

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 1174  
Appropriations

(Delegate Myers, *et al.*)

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Higher Education - Private Career Schools - Financial Guarantee Requirements

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This bill reduces the amount of a financial guarantee that a private career school may be required to provide in order to operate in the State. The amount is capped at the lesser of the maximum actual student tuition liability or \$300,000. The Secretary of Higher Education also loses the authority to set the form of financial guarantee required by a private career school.

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Fiscal Summary

**State Effect:** The Maryland Higher Education Commission (MHEC) can handle any additional reassessments required due to the reduced financial guarantee with existing resources.

**Local Effect:** None.

**Small Business Effect:** Meaningful. Private career schools that are required by the Secretary of Higher Education to have a financial guarantee greater than the amount required under the bill will benefit from modest reductions in fees associated with paying for a letter of credit or purchasing insurance in the form of a bond; however, if a private career school with inadequate financial guarantees closes all remaining private career schools it may be assessed additional fees to restore the Guaranty Student Tuition Fund.

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Analysis

**Bill Summary:** Private career schools that are seeking an initial certificate of approval may be required to maintain a financial guarantee for five years. The financial guarantee must be in a performance bond or a letter of credit. The amount of the financial

guarantee needs to be sufficient to protect 100% of the tuition liability of the maximum student enrollment of the school, up to a maximum of \$300,000. However, the Secretary may determine that a lesser percentage is sufficient based on the financial condition of the school as reflected in an audited financial statement.

With certain exceptions, private career schools that have had a certificate of approval for more than five years may not be required to have a financial guarantee. The Secretary of Higher Education may require a private career school to maintain a financial guarantee if the Secretary determines that the school does not meet either of these criteria: (1) the U.S. Department of Education financial criteria required to participate in federal financial aid programs; or (2) a one-to-one ratio of liabilities to assets based on reviewed financial statements. If the Secretary determines that a financial guarantee is required, the guarantee must be (1) in the form of a performance bond or a letter of credit; and (2) in an amount that is sufficient to protect 30% of the tuition liability of enrolled students, up to a maximum of \$300,000. Private career schools that offer distance education programs must maintain a financial guarantee for each distance education program (1) in the form of a performance bond or a letter of credit; and (2) in an amount that is sufficient to protect 100% of the tuition liability of enrolled students, up to a maximum of \$300,000.

**Current Law:** Most postsecondary education institutions must obtain a certificate of approval from MHEC before they are allowed to operate in the State. However, certain institutions are exempt from obtaining a certificate of approval from MHEC. These institutions are either under charter from the General Assembly or religious institutions meeting certain qualifications. MHEC grants a certificate of approval exemption after an institution demonstrates it meets the requirements to qualify for an exemption.

MHEC may require any institution of postsecondary education that is required to obtain a certificate of approval to furnish a performance bond or other form of financial guarantee to the State. The institution is guaranteeing it will perform faithfully all agreements or contracts it makes with its students. The bond or guarantee has to be in the form and amount required by the Secretary of Higher Education.

The total liability of an entity insuring an institution may not exceed the amount of the bond or guarantee. If the total amount of claims filed exceeds the amount of the bond or guarantee, the insurer must pay the amount of the bond to the Secretary for distribution to the claimants.

MHEC may create and operate a guaranty fund for private career schools. The fund is to be used to reimburse any student at a private career school who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student or failed to comply with certain rules. The fund can also be

used for any other function related to the original purpose deemed appropriate by the Secretary of Higher Education.

The Code of Maryland Regulations (COMAR) requires each private career school that is required to obtain a certificate of approval to pay an annual fee into the fund. MHEC determines the amount of the fee based on the probable amount of money needed for the fund for each fiscal year. If the monies in the fund are insufficient to satisfy claims, the participating institutions may be reassessed. The institutions must pay the additional amount required. MHEC may not issue a certificate of approval to, and must revoke any certificate of approval previously issued to, an institution that fails to pay any annual fee or reassessment. MHEC must also deposit into the fund any penalty assessed against a private career school for failure to meet conditions or standards. MHEC may enforce the claim of any student to the extent of any actual or authorized reimbursement from the fund.

The State Comptroller is responsible for maintaining the fund, and may deposit the assets of the fund in any manner that is consistent with the purposes of the fund. All interest or other return on fund investment must be credited to the fund. MHEC, through the Attorney General, may enforce any claim.

**Background:** Private career schools offer the training needed in dozens of fields, ranging from electronic repair and computer operation to cosmetology and allied health. During the 2005-2006 academic year, approximately 37,000 students were enrolled in 156 private career schools throughout the State. At that time, the real estate schools had the largest percentage of students; approximately 17,000 students were enrolled at 29 schools. The average program completion rate for all private school career schools was 69%.

The Guaranty Student Tuition Fund is capped at \$1 million in COMAR. This is the fund of last resort if a school closes owing tuition refunds to students. The first source of a refund is the school itself. The next is the school's financial guarantee, if the school had a one. MHEC advises that about 72% of the private career schools are required to have a financial guarantee. The Guaranty Student Tuition Fund is the last option for students to recover tuition from a private career school that closes.

MHEC advises that the Secretary currently requires 15 private career schools to have a financial guarantee above \$300,000. These 15 schools have financial guarantees ranging from \$323,250 to \$3.9 million. The total amount of the guarantees for these 15 schools is \$21.4 million and the average guarantee is \$1.4 million. If the guarantees were capped at \$300,000, then \$16.9 million would be left unprotected by financial guarantees. Then, if any of these schools closed, this liability would be picked up by the Guaranty Student Tuition Fund to the extent the money is available. However, students that received

federal student financial aid from programs authorized under Title IV of the federal Higher Education Act of 1965 (as amended), which includes federal Unsubsidized Stafford loans, federal Subsidized Stafford loans, federal PLUS Loans, federal Perkins Loans, federal Pell Grants, and the federal Supplemental Educational Opportunity Grants, have additional protections for their Title IV aid.

**State Effect:** If a private career school with inadequate financial guarantees closes and the additional student refunds required exceed funds in the Guaranty Student Tuition Fund, MHEC may be required to assess the remaining private career schools an additional fee to cover student tuition. As long as the reassessments are infrequent, MHEC can handle the extra workload with existing resources.

**Small Business Effect:** Private career schools that are required by the Secretary of Higher Education to have a financial guarantee greater than the amount required under the bill will benefit from some modest reductions in fees associated with paying for a letter of credit or purchasing insurance in the form of a performance bond.

However, if a private career school with inadequate financial guarantees closes, all remaining private career schools may be assessed additional fees to restore the Guaranty Student Tuition Fund. The 15 schools that are required to have financial guarantees greater than \$300,000 have an average guarantee of approximately \$1.4 million, greater than the Guaranty Student Tuition Fund which is capped at \$1 million.

MHEC advises that, in addition, the negative publicity from even one public career school closing with inadequate protection for student's tuition has the potential to negatively impact enrollments and goodwill for the entire industry.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Maryland Higher Education Commission, Maryland Independent College and University Association, Department of Legislative Services

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