal Effect: Likewise, community college expenditures increase by approximately \$60,300 collectively in fiscal 2012 to use the SAVE program to verify that an individual is lawfully present in the United States; however, the increased costs can be offset by raising application fees. This estimate is based on the assumption that approximately 120,600 FTES will enroll in community colleges in fiscal 2012, and assumes that all students are full-time. An additional \$0.50 cost for each part-time student not included in the FTES count is not included in the estimate.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Higher Education Commission, Morgan State University, University System of Maryland, U.S. Citizenship and Immigration Services, National Conference of State Legislatures, Department of Legislative Services

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