

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 695

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

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Higher Education - Regulation of Public, Private Nonprofit, and For-Profit  
Institutions of Higher Education

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This bill distinguishes between public, private nonprofit, and for-profit institutions of higher education in the State. The bill clarifies the scope of the Maryland Consumer Protection Act (MCPA) to include the unfair or deceptive offer for sale of course credit or other educational services; creates a separate and distinct Guaranty Fund to reimburse students at for-profit institutions of higher education who are entitled to a refund of tuition and fees due to the for-profit institution's breach of agreement or contract with the student or the State; alters the process for approval of programs offered by for-profit institutions of higher education and requires notification of specified students if a program has not been recommended for implementation; prohibits the payment of a commission, bonus, or other incentive payment based on success in securing enrollment; and restricts the use of State student financial assistance to specified institutions.

The bill takes effect June 1, 2011, except for provisions relating to for-profit institutions' contributions to the Guaranty Fund, which take effect July 1, 2011, and terminate June 30, 2013, and certain provisions relating to financial assistance, which take effect July 1, 2011, and terminate June 30, 2016.

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Fiscal Summary

**State Effect:** Nonbudgeted fund revenues increase due to the Guaranty Fund for for-profit institutions. Nonbudgeted fund expenditures from the Guaranty Fund may also increase to reimburse affected students who attended a for-profit institutions. Modifying the *eligibility* requirements for scholarships does not directly affect expenditures; for FY 2012 to 2016, the bill codifies current practice but after that, students who attend for-profit institutions are not eligible for an award.

**Local Effect:** None.

**Small Business Effect:** Meaningful. For-profit institutions of higher education must pay an annual fee into the Guaranty Fund.

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## Analysis

### Bill Summary:

#### *Types of Institutions of Higher Education*

A “for-profit institution of higher education” is defined as an institution of higher education that generally limits enrollment to graduates of secondary schools, awards degrees at the associate, baccalaureate, or graduate level, and is not a public or private nonprofit institution of higher education.

A “private nonprofit institution of higher education” is defined as a private nonprofit institution of higher education that generally limits enrollment to graduates of secondary schools and awards degrees at the associate, baccalaureate, or graduate level. An “independent institution of higher education” is considered a “private nonprofit institution of higher education.”

Regional higher education centers must be operated by a public institution of higher education or a private nonprofit institution of higher education.

This bill specifies that an institution of higher education includes a public, private nonprofit, and for-profit institution of higher education.

#### *Guaranty Fund for For-profit Institutions of Higher Education*

MHEC is authorized to create a separate and distinct Guaranty Fund to reimburse a student at a for-profit institution of higher education, similar to the Guaranty Fund that exists for private career schools. Both the private career school and for-profit institution of higher education guaranty funds are deemed special funds. Any unspent portions of the funds may not be transferred or revert to the general fund. No other State funds may be used to support the funds.

From July 1, 2011, to June 30, 2013, the amount of the annual fee charged to a for-profit institution of higher education for contribution to the Guaranty Fund may not exceed 0.0025 of all gross tuition, or \$30,000, whichever is less. After that, MHEC determines the maximum fee based on the probable amount needed each year. If monies in the fund

are insufficient, MHEC may reassess the institutions, which must pay the additional amounts.

The for-profit institution of higher education Guaranty Fund must be used to reimburse any student at a for-profit institution of higher education who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student or failed to comply with certain rules. MHEC may enforce the claim of any student to the extent of any actual or authorized reimbursement from the fund.

A for-profit institution of higher education that is required to obtain a certificate of approval is required to pay an annual fee into the fund. MHEC may not issue a certificate of approval to, and must revoke any certificate of approval previously issued to, an institution that fails to pay any annual fee or reassessment.

The State Comptroller is responsible for maintaining the fund and may deposit the assets of the fund in any manner that is consistent with the purposes of the fund. All interest or other return on fund investment must be credited to the fund. MHEC, through the Attorney General, may enforce any claim.

Instead of or in addition to reprimanding a for-profit institution of higher education, or suspending or revoking any approval issued to a for-profit institution of higher education, MHEC may impose a penalty of up to \$5,000 for each violation. MHEC must deposit any penalty assessed against a for-profit institution of higher education into the for-profit institution of higher education Guaranty Fund.

