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FISCAL AND POLICY NOTE
First Reader

House Bill 548
Appropriations

(Delegate Lierman, *et al.*)

Collective Bargaining - Student Athletes

This bill requires the State Higher Education Labor Relations Board (SHELRB) to adopt regulations by July 1, 2020, authorizing and establishing a process for collective bargaining specified topics for student athletes who participate in an intercollegiate athletic program at a University System of Maryland (USM) institution, Morgan State University (MSU), St Mary's College of Maryland (SMCM) or Baltimore City Community College (BCCC). **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: Beginning in FY 2021, higher education expenditures may increase, potentially significantly as explained below. Potential significant loss of higher education revenues if institutions of higher education are required to leave the National College Athletics Association (NCAA) or athletics conferences beginning in FY 2021 as explained below. SHELRB reimbursable revenues and expenditures increase by an estimated \$9,500 per election. USM institutions, SMCM, MSU, BCCC expenditures increase by an estimated \$2 per eligible student athlete to reimburse SHELRB for collective bargaining expenses. In addition, USM, SMCM, MSU, and BCCC administrative and personnel expenditures including State retirement may increase.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, “collective bargaining” is defined as:

- good faith negotiations by an authorized representative of student athletes and an institution of higher education with the intention of (1) reaching an agreement about scholarship terms, health insurance benefits, use of a student athlete’s image or likeness, the establishment of an independent student athlete advocate at each institution, and the duties of the independent student athlete advocate at the institution and (2) incorporating the terms of the agreement in a written memorandum of understanding or other written understanding;
- clarifying the terms and conditions of being a student athlete;
- administration of terms and conditions of being a student; or
- the voluntary adjustment of a dispute or disagreement between an authorized representative of student athletes and an institution of higher education that arises under a memorandum of understanding or other written understanding.

Current Law: Student athletes have no explicit rights in statute beyond those granted to all students. Institutions of higher education have no explicit responsibilities regarding student athletes.

Chapter 341 of 2001 extended collective bargaining rights to many categories of higher education personnel at public four-year institutions of higher education and BCCC but excluded all faculty and *students* from the benefit. In addition, contingent, contractual, temporary, or emergency employees are specifically excluded from collective bargaining. Also excluded are *student employees* including a teaching assistant or a comparable position, fellow, or postdoctoral intern.

Background:

Collective Bargaining Overview

Collective bargaining at public institutions is governed by State law. Collective bargaining at private institutions is governed by the federal National Labor Relations Act (NLRA). The National Labor Relations Board (NLRB) has statutory jurisdiction over many issues related to the NLRA including recognizing collective bargaining units.

Collective Bargaining for Student Athletes

In January 2014, at Northwestern University (a private institution), quarterback Kain Colter advocated for reform in NCAA. Specifically, Colter and his teammates called for greater

medical protections and improved scholarships for student athletes. To that end, they began the process to form the first college athlete union. NCAA and Northwestern maintained that student athletes are not employees and therefore did not qualify under federal law for collective bargaining rights. The dispute continued until August 2015 when NLRB declined to assert jurisdiction over the issue.

State Higher Education Labor Relations Board

Since 2001, most of the bargaining units for State higher education employees have elected an exclusive representative. In 2015, there were 39 bargaining units from 15 public higher education institutions certified as “eligible for exclusive representative election” by SHELRB.

The administration of SHELRB was consolidated with the State Labor Relations Board in 2006, and the proposed fiscal 2020 State budget includes \$434,517 and three full-time regular positions for the administration of the boards, including the Public School Labor Relations Board. Of that, \$94,770 is reimbursable funds from institutions of higher education, and the remainder is State general funds.

Student Athletes’ Deaths

The death of Jordan McNair, a 19-year-old offensive lineman who played for the University of Maryland, College Park Campus (UMCP) is the latest student athlete-related tragedy. His death, the care he received prior to death, and the aftermath has reopened the question of the treatment of student athletes in Maryland. Football players from Navy and Frostburg State University have also died in recent years.

