

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 427

(Chair, Appropriations Committee)(By Request -
Departmental - Higher Education Commission)

Appropriations

Maryland Higher Education Commission - Program Review - Approval

This departmental bill prohibits a private nonprofit or for-profit institution of higher education from implementing a new academic program or a substantial modification of an existing program without approval from the Maryland Higher Education Commission (MHEC).

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: MHEC has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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 approval are not subject to judicial review or administrative appeal.

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 private nonprofit and for-profit institutions of higher education, recommend that the programs be implemented or not implemented. If MHEC fails to act within 60 days of the date of submission of a completed proposal, the proposal is automatically deemed approved.

A program that has not received a positive recommendation from MHEC may be implemented by a private nonprofit or for-profit institution. However, if a private nonprofit institution implements a new or substantially modified program contrary to the recommendation of MHEC that was based on a finding of unreasonable duplication, then MHEC may recommend that the General Assembly reduce the institution's appropriation under the Joseph A. Sellinger Program by the amount of aid associated with the full-time equivalent enrollment in the program. However, this does not preclude the nonpublic institution from going forward with implementation of the new or substantially modified program. This provision applies whether the new or substantially modified program can be implemented with new or existing resources. In addition, if a private nonprofit or for-profit institution of higher education implements a program despite the recommendation from MHEC that a program not be implemented, the institution must notify both prospective and enrolled students of the program that the program has not been recommended for implementation by MHEC.

When a public or private nonprofit 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. Based on those factors, MHEC must determine if an institution's objection is justified. 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 within 30 days of receipt of an objection, MHEC must make a final determination about the approval of the proposed program for a public institution of higher education or a final recommendation on implementation for a private nonprofit institution of higher education.

Chapter 277 of 2011 (SB 695) explicitly required all for-profit institutions offering programs in Maryland to submit new and substantially modified programs to MHEC for review and required them to notify current or prospective students if they implement a program that MHEC has not recommended.

Background: MHEC advises that treating public institutions of higher education differently than private for-profit or nonprofit institutions of higher education is not sound higher education policy. In particular, MHEC has no recourse against a for-profit institution of higher education if it decides to offer a new program despite the recommendation from MHEC that a program not be implemented. For a nonprofit institution of higher education that implements a program that MHEC does not recommend, MHEC can withhold Sellinger funds MHEC has no such recourse for a for-profit institution. In other states, according to MHEC, it is uncommon to allow an institution of higher education to implement a program without explicit approval.

The Maryland Independent College and University Association (MICUA) reports that in the uncommon instances when one of its member institutions submitted a program to MHEC for review and the program was not recommended to be implemented or encountered resistance from MHEC and was likely to not be recommended, the submitting MICUA institution withdrew its proposal. This occurred twice in recent years. In 2010, Stevenson University was informed that a master's program that it submitted was duplicative and would not be recommended for implementation. In 2007, Sojourner-Douglass College was informed that a proposed bachelor's program would not be recommended for implementation. In both instances, the institution withdrew its application for program review and subsequently did not offer the program.

Maryland's 13 public four-year institutions of higher education enrolled approximately 123,000 full-time equivalent (FTE) students in fiscal 2011. The State also has 16 community colleges, which enrolled over 115,000 FTE students in fiscal 2011 for State aid purposes. There are 16 private nonprofit institutions of higher education that receive State aid through the Sellinger formula. In fiscal 2011, the private nonprofit institutions enrolled close to 42,000 FTE students. In 2009, the latest year for which data are available, there were approximately 29,100 students enrolled in 174 private career schools in the State. In 2010, there were 7 for-profit institutions operating in Maryland with over 11,500 students enrolled (University of Phoenix and Kaplan University did not report enrollment to MHEC).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City Community College, Maryland Higher Education Commission, Maryland Independent College and University Association, Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2012
ncs/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Higher Education Commission – Program Overview - Approval

BILL NUMBER: HB 427

PREPARED BY: Maryland Higher Education Commission

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☒ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

☐ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.