### *Program Approval*

The program approval process by which MHEC recommends or does not recommend a program for implementation applies to both private nonprofit and for-profit institutions. If a private nonprofit or for-profit institution implements a program despite not being recommended by MHEC, the institution must notify both prospective and enrolled students that the program has not been recommended for implementation.

### *Financial Assistance*

Financial assistance awarded by the Office of Student Financial Assistance (OSFA) within MHEC may be used at any in-state institution of higher education whose primary campus is in Maryland and whose degree-granting authority is conferred by Maryland, regardless of whether the institution is public, private, nonprofit, or for-profit. This provision takes effect July 1, 2011, and terminates June 30, 2016. On or after July 1, 2016, financial assistance may be used only at a public or private nonprofit

institution of higher education with an MHEC certificate of approval in the State except for legislative scholarships and the Jack F. Tolbert Private Career School Grant Program.

#### *Prohibition of Recruitment Incentives*

An institution of higher education is prohibited from paying a commission, a bonus, or any other incentive payment based on success in securing enrollments or the award of financial aid to a person or entity engaged in student recruitment or admission activity.

#### *Reporting Requirements*

MHEC may require reasonable annual reports and data from a for-profit institution of higher education as the commission generally requires of other institutions of higher education but may not require a for-profit institution of higher education to report on matters that are proprietary to the institution or constitute a trade secret.

For-profit and private nonprofit institutions of higher education must transfer student-level enrollment, degree, and financial aid data for all Maryland residents to the Maryland Longitudinal Data System in accordance with the existing data security and safeguarding plan.

#### *Governor's P-20 Leadership Council of Maryland*

The bill adds a representative of a for-profit institution of higher education to the Governor's P-20 Leadership Council of Maryland.

#### *Other*

MHEC is required to distribute a community college's request for proposal (RFP) for the offering of a baccalaureate degree program not currently offered in the region to public four-year institutions and private nonprofit institutions, instead of nonpublic institutions as in current law. A community college's board of trustees may submit RFPs to for-profit institutions of higher education, in addition to out-of-state four-year institutions, if none of the four-year institutions in the State submits an acceptable response. Before offering a degree program, a for-profit institution of higher education must seek MHEC approval.

The bill specifies that, to be eligible for a certain paid work-based learning program, a student must attend a public or private secondary school or a public or private nonprofit postsecondary institution in the State.

The bill states that MHEC should consider incorporating for-profit and out-of-state institutions awarding degrees in Maryland into reaching the State's goal that 55% of Maryland adult residents will have an associate's or bachelor's degree by 2025.

### **Current Law:**

#### *Types of Institutions of Higher Education*

Current law differentiates between institutions of higher education, institutions of postsecondary education, private career schools, public senior (four-year) higher education institutions, regional higher education centers, and proprietary institutions. Out-of-state institutions are addressed in the Code of Maryland Regulations (COMAR). While nonpublic and private institutions of higher education are used throughout the Education Article, they are not defined terms.

#### *Certificate of Approval*

Most postsecondary education institutions must obtain a certificate of approval from MHEC before they are allowed to operate in the State. However, certain institutions are exempt from obtaining a certificate of approval from MHEC. These institutions are either under charter from the General Assembly or religious institutions meeting certain qualifications. MHEC grants a certificate of approval exemption after an institution demonstrates it meets the requirements to qualify for an exemption.

If MHEC believes that an institution of postsecondary education does not meet the condition or standards on which its certificate of approval, or any other approval issued by MHEC or the Secretary of Higher Education, was based, MHEC must give the institution written notice specifying the deficiencies. MHEC may reprimand the institution or suspend or revoke the institution's certificate of approval or any other approval issued by MHEC or the Secretary. Instead of or in addition to reprimanding a private career school, or suspending or revoking any approval issued to a private career school, MHEC may impose a penalty of up to \$5,000 for each violation. MHEC must deposit any penalty assessed against a private career school into the Guaranty Fund for private career schools.

#### *Maryland Consumer Protection Act*

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any

consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division of the Attorney General's Office is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

#### *Guaranty Fund for Private Career Schools*

MHEC may create and operate a Guaranty Fund for private career schools. The fund is to be used to reimburse any student at a private career school who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student or failed to comply with certain rules. The fund can also be used for any other function related to the original purpose deemed appropriate by the Secretary of Higher Education.

