

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 998

(Senator Conway, *et al.*)

Budget and Taxation

Appropriations

Maryland Higher Education Commission - Review of Duplicative Academic Programs

This bill authorizes judicial review in the circuit court of a decision by the Maryland Higher Education Commission (MHEC) regarding the duplication of academic programs. Decisions are only subject to judicial review when an institution of higher education has specifically requested a determination about program duplication or has filed an objection to the implementation of a new program based on unreasonable program duplication. The bill also clarifies that MHEC must make a determination about the duplication of academic programs that are approved or implemented after July 1, 2006, after receiving a request from a public institution directly affected by the duplication.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: The FY 2007 State budget includes a \$2 million general fund appropriation for MHEC that is contingent on the enactment of this legislation. Future year general fund expenditures for MHEC could increase due to legal fees.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: There are two processes for implementing new academic programs at institutions of higher education, one for new programs that can be implemented with

existing resources and another for new programs that will require additional resources. The processes are overseen by MHEC, and MHEC's determinations about program duplication are not subject to judicial review.

Institutions of higher education seeking to implement new programs with new resources must submit proposals for the new programs to MHEC, and MHEC must approve or disapprove the programs or, in the case of nonpublic institutions, recommend that the programs be implemented or not implemented. MHEC may review an existing program at a public institution if it has reason to believe that the academic program is unreasonably duplicative or inconsistent with the institution's adopted mission. MHEC may make a determination that unreasonable duplication exists on its own initiative or after receiving a request from a public institution affected by the program duplication. If MHEC determines that there is unnecessary duplication, it may require the institutions with duplicative programs to submit a plan to resolve the duplication. If the plan does not adequately address the duplication, MHEC may revoke an institution's authority to offer a duplicative program. MHEC must offer the institution an opportunity to present an objection to its decision, but MHEC's decision is final.

When an institution of higher education determines that it can implement a new program with existing resources, the president of the institution must submit the proposal to the institution's governing board and to MHEC and MHEC must distribute the proposal to other institutions. MHEC or another institution may file an objection to the proposal based on: (1) inconsistency with the mission of the institution proposing the program; (2) a lack of need for the program; (3) unreasonable program duplication that could cause harm to another institution; or (4) violation of the State's equal educational opportunity obligations. If MHEC determines that an objection is justified, it must negotiate with the institution's governing board and president to modify the proposal. If the objection cannot be resolved, MHEC must make a final determination about the approval of the proposed program.

Background: A recent decision by the Secretary of Higher Education authorized Towson University (TU) and the University of Baltimore (UB) to offer a joint Master of Business Administration (MBA) program. The decision resulted in an appeal from Morgan State University (MSU), which has had an MBA program for more than 30 years and, like TU and UB, is located in the Baltimore area. MSU argued that the new MBA program would duplicate the MSU program and would lead to further segregation in Baltimore-area universities. In November 2005, MHEC voted to uphold the Secretary's decision and allow TU and UB to implement the new MBA program.

State Expenditures: Although the funding would not be used to implement this bill, \$2 million in the fiscal 2007 State budget for MHEC is contingent on the passage of this legislation.

As a result of the bill, legal fees for MHEC could increase depending on the frequency of court challenges to MHEC's decisions about program duplication. The increase cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Cross File: HB 1634 (Delegate Cane, *et al.*) – Appropriations.

Information Source(s): Maryland Higher Education Commission, Department of Legislative Services

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