

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

Senate Bill 396

(Senator Elfreth, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

Higher Education - Legal Representation Fund for Title IX Proceedings -
 Established

This bill establishes the Legal Representation Fund for Title IX Proceedings to provide funds for reasonable costs and attorney’s fees for current and former students provided with counsel in accordance with an institution’s sexual assault policy as required by Chapters 394 and 395 of 2018. Under Chapters 394 and 395, the Maryland Higher Education Commission (MHEC) must reimburse students for these costs; however, no funds are mandated for this purpose. Beginning in fiscal 2021, the Governor must include in the annual budget bill an appropriation of *at least* \$250,000 to the fund. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: No effect in FY 2020. Beginning in FY 2021, special fund revenues increase by \$250,000; special fund expenditures may be more or less than \$250,000 in any given year. As explained below, it is assumed that under current law at least \$250,000 in general funds would be spent annually beginning in FY 2020, so the bill has no net effect. **This bill establishes a mandated appropriation beginning in FY 2021.**

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$0	\$250,000	\$250,000	\$250,000	\$250,000
SF Expenditure	\$0	\$250,000	\$250,000	\$250,000	\$250,000
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapters 394 and 395 of 2018 require that each student (current or former) alleging a violation of the sexual assault policy *and* each student (current or former) responding to an allegation have access to counsel paid for by MHEC, as specified. MHEC is not required to pay a student's attorney's fees for representation in a criminal or civil matter.

In consultation with State and local bar associations and legal services providers with expertise about sexual misconduct, MHEC must develop a list of attorneys and legal services programs willing to represent students on a *pro bono* basis or at fees equivalent to those paid to attorneys under civil legal services programs administered by the Maryland Legal Services Corporation (MLSC). A student may select an attorney from the list. A student may select and retain an attorney prior to the conclusion of the formal Title IX proceedings. If a student selects and retains an attorney who is not on the list, MHEC must pay fees to the attorney selected by the student that are equivalent to those paid to attorneys under civil legal services programs administered by MLSC. An institution may not discourage a student from retaining an attorney.

Background: The issue of sexual assault on campuses garnered attention in 2014 when the U.S. Department of Education's (ED) Office for Civil Rights released a list of 52 institutions that were under investigation for possible violations of federal law regarding the handling of sexual assault and harassment complaints. Initially, the only Maryland institution on the list was Frostburg State University for a case that has since been resolved. As of January 2018, ED no longer posts a list of active investigations but rather provides a list of pending cases with a disclaimer that inclusion does not mean that an institution violated the law, only that a complaint has been filed. ED does provide data on active investigations upon request. According to the *Chronicle of Higher Education*, as of January 3, 2019, 192 cases have been resolved and 310 remain open, including 4 at St. Mary's College of Maryland; 3 at the University of Maryland, College Park Campus; 2 each at the University of Maryland, Baltimore County and Morgan State University; and 1 each at The Johns Hopkins University and Mount St. Mary's University.

According to the 2018 [Report on Campus Climate and Sexual Violence at Maryland Colleges and Universities](#), during the approximately two-year period covered by the report, there were 548 formal complaints at institutions of higher education, which equates to about 274 formal complaints made per year involving at least 548 individuals. The 2016 [Report on Campus Climate and Sexual Violence at Maryland Colleges and Universities](#) found that there were 258 formal complaints during the 2015-2016 academic year.

State Fiscal Effect: The bill establishes a new special fund and requires that it be funded, beginning in fiscal 2021, with at least a \$250,000 appropriation annually. That fund is

dedicated to providing monies for reasonable costs and attorney's fees, which must already be paid *beginning in fiscal 2020* under Chapters 394 and 395 of 2018. The fiscal 2020 budget as introduced did not include any funding specifically for legal fees; however, the General Assembly has restricted \$250,000 in the fiscal 2020 State budget, subject to the Governor releasing the funds, to cover legal fees. As explained further below, it is assumed that the costs associated with the special fund are required under current law and, therefore, this bill has no additional fiscal impact.

The fiscal and policy note for Chapters 394 and 395 estimated that MHEC expenditures would increase by \$412,800 annually based on 2016 data. Using updated data from the 2018 report, DLS now estimates that, under Chapters 394 and 395, general fund expenditures increase by \$438,400 annually, which is \$188,400 more than the \$250,000 mandated in the bill for the special fund. Therefore, it is assumed that the entire \$250,000 in general funds appropriated to the special fund is spent under current law and there is no increase in general fund expenditures due to the bill. Special fund revenues and expenditures increase by \$250,000 due to the creation of the special fund.

For any costs for specified attorney's fees above the \$250,000 mandated for the special fund, which based on the data discussed above total approximately \$188,400 annually, it is assumed that MHEC will request a deficiency appropriation each year. These expenditures are also attributable to Chapters 394 and 395 and not the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 633 (Delegate Lierman, *et al.*) - Appropriations.

Information Source(s): Maryland Higher Education Commission; Department of Budget and Management; *Chronicle of Higher Education*; U.S. Department of Education; Department of Legislative Services

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Analysis by: Caroline L. Boice

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