COMAR requires each private career school that is required to obtain a certificate of approval to pay an annual fee into the fund. MHEC determines the amount of the fee based on the probable amount of money needed for the fund for each fiscal year. If the monies in the fund are insufficient to satisfy claims, the participating institutions may be reassessed. The institutions must pay the additional amount required. MHEC may not issue a certificate of approval to, and must revoke any certificate of approval previously issued to, an institution that fails to pay any annual fee or reassessment. MHEC must also deposit into the fund any penalty assessed against a private career school for failure to meet conditions or standards. MHEC may enforce the claim of any student to the extent of any actual or authorized reimbursement from the fund.

The State Comptroller is responsible for maintaining the fund and may deposit the assets of the fund in any manner that is consistent with the purposes of the fund. All interest or other return on fund investment must be credited to the fund. MHEC, through the Attorney General, may enforce any claim.

#### *Program Approval*

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 nonpublic 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.

When a public or nonpublic 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.

### *Scholarships*

A scholarship, grant, or loan, or other student financial assistance awarded by OSFA within MHEC may be used at any public or private institution of higher education in the State that possesses a certificate of approval from MHEC.

### *Governor's P-20 Leadership Council*

The Governor's P-20 Leadership Council of Maryland was created by Executive Order 01.01.2007.20 in October 2007 and codified by Chapter 191 of 2010. A partnership between State educators and the business community, the council's mission is to better prepare Maryland students for the jobs of the 21<sup>st</sup> century while enhancing the State's economic competitiveness by creating a workforce with 21<sup>st</sup> century skills.

## **Background:**

### *For-profit Institutions*

MHEC interprets the law to allow only students attending private institutions that have their headquarters or primary campus in Maryland to receive financial aid.

The National Conference of State Legislatures reports that enrollment at for-profit institutions has increased 225% during the past two decades. In August 2010, the U.S. Government Accountability Office (GAO) released a report that it conducted to (1) determine if for-profit institutions' representatives engaged in fraudulent, deceptive, or otherwise questionable marketing practices; and (2) compare the tuitions of the for-profit colleges tested with those of other colleges in the same geographic region. GAO found that 4 colleges out of 15 tested made deceptive or otherwise questionable statements to GAO's undercover applicants. They also found that some staff misled prospective students by telling them they would attend classes for 12 months a year, but gave the cost of attendance for 9 months a year. However, GAO reported that, in some instances, undercover applicants were provided accurate and helpful information by college personnel. The report also found that programs at the for-profit institutions cost substantially more than comparable degrees and certificates at public colleges nearby. Costs at private nonprofit colleges were found to be more comparable to public institutions when similar degrees were offered. GAO released a revised report in November 2010 that characterized the behavior by the for-profit institutions of higher education less harshly but retained the key findings of the original report.

The use of federal loans at for-profit institutions of higher education has also recently gained national attention. In 2009, students at for-profit institutions received more than \$4 billion in Pell Grants and more than \$20 billion in federal loans provided by the U.S. Department of Education. An examination of 16 for-profit institutions by the U.S. Senate Health, Education, Labor, and Pensions Committee found that 14 of those institutions received at least 87% of all their revenue from federal student aid in 2009. The report also found that more than half of students at for-profit institutions withdrew without a diploma within two years of enrollment.

Under federal law, institutions can lose eligibility for their students to receive federal student loans if their student loan default rate exceeds certain levels. Currently, the federal government looks at a two-year cohort default rate to enforce the law; however, that law changed in 2008, and soon a three-year cohort default rate will be used. A trial run of the three-year cohort rate was released in early 2011, and it was much worse than the two-year cohort default rate. Under the new metric, 25% of students who attended for-profit institutions and received federal student loans defaulted on their loan by the



third year of repayment. The loan default rate was about 11% for students who attended public colleges and about 8% for students who attended nonprofit colleges.

In July 2010, the U.S. Department of Education released preliminary regulations that would prohibit an institution from receiving federal aid if (1) less than 35% of former students are repaying their student loans; and (2) a majority of graduated students' loan payments exceed 12% of their income.

