

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 696
Appropriations

(Delegate McDonough)

Institutions of Higher Education - Hiring of Outside Legal Counsel -
Requirements

This bill requires a public institution of higher education to request approval from the Office of the Attorney General (OAG) before hiring outside legal counsel for a single matter projected to cost \$25,000 or more. A private nonprofit institution of higher education that receives State aid through the Sellinger formula is prohibited from using that State aid to hire outside legal counsel for a single matter projected to cost \$25,000 or more.

Each private nonprofit institutions of higher education that receive State aid through the Sellinger formula must annually submit a report to the Maryland Independent College and University Association (MICUA) on the institution's total expenditures for legal services for the prior fiscal year. MICUA must annually compile that information into a report for the Maryland Higher Education Commission.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Public four-year institutions of higher education will need to request approval from OAG before hiring outside legal counsel for a single matter projected to cost \$25,000 or more. To the extent OAG declines such requests, higher education expenditures will decrease; however, it is not anticipated that OAG will decline many requests.

Local Effect: Community colleges will need to request approval from OAG before hiring outside legal counsel for a single matter projected to cost \$25,000 or more. To the

extent OAG declines such requests, community college expenditures will decrease; however, it is not anticipated that the OAG will decline many requests.

Small Business Effect: None.

Analysis

Bill Summary: If the projected cost of legal services for a public institution of higher education is less than \$25,000 for a single matter, the institution and its governing board may (1) use in-house legal resources to address the matter; or (2) hire outside legal counsel to address the matter.

The request for approval to hire outside legal counsel made by a public institution of higher education must be made in writing to OAG and must include (1) a description of the matter in which the institution seeks to hire outside legal counsel; (2) an explanation of why the in-house legal resources are not sufficient to address the matter; (3) the projected cost of the legal services; and (4) the source of funding.

The requests made to OAG and the reports submitted are public records open to inspection in accordance with Maryland's Freedom of Information Act.

Current Law: A public institution of higher education is not required to obtain approval to hire outside legal counsel for a matter projected to cost \$25,000 or more. The use of Sellinger funds by a private nonprofit institution of higher education is not restricted, beyond being prohibited from using the funds on religious activities.

Background: OAG provides legal support to all public institutions of higher education, and many institutions also have in-house legal counsel. Public institutions of higher education hire outside legal counsel when OAG or the in-house counsel lack expertise in the subject matter; or if they do not have in-house legal counsel. The University System of Maryland (USM) reports that most of the recent cases for which its institutions have hired outside legal counsel have involved filing for patents and other tech transfer applications. USM reports that there is existing authority for the institutions and OAG to retain outside legal counsel as appropriate and that adding an additional approval process will not reduce the cost of services; it will merely delay institutions obtaining needed services.

MICUA reports that most of the private nonprofit institutions it represents lack in-house legal counsel and generally have outside legal counsel on retainer to handle all legal matters.

Additional Comments: MICUA institutions will need to carefully track State aid to ensure no State funds are used to hire outside legal counsel for a single matter projected to cost \$25,000 or more. Each institution will also need to submit a report to MICUA on its total expenditures for legal services for the prior fiscal year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Baltimore City Community College, Department of Budget and Management, Maryland Higher Education Commission, Maryland Independent College and University Association, University System of Maryland, Department of Legislative Services

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Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510