

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1179

(Delegate Forbes)

Environment and Transportation

Education, Energy, and the Environment

University System of Maryland - Affiliated Foundations

This bill explicitly allows officials or employees of the University System of Maryland (USM), its constituent institutions, centers, or institutes to accept a research grant through an affiliated foundation if the research grant cannot be directly accepted because of conditions required by the grantor, including providing an indemnity or purchasing indemnity insurance as a condition of receiving the research grant. Consequently, the bill exempts USM officials or employees from the Maryland Ethics Laws that prohibit employment by an affiliated foundation, as specified. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: To the extent that USM would have rejected grants with specified conditions, USM higher education revenues (and corresponding expenditures) are maintained, likely \$3 million to \$11 million annually, due to affiliated foundations continuing to accept research grants on behalf of USM institutions, as specified.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill establishes that an official or employee of USM, a constituent institution, a center, or an institute is *not* barred under the Maryland Public Ethics Law from becoming a director, an official, or an employee of an independent foundation organized to accept research grants for the benefit of the institution if (1) the affiliated foundation that accepts a research grant is a tax-exempt organization under

§ 501(c)(3) of the Internal Revenue Code and (2) USM, a constituent institution, a center, or an institute determines that it cannot directly accept the research grant because of conditions required by the grantor, including providing an indemnity or purchasing indemnity insurance as a condition of receiving the research grant.

Current Law:

Use of Funds Received by a Public Institution of Higher Education

It is the public policy of the State that endowment funds of public institutions of higher education and gifts, donations, bequests, private endowments, and private grants received by public institutions of higher education or their governing boards, including any income (1) must be used in accordance with the wishes of the donors and (2) may not be used a substitute for State general funds.

Affiliated Foundations

Public institutions of higher education are encouraged to promote private fundraising by strengthening institutional development activities and by maintaining relationships with affiliated foundations. Affiliated foundations that are independently established for this purpose must operate subject to policies adopted by the governing boards and be approved for form and legal sufficiency by the Attorney General.

The presidents of USM constituent institutions may establish campus-based foundations. Each foundation need not be approved by the Board of Regents of USM but must operate subject to policies adopted by the Board of Regents of USM in consultation with the presidents of USM constituent institutions.

An affiliated foundation established and operated may not be considered an agency or instrumentality of the State or a unit of the Executive Branch for any purpose. A financial obligation or liability of an affiliated foundation may not be considered a debt or an obligation of the State or USM.

The Maryland Public Ethics Law does not bar an official or employee of a public institution of higher education from becoming a director, official, or employee of an independent foundation organized to foster fundraising and provide related services for the benefit of the institution.

No funds may be accepted from an affiliated foundation by a public institution of postsecondary education unless the fiscal affairs of the affiliated foundation are audited annually by an independent certified public accountant.

Maryland Public Ethics Law, Generally

The Maryland Public Ethics Law sets out requirements, prohibitions, and procedures that affect officials in the Legislative, Executive, and Judicial branches of government for the purpose of maintaining people's trust in government and protecting against the improper influence and the appearance of improper influence of government. The Ethics Law is generally administered by the State Ethics Commission; however, the Joint Committee on Legislative Ethics and the Commission on Judicial Disabilities administer specified provisions of the Ethics Law as they apply to members of the General Assembly and State officials of the Judicial Branch, respectively.

State Fiscal Effect: The USM Foundation and other affiliated foundations manage grants for USM constituent institutions when the institution cannot administer them directly due to certain conditions. As State entities, USM constituent institutions are generally unable to accept contracts or grants with an indemnity clause unless there is a specific source of funds to pay out a claim, such as an insurance policy. Thus, absent the bill, USM constituent institutions may not be able to continue to accept research grants with specific conditions. However, under the bill, higher education revenues (and corresponding expenditures) are maintained without any ethical ambiguity – amounting to an estimated \$3 million to \$11 million annually. This money funds research, programs, and grant-funded positions, including providing services to Marylanders.

USM advises these grants primarily benefit faculty and programs at the University of Maryland, College Park Campus; the University of Maryland Center for Environmental Sciences; and the University of Maryland Baltimore County. The USM Foundation enters into approximately 10 to 20 of these grant agreements on an annual basis; in aggregate, these grant awards total between \$1 million and \$5 million annually. In aggregate, all affiliated foundations accept \$3 million to \$11 million in grants annually.

The University of Baltimore advises an example of a grant that could be lost includes \$100,000 per year from the Internal Revenue Service for the operation of the Low Income Taxpayer Clinic in the School of Law. Other grants support the work of the Human Trafficking Prevention Project, the Truancy Court Program, and the Center for Criminal Justice Reform in the School of Law, as well the Second Chance College Program, supporting the education of inmates at the Jessup Correctional Facility and later, on campus, upon their release.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 9, 2023
km/ljm Third Reader - March 20, 2023

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