The National Collegiate Athletic Association Governance of Student Athletics

In the United States, institutions join NCAA in order to participate in intercollegiate athletics. When a college joins it agrees to follow NCAA constitution and bylaws regarding student athletes on a host of topics including admissions, financial aid, eligibility, recruiting, academic performance, playing and practice seasons, and extra benefits. Infraction penalties, which generally take the form of fines, probation, and prohibition from postseason play and loss of television rights are applied to institutions and coaches when they fail to fulfill NCAA constitution or bylaws.

NCAA is divided into three divisions with different bylaws. The divisions are generally based on the size of the college, with Division I institutions being the largest. Each division is made up of several conferences for regional league play. Approximately 1,100 colleges and universities belong to NCAA.

NCAA bylaws are made by the institutional members. Member representatives serve on committees that propose rules and policies surrounding college athletics. Membership decides which rules to adopt and implement on campuses. [NCAA bylaws](#) cover a range of topics including scholarships and the use of a student athlete’s image.

NCAA is a nonprofit organization that has over \$1 billion in annual revenue. Most of its [revenue](#) comes from Division I Men’s Basketball Championship television and marketing rights and Championships ticket sales. NCAA also receives funding from a few other sources such as membership dues from member institutions. The majority of the revenue is then distributed to member institutions to be used for specific purposes.

Membership in NCAA is voluntary, however, as of now there are no *bona fide* alternatives for participation at the highest level of college athletics.

Number of Students Participating in NCAA Sports

As shown in **Exhibit 1**, there are approximately 450 student athletes per school. Exhibit 1 also shows that percentage of students participating in intercollegiate athletics ranges an average of 4% of the student body at the Division I schools to 26% at Division III schools.

Exhibit 1
Student Athlete Participation by NCAA Division

	<u>Division I</u>	<u>Division II</u>	<u>Division III</u>
Colleges and Universities	351	308	443
Total Student Athletes in Division	179,200	121,900	190,900
Average Number of Teams per School	19	16	18
Average Percentage of Student Body Participating in Sports	4%	9%	26%
Average Number of Student Athletes per School	511	396	431

NCAA: National College Athletics Association

Source: National College Athletics Association; Department of Legislative Services

Institutions that belong to NCAA also belong to at least one conference. Conferences are groups of teams (generally 8 to 12 institutions, occasionally as high as 16) that regularly play against each other within NCAA. The public four-year institutions of higher education and NCAA division and the conference that each institution participates in are shown in **Exhibit 2**. The conferences, especially the more elite ones, are also a source of revenues for member institutions.

Exhibit 2
Maryland Public Universities in NCAA

Division I

Coppin State University
Morgan State University
Towson University
University of Maryland Baltimore County
University of Maryland Eastern Shore
University of Maryland, College Park

Conference

Mid-Eastern Athletic Conference
Mid-Eastern Athletic Conference
Colonial Athletic Association
America East Conference
Mid-Eastern Athletic Conference
Big Ten Conference

Division II

Bowie State University

Central Intercollegiate Athletic Association

Division III

Frostburg State University
Salisbury University
St. Mary's College of Maryland

Capital Athletics Conference Inc.
Capital Athletics Conference Inc.
Capital Athletics Conference Inc.

NCAA: National College Athletics Association

Note: As a community college, Baltimore City Community College competes in the National Junior College Athletic Association Region 20 and is a member of the Maryland Junior College Athletic Conference in all sports.

Source: National College Athletics Association

Big Ten Conference

UMCP's membership in the Big Ten athletic conference began in July 2014. Prior to that UMCP belonged to the Atlantic Coast Conference.

The Big Ten conference, established in 1896, is governed by a Council of Presidents and Chancellors (COP/C), which receives support and advice from faculty representatives and the Administrators Council. The ultimate authority and responsibility for the operations and policies of the Big Ten lie with the COP/C. Faculty athletic representatives have legislative authority for conference rules while issues related to management of the conference's athletic programs are governed by negotiated agreements that are overseen by the Administrators Council.

Institutions of Higher Education – Auxiliary Enterprises

Intercollegiate athletics programs are budgeted as auxiliary enterprises within the budgets of public four-year institutions of higher education and BCCC. Auxiliary enterprises are self-supporting entities which provide goods and services to students, faculty, and staff. In addition to intercollegiate athletics programs, it includes residence halls, food services, and college stores.

