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FISCAL AND POLICY NOTE
Revised

House Bill 941 (The Speaker, *et al.*) (By Request - Maryland Economic
Development and Business Climate Commission)
Economic Matters and Appropriations Finance and Education, Health, and
Environmental Affairs

**Task Force to Study Exemptions from Higher Education Ethics Requirements
and Procurement Rules to Facilitate Technology Transfer**

This bill establishes the Task Force to Study Exemptions from Higher Education Ethics Requirements and Procurement Rules to Facilitate Technology Transfer. The University System of Maryland (USM) must provide staff for the task force. The task force must report its findings and recommendations to the Governor and the General Assembly by December 1, 2015.

The bill takes effect June 1, 2015, and terminates June 30, 2016.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for USM are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must:

- review the effect of existing State ethics requirements and procurement rules on technology transfer at universities, including the participation of faculty in

economic development activities, the purchase of research equipment and supplies, and the hiring of research personnel;

- study options for creating exemptions from, or other modifications of, State ethics requirements and procurement rules to meet the complex needs of universities, maintain the necessary protections provided by ethics requirements and procurement rules, and facilitate technology transfer at universities;
- review and recommend possible procurement and operational exemptions for all University of Maryland University College (UMUC) operations, including extending existing exemptions for UMUC's overseas programs to all UMUC operations; and
- make recommendations regarding the relaxation of ethics requirements and procurement rules to facilitate technology transfer at universities in the State.

Current Law:

Ethics

Chapter 313 of 1990, later amended to be the Public-Private Partnership Act, requires each public four-year institution in the State (as well as the USM Office and the University of Maryland Center for Environmental Science) that is engaged in research or development to develop conflict of interest procedures based on (1) conflict of interest policies developed by its governing board and (2) the purposes of the Maryland Public Ethics Law.

“Research or development” means basic or applied research or development, and includes (1) the development or marketing of university-owned technology; (2) the acquisition of services of an official or employee by an entity for research and development purposes; or (3) participation in State economic development programs.

Before they may become effective, the procedures and policies must be approved by the Office of the Attorney General and the State Ethics Commission. The procedures adopted by an educational institution must:

- require disclosure of any interest in, employment by, or other relationship with an entity for which an exemption from the ethics requirements is claimed, on a form filed with the Ethics Commission and maintained as a public record at the educational institution;

- require a review of all disclosures by a designated official, who must determine what further information must be disclosed and what restrictions must be imposed by the educational institution to manage, reduce, or eliminate any actual or potential conflict of interest;
- include guidelines to ensure that interests and employment for which an exemption from the Public-Private Partnership Act is claimed do not (1) improperly give an advantage to entities in which the interests or employment are maintained; (2) lead to misuse of an institution's students or employees for the benefit of entities in which the interests or employment are maintained; or (3) otherwise interfere with the duties and responsibilities of the exempt official or employee;
- require approval by the president of the educational institution of any interest or employment for which an exemption is claimed from the ethics requirements; and
- require approval by the governing board of the educational institution if an exemption is claimed by the president of the educational institution.

Generally, a present or former official or employee at an educational institution may have a relationship, otherwise prohibited by law, with an entity engaged in research or development, or with an entity having a direct interest in the outcome of research or development, only if:

- the educational institution has adopted policies and procedures in accordance with the Public-Private Partnership Act; and
- the official or employee has complied with the policies and procedures.

Procurement

USM, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. Likewise, public-private partnerships authorized by State law are exempted from most of the law. State law also exempts other agencies, in whole or in part. However, each exempt entity is subject to specified provisions of State procurement law. For example, a procurement by USM must comply with the policies and procedures developed by USM and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the General Assembly in accordance with specified requirements. The policies and procedures must promote the purposes of the State procurement law.

A procurement at any of UMUC's overseas programs is exempt from most of the provisions of State procurement law that otherwise apply to USM. However, the acquisition, rental, purchase, or lease of supplies, services, maintenance, capital improvements, and engineering and architectural services made outside of the United States must be (1) in accordance with written policies and procedures established by the overseas divisions and (2) consistent with current best methods and business practices. To the extent practicable, the overseas policies must be in accordance with UMUC procurement policy applicable in the United States.

Background:

Maryland Economic Development and Business Climate Commission

In March 2014, the President of the Senate and the Speaker of the House of Delegates established and appointed the Maryland Economic Development and Business Climate Commission (MEDBCC) to focus on the State's economic development structure and incentive programs in order to make recommendations to the Presiding Officers.

The commission's 21 members come from a broad spectrum of backgrounds and have had business involvement in many states, as well as abroad. In 2014, the commission held eight public meetings, including hearings in seven parts of the State involving over 100 witnesses; reviewed well over 100 relevant documents; and discussed pertinent issues informally with a large number of individuals and organizations from the business, labor, government, academic, and related communities.

A report containing 10 findings and 32 recommendations, which were unanimously endorsed by the members of the commission, was submitted to the Presiding Officers in February 2015. The principal finding of the commission is that Maryland has not nearly reached its potential in growing business and creating jobs. The recommendations in the report address various short- and long-term aspects of this principal finding and related findings. At the request of the Presiding Officers, a subsequent report is anticipated later in 2015 that will investigate in further depth certain tax issues affecting economic development and the State's business climate. The report can be found [here](#).

The commission also found that technology transfer at universities is crucial and impeded by State laws (finding 10), which led to several specific recommendations, including:

- establish a task force to examine the appropriateness of existing conflict of interest laws, procurement rules, and intellectual property policies that inhibit technology transfer;

- require all research universities receiving State funds to consider establishing mechanisms of technology transfer, including incubators and innovation hubs, and provide additional State funding to support these efforts; and
- encourage higher education institutions to implement higher education professional development standards.

The bill generally implements the first of these recommendations (recommendation 32): that a task force should be established to examine the appropriateness of existing conflict of interest laws, procurement rules, and intellectual property policies that inhibit technology transfer. Specific to this issue, the report concludes:

Existing State procurement rules inhibit the efficient purchase of research equipment and supplies and the hiring of research personnel. In addition, ethics regulations and intellectual property laws restrict the commercialization of technology from State universities and government institutions. Universities provided testimony to MEDBCC describing the challenges of commercializing intellectual property under current law.

A task force with representatives of the State's economic development agencies, higher education community, and technology incubators should examine whether State procurement rules and ethics requirements applying to technology transfer and incubators should be revised. The task force should consider the need of universities to be compatible with the demands of a fast-moving market and the protections that procurement rules and ethics requirements provide. Similarly, universities should modify intellectual property policies to facilitate technology transfer much as has been done at, for example, Pennsylvania State University. Most evidence to date suggests that rigid intellectual property practices have been counterproductive in all but a few prominent instances.

Additional Information

Prior Introductions: None.

Cross File: SB 773 (The President, *et al.*) (By Request - Maryland Economic Development and Business Climate Commission) - Finance and Education, Health, and Environmental Affairs.

Information Source(s): University System of Maryland, Maryland Economic Development and Business Climate Commission, Department of Legislative Services

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