

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 807 (Senator Madaleno)
Education, Health, and Environmental Affairs

Higher Education - Ethics and Procurement Requirements

This bill authorizes a State public higher education institution to enter into lease agreements with, and receive lease payments from, any business entity engaged in research and development activity with faculty and staff at the institution with an interest in, employment with, or relationship with the entity. In addition, a conflict of interest policy currently required for each educational institution engaged in research and development must allow faculty or staff of the institution to have an interest in, be employed by, or have a relationship with an entity for which an exemption from conflict of interest requirements is claimed under current law, subject to specified requirements. The policies and procedures related to a conflict of interest policy must include reasonable accommodations for faculty and staff at an educational institution to engage in classified and proprietary consultation on research with a federal agency or business entity.

Fiscal Summary

State Effect: To the extent that the bill facilitates additional lease agreements and lease payments between public higher education institutions and business entities engaged in research and development, or additional federal grant funding for research and development, higher education revenues for the State's public higher education institutions increase. The amounts cannot be reliably estimated at this time. The bill does not otherwise materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Meaningful, as discussed below.

Analysis

Bill Summary: The provisions related to lease agreements apply to the University System of Maryland (USM) constituent institutions, St. Mary's College of Maryland (SMCM), Morgan State University (MSU), and Baltimore City Community College (BCCC).

Provisions relating to conflict of interest policies apply to USM, the USM Office, an institute of USM that is designated in the conflict of interest policies adopted by USM's Board of Regents, the University of Maryland Center for Environmental Science, MSU, and SMCM. A conflict of interest policy currently required of each of these institutions engaged in research and development must allow faculty or staff of the institution to have an interest in, be employed by, or have a relationship with an entity for which an exemption from conflict of interest requirements is claimed under current law. For any amount of \$5,000 or more (there is no minimum in current law), a disclosure form must be filed with the State Ethics Commission. Intellectual property created by the faculty or staff members under these conditions may be deemed the property of the entity for which the exemption is claimed, and the Chancellor of USM or the president of the educational institution may grant the exemption.

All other existing requirements relating to conflicts of interest for faculty and staff at the educational institutions remain unchanged.

Current Law:

Auxiliary and Academic Facilities

USM, SMCM, MSU, and BCCC, in order to provide auxiliary and academic facilities, may, among other things:

- issue bonds for the purpose of financing or refinancing all or any part of the costs of any one or more projects or issue bonds for the purpose of acquiring any auxiliary facility or academic facility previously financed through a capital lease with a State public higher education institution or any predecessor;
- fix, revise, charge, and collect auxiliary facilities fees and academic fees and pledge all or any part of such auxiliary facilities fees and academic fees as security for bonds issued for auxiliary and academic facilities by the institution;
- enter into all contracts and agreements necessary or incidental to the performance of duties and the execution of powers under current law; employ consulting

engineers, architects, attorneys, construction and financial experts, and other employees and agents as may be necessary; and fix their compensation; and

- do all acts and things necessary or convenient to carry out the powers expressly granted by current provisions related to auxiliary and academic facilities.

“Auxiliary facility” and “auxiliary facilities” mean any facility or facilities, now existing or constructed or acquired at a later date, which furnish a service to students, faculty, or staff at a State public higher education institution and which generate income, fees, rents, charges, and revenues arising from the use of the facility or facilities to support any project costs. The term includes (but must not be limited by type or class or otherwise to) housing facilities, eating facilities, recreational facilities, campus infirmaries, parking facilities, athletic facilities, student union or activity facilities, research facilities, laboratory facilities, testing facilities, and any related or incidental facility or any combination of such facilities.

Research and Development Conflict of Interest Policies

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 it 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 State 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.

Background: 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 to focus on the State's economic development structure and incentive programs in order to make recommendations to the Presiding Officers. One of the commission's findings was that technology transfer at universities is crucial and impeded by State laws, 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.

As part of a package of legislation to implement some of the commission's recommendations, Chapter 139 of 2015 established the Task Force to Study Exemptions from Higher Education Ethics Requirements and Procurement Rules to Facilitate Technology Transfer and required USM to provide staff for the task force. The task force was required to:

- 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.

The task force was required to report its findings and recommendations to the Governor and the General Assembly by December 1, 2015; however, as of March 6, 2016, the report had not been submitted.

New Company Formation at USM Institutions

As part of a series of initiatives to accelerate technology transfer and entrepreneurship, USM has put in place a process to regularly monitor new company formation. According to a recent [report](#) by the Board of Regent's Economic Development and Technology Commercialization Committee, from fiscal 2012 through 2015, 388 companies were facilitated at USM institutions, which exceeds USM's 2020 strategic plan goal of 325 companies. The report can be found on USM's website.

USM Conflict of Interest Policy in Research and Development

USM's conflict of interest [policy](#) allows a present or former official or employee of a constituent institution of the system to have a relationship with an entity engaged in research or development, or an entity having a direct interest in the outcome of research or development, which relationship would otherwise be prohibited by the conflict of interest provisions of the State ethics law, if such relationship is disclosed and approved by the president of the educational institution in accordance with the institution's faculty conflict of interest procedures developed pursuant to the USM policy. Each institution must develop procedures based on the above policy and the purposes of the State ethics law.

For purposes of USM's policy, "relationship" means any interest, service, employment, gift, or other benefit or relationship with an entity that would be prohibited by specified provisions of the State ethics law if not disclosed and approved pursuant to the USM policy and procedures. "Research or development" means basic or applied research or development, and it includes the development or marketing of university-owned technology, the acquisition of services of an official or employee by an entity for research and development purposes, or participation in State economic development programs.

Small Business Effect: Small businesses are positively affected to the extent that the legislation allows greater flexibility for faculty or staff of public higher education institutions to collaborate with start-up companies, which may lead to additional innovation, commercialization, and project funding.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Commerce, University System of Maryland, State Ethics Commission, Department of Legislative Services

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