State Fiscal Effect: There are a number of potentially significant impacts that may occur because of the collective bargaining authorized under the bill; however, the impacts will only occur if student athletes decide to collectively bargain and the reaction of NCAA and the conferences to the collective bargaining. Further, the impact may depend on which topics student athletes choose to collectively bargain.

Since choosing to collectively bargaining *may* endanger participation in NCAA and athletic conferences, it is unclear if student athletes will choose to collectively bargain. Among other things, student athletes will have to weigh their desires for protections while playing college athletics against their desire to participate in NCAA and conference athletics. Further, without NCAA and conference revenues there may not be the funds to pay for additional services.

The impacts cannot be reliably estimated; however, the potential impacts are discussed below.

Public Higher Education Institutions

Some of the topics authorized to be collectively bargained under the bill such as the use of a student's athlete's image or likeness are specifically addressed in NCAA bylaws. It is assumed that institutions will not allow agreements that are in opposition to NCAA bylaws or conference rules due to the potential significant revenue loss. However, to the extent that collective bargaining agreements are in opposition to NCAA bylaws or conference rules, institutions may need to withdraw from NCAA or conferences, which will result in a significant loss of revenue, and potential fines, which would increase expenditures due to current contracts with these organizations. Alternatively, NCAA and conferences may choose to change their bylaws and rules to accommodate the collective bargaining agreements due to increased pressure to treat student athletes better.

Even topics that are potentially allowed under NCAA bylaw and conference rules could have a fiscal impact on institutions. For example, hiring an independent student athlete advocate will cost each institution approximately \$80,000 annually. This estimate includes a full-time salary, benefits, operating expenses, and one-time start-up expenses. Providing

additional health insurance coverage could increase institution expenditures by an unknown, but potentially significant, amount.

As a community college, BCCC does not belong to NCAA; instead BCCC competes in the National Junior College Athletic Association Region 20 and is a member of the Maryland Junior College Athletic Conference in all sports. However, the bill may have a similar impact on BCCC expenditures as it does on the public four-year institutions.

To the extent that student athletes decide to collectively bargain, higher education expenditures increase for USM institutions, MSU, SMCM, and BCCC to reimburse SHELRB for expenses related to collective bargaining. For the purposes of this estimate, it is assumed that USM institutions, MSU, SMCM, and BCCC expenditures increase by an estimated \$2 per eligible student athlete; however, actual costs depend on whether eligible student athletes decide to collectively bargain and the actual reimbursable costs that can be assigned to the institutions.

Administrative expenditures may increase minimally at USM institutions, MSU, SMCM, BCCC to expand collective bargaining to eligible student athletes. Administrative expenses may be greater than other collective bargaining especially in the initial years of implementation due to the many potential unknown impacts of collective bargaining with student athletes.

Further, under the bill some top student athletes may choose not to attend a public institution of higher education in Maryland due to the threat of not participating in NCAA. If top student athletes choose not to attend Maryland institutions, revenues from ticket sales and other sources potentially decrease. Alternatively, top student athletes may choose to attend public institutions in Maryland due to the potential additional protections and benefits. In that case, revenues may increase. About 2% of high school athletes receive some sort of athletics scholarship to compete in college, and less than 2% of college student athletes become professional athletes. Top student athletes attract higher revenue from ticket sales and television contracts.

State Higher Education Labor Relations Board

SHELRB reimbursable revenues and expenditures increase by an estimated \$9,510 per election, if all student athletes decide to collectively bargain. SHELRB advises that postage for election ballots and election supplies are required. These costs are approximately \$2 per eligible student athlete. This estimate assumes that there are approximately 4,755 student athletes who decide to collectively bargain. No information about the number of student athletes was provided by the institutions, the estimated number of student athletes was derived from the average number of student athletes at institutions in each division and the

number of institutions in each division as shown in Exhibits 1 and 2. SHELRB can develop the required regulations using existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Labor Relations Board; Baltimore City Community College; University System of Maryland; Morgan State University; National College Athletics Association; Penn State Law Review; Department of Legislative Services

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