

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 402 (Senator Conway, *et al.*)
Education, Health, and Environmental Affairs

Maryland Higher Education Commission - Review of Duplicative Academic Programs

This bill requires the Maryland Higher Education Commission (MHEC) to review any determinations it made regarding unreasonable or unnecessary duplication of programs approved or implemented between July 1, 2005 and December 1, 2005, if an objection to the determination was filed by a Historically Black Institution (HBI). Upon request from an HBI, MHEC must also make a determination about unreasonable or unnecessary duplication of programs approved or implemented after July 1, 2007. 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. The bill also authorizes judicial review in the circuit court of unnecessary program duplication determinations made by MHEC.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund and higher education expenditures may increase depending on the frequency of court challenges to MHEC decisions. Towson University tuition and fee revenues potentially decrease if the bill results in the elimination of its Masters of Business Administration (MBA) program. The loss of tuition and fee revenues may 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.

Analysis

Bill Summary: An MHEC decision about program duplication is subject to judicial review only if an HBI (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.

The bill also 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 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” (*United States v. Fordice*). Duplicative programs may be allowed if there is sound educational justification.

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 to the MHEC decision, 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. Similar legislation was introduced the following year as Senate Bill 29/House Bill 81 of 2007. Different versions of Senate Bill 29 were passed by the two chambers, but the differences were not resolved in time for final passage. In 2008, legislation similar to the Senate version of SB 29 was introduced.

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, and in a December 2007 filing, the University of Maryland Eastern Shore joined MSU as a plaintiff in the case. The case is currently in the discovery phase and could go to trial as early as fall 2009.

From 1998 to 2007, MSU graduated 231 MBA students, an average of 23.1 graduates per year. However, this number declined to 16 graduates in 2006 and 22 graduates in 2007 from a high of 39 graduates in 2000. The MBA program at UB, which was established well before the joint MBA program with Towson was proposed, graduated 1,737 students over the same 10-year period, an average of 173.7 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 151 in 2006 and 138 in 2007.

The joint Towson-UB program began operating in fall 2006. Since the 2007-2008 school year, students in the joint Towson-UB program have not been required to identify a home institution. The University System of Maryland (USM) advises that student enrollment in the joint MBA program as of fall 2008 is 633, an enrollment increase of 199 students since fall 2006.

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.

State Revenues: If the bill leads to the elimination of the Towson MBA program, tuition and fee revenues at Towson may decrease in future fiscal years. The decrease depends on when the program stops accepting new students and the number of students who enroll in the program if it is not eliminated. Any revenue loss cannot be reliably estimated but does not comprise a significant proportion of the total tuition and fee revenues generated by Towson. The Governor's proposed fiscal 2010 budget estimates \$146.6 million in tuition and fee revenues for the university.

If the Towson MBA program is terminated and students who would otherwise attend the Towson program choose to instead enroll at MSU or UB or any other State institution, increases in tuition and fee revenues at other institutions may offset the loss of revenues at Towson.

To the extent that the bill results in a more stringent program approval review process, enrollments for certain programs may be concentrated in fewer schools. In the long term, this may have implications for the market shares (and tuition revenues) retained by different universities but will probably not significantly impact total enrollment or total revenues for Maryland's public institutions.

State Expenditures: Legal fees for MHEC, USM, MSU, and St. Mary's College of Maryland may increase depending on the frequency of circuit court challenges to MHEC decisions. The increase cannot be reliably estimated but may be significant for some institutions. It is expected that the Judiciary can handle any caseload increase resulting from the bill with existing resources.

The bill may also result in a more rigorous program approval review process, which, over time, may lead to a more efficient higher education system with little or no program duplication among neighboring institutions. Any long-term savings that may be derived from a more efficient statewide system cannot be reliably estimated.

Additional Information

Prior Introductions: SB 49 of 2008 received a favorable report from the Senate Education, Health, and Environmental Affairs Committee. No further action was taken. Similar legislation passed the Senate in 2007 as SB 29. The House passed a different version of SB 29 in 2007, but the differences were not resolved in time for final passage. A substantially similar bill, SB 998 of 2006, was passed by the General Assembly but vetoed by the Governor.

Cross File: HB 900 (Delegate Cane, *et al.*) - Appropriations.

Information Source(s): Maryland Higher Education Commission, Independent College and University Association, Judiciary (Administrative Office of the Courts), Morgan State University, University System of Maryland, Department of Legislative Services

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