### *Other States*

Four states have begun to take action to further regulate for-profit institutions of higher education. In 2009, North Carolina enacted legislation that will set up a Guaranty Fund to compensate students attending proprietary schools that have suffered a loss of tuition, fees, or other school-related expenses as a result of the school closing and failing to complete the instruction for which the student paid. Legislation has been introduced in Ohio that would require proprietary institutions to disclose data regarding accreditation, job placement, and procedures for receiving tuition refunds.

### *Maryland*

In Maryland, the Guaranty Student Tuition Fund for private career schools is capped at \$1 million in COMAR, although proposed regulations would raise the cap to \$2 million. This is the fund of last resort if a school closes owing tuition refunds to students. The first source of a refund is the school itself. The next is the school's financial guarantee, if the school had one. The Guaranty Student Tuition Fund is the last option for students to recover tuition from a private career school that closes.

Maryland's 13 public four-year institutions of higher education enrolled over 123,000 full-time equivalent (FTE) students in fiscal 2010. The State also has 16 community colleges, which enrolled over 130,000 FTE students in fiscal 2010 for State aid purposes. There are 17 private nonprofit or independent institutions of higher education which receive State aid through the Sellinger formula. In fiscal 2010, the private nonprofit institutions enrolled close to 41,000 FTE students. In 2008-2009, the latest year for which data are available, there were approximately 28,300 students enrolled in 172 private career schools in the State. Also in 2008-2009, 24 for-profit and out-of-state institutions (public and private) operated in Maryland enrolling nearly 27,000 students MHEC advises that 9 for-profit institutions are currently operating in Maryland.

State financial assistance has been awarded to students who attend for-profit institutions that have their primary campus or headquarters physically located in Maryland. In fiscal 2010, \$62,550 in Delegate Howard P. Rawlings Educational Assistance and

Guaranteed Access grants was awarded to 38 students attending for-profit institutions of higher education that are “headquartered” in Maryland.

The Jack F. Tolbert Memorial Student Grant Program provides need-based grants up to \$1,500 to Maryland private career school students. Students must be enrolled for at least 18 clock hours, and the award may be renewed once. The proposed fiscal 2012 State budget includes \$200,000 for the program; however, the Budget Reconciliation and Financing Act of 2011 as introduced (SB 87/HB 72) repeals the program.

Legislative scholarships may also be awarded to students attending a for-profit institution or private career school, and in fiscal 2010, 15 awards totaling \$11,000 were made.

**State Fiscal Effect:** MHEC has indicated that it will create a Guaranty Fund for for-profit institutions; thus, nonbudgeted fund revenues increase. The magnitude of the increase is dependent on the size of fund that MHEC believes is required to cover the risk of students who attend for-profit institutions of higher education. *For illustrative purposes*, if the 9 for-profit institutions currently operating in Maryland each pay the maximum \$30,000 in fiscal 2012 and 2013, nonbudgeted revenues increase by \$270,000 each year. After that MHEC will set the maximum fee in regulation.

Nonbudgeted expenditures from the Guaranty Fund increase when a for-profit institution of higher education closes without refunding tuition to students.

It is assumed that the financial assistance awards for fiscal 2012 are not affected due to the one-month period (June 2011) during which the assistance may only be used at a public or private nonprofit institution of higher education in Maryland.

**Small Business Effect:** For-profit institutions of higher education will have to pay an annual fee into the Guaranty Fund. The amount of the potential fee is unknown, but it is assumed that it will operate in a similar manner as the Guaranty Fund for private career schools. According to proposed regulations, annual payments by private career schools into its Guaranty Fund will be 0.25% of adjusted gross tuition, with a minimum annual payment of \$250. If at the end of any assessment year, the fund contains \$2 million or more, then during the next assessment year, an assessment may not be made. The exact payment structure for a Guaranty Fund for for-profit institutions depends on how MHEC evaluates the risk of for-profit institutions closing without refunding students’ tuition.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 995 (Delegate Bohanan) - Appropriations.

**Information Source(s):** Maryland Higher Education Commission; Maryland Independent College and University Association; Morgan State University; University System of Maryland; U.S. Government Accountability Office; *Washington Post*; *Inside Higher Ed*; National Conference of State Legislators; U.S. Health, Education, Labor, and Pensions Committee; Department of Legislative Services

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