

Department of Legislative Services  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

House Bill 81  
Appropriations

(Delegate Cane, *et al.*)

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**Maryland Higher Education Commission - Review of Duplicative Academic Programs**

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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 program duplication. The bill also requires MHEC to make a determination about the duplication of academic programs that are approved or implemented after July 1, 2005, after receiving a request from a public institution affected by the duplication.

The bill takes effect July 1, 2007.

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**Fiscal Summary**

**State Effect:** General fund and higher education expenditures could increase depending on the frequency of court challenges to MHEC decisions. Revenues would not be affected.

**Local Effect:** Legal fees for community colleges could increase depending on the frequency of court challenges to MHEC decisions.

**Small Business Effect:** Minimal.

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## 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 unreasonable 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 2005 decision by the Secretary of Higher Education authorized Towson University and the University of Baltimore (UB) to offer a joint Masters 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 Towson and UB, is located in the Baltimore area. MSU claimed that the new MBA program would duplicate the MSU program and would lead to further segregation in

Baltimore-area universities. In November 2005, MHEC board members voted to uphold the Secretary's decision and allow Towson and UB to implement the new joint program.

In response, Senate Bill 998 of 2006 would have enabled an institution directly affected by an unreasonably duplicative academic program to appeal an MHEC determination to the circuit court. The bill passed the General Assembly but was vetoed by the Governor. In October 2006, the Coalition for Equity and Excellence in Maryland Higher Education filed a lawsuit in the Circuit Court for Baltimore City arguing that the State has failed to desegregate its higher education system and requesting the elimination of several new academic programs at traditionally white institutions, including the joint Towson-UB MBA program. The case has been moved to federal court.

MHEC advises that it receives approximately 450 to 500 requests for program changes each year. Approximately one-half of these requests are to start new academic programs, and virtually all the new program requests are approved. Institutions raise objections to approximately 10 to 15 new program requests per year, and about 1 to 5 of these objections ultimately result in an MHEC determination that a program is unreasonably duplicative.

From 1996 to 2005, MSU graduated 235 MBA students, an average of 23.5 graduates per year. However, this number declined to 13 graduates in 2005 from a high of 39 graduates in 2000. MHEC reports that there were 28 students enrolled in the MSU MBA program last year.

The MBA program at UB, which was established well before the joint MBA program with Towson was proposed, graduated 1,801 students from 1996 to 2005, an average of 180.1 students per year. As with the MSU program, the number of UB MBA graduates has declined in recent years from a high of 222 in 2001 to 150 in 2005. Towson reports that 30 students enrolled in the new joint MBA program call Towson their home institution. The joint program also includes 454 MBA students from UB.

**State and Local Expenditures:** Legal fees for MHEC, the University System of Maryland, MSU, St. Mary's College of Maryland, and community colleges could increase depending on the frequency of circuit court challenges to MHEC decisions. The increase cannot be reliably estimated but could be significant if challenges become common.

## **Additional Information**

**Prior Introductions:** A substantially similar bill, SB 998, was passed by the General Assembly last year but was vetoed by the Governor.

**Cross File:** SB 29 (Senator Conway, *et al.*) – Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Higher Education Commission, University System of Maryland, Morgan State University, Maryland Independent College and University Association, Towson University, Department of Legislative Services

**Fiscal Note History:** First Reader - January 29, 2007  
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