

Department of Legislative Services  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

**Revised**

Senate Bill 29

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs and Budget and Taxation    Appropriations

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

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This bill requires the Maryland Higher Education Commission (MHEC) to make a determination whether unnecessary academic program duplication exists after receipt of a request from one of the State's public historically black institutions. If MHEC determines that there is unnecessary duplication, it must determine that the duplication is also unjustified if the program violates the State's agreement with the U.S. Department of Education Office for Civil Rights or the State's equal educational opportunity obligations. MHEC must specifically review any determinations it made regarding unreasonable or unnecessary duplication of programs approved or implemented between July 1, 2005 and December 1, 2005. The bill also authorizes judicial review in the circuit court of specified program duplication determinations made by MHEC.

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. Towson University tuition and fee revenue could decrease if the bill results in the elimination of its Masters of Business Administration (MBA) program. The loss of tuition and fee revenue could be offset by increases in tuition and fee revenues at other public institutions of higher education that have MBA programs.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** An MHEC decision about unreasonable or unnecessary duplication is subject to judicial review only if a historically black institution (Morgan State University, Coppin State University, Bowie State University, or the University of Maryland Eastern Shore) makes the request for a determination and the program was approved or implemented between July 1, 2005 and December 1, 2005 or after July 1, 2007. Judicial review of an MHEC decision must be in a circuit court in a jurisdiction in which none of the involved institutions are located. If a court decision results in a judgment ordering an institution to cease operating a program, the institution must be given at least four years from the date of the decision to end the program. The bill requires Morgan State University (MSU) or the University of Baltimore (UB) to accept students in good standing who are enrolled in a program at Towson University (Towson) that is discontinued under an order of MHEC or a court.

**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:** Federal law defines "unnecessary" program duplication between historically black and traditionally white institutions in states that had a prior segregated system of higher education as "those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor's level of nonbasic liberal arts and sciences course work and all duplication at the master's level and above are considered to be unnecessary."<sup>1</sup>

A 2005 decision by the Secretary of Higher Education authorized Towson and UB to offer a joint MBA program. The decision resulted in an appeal from 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.

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<sup>1</sup> *United States v. Fordice*, 505 U.S. 717(1992) at 738

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 Revenues:** If the bill leads to the elimination of the Towson MBA program, tuition and fee revenue at Towson could decrease in future fiscal years. The decrease would depend on when the program would stop accepting new students and the number of students who would enroll in the program if it is not eliminated. Any revenue loss cannot be reliably estimated but would not comprise a significant proportion of the total tuition and fee revenue generated by Towson. The proposed fiscal 2008 State budget includes \$128.8 million in tuition and fee revenue for the university.

If the Towson MBA program is terminated and students who would otherwise attend the Towson program choose to enroll at MSU or UB instead, increases in tuition and fee revenue at those institutions could offset the loss of revenue at Towson.

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

If the bill leads to the elimination of the Towson MBA program, higher education expenditures at Towson could decrease in future years depending on when the program is eliminated.

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### **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:** HB 81 (Delegate Cane, *et al.*) – Appropriations.

**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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