



TOPIC: Review of Chapter 450 Economic Development (House Bill 442/Senate Bill 239) —
Next Steps

COMMITTEE: Effectiveness and Efficiency

DATE OF COMMITTEE MEETING: October 17, 2012

SUMMARY: During the 2012 Legislative Session, HB442/SB239 was passed and signed into law. The legislation establishes the Maryland Innovation Initiative in the Maryland Technology Development Corporation providing a fund that is a “certain special, non-lapsing fund.” The legislation further requires the Board of Regents to undertake certain high impact economic development activities and to adopt certain policies and procedures related to certain high impact economic development activities.

This item is intended to be a review and discussion of these activities as well as a discussion of future possibilities as they relate to the work of the Committee on Effectiveness and Efficiency and the Board’s Policy on the Role of the University System of Maryland as a Public Corporation.

ALTERNATIVE(S): This item is presented for information and discussion purposes.

FISCAL IMPACT: This item is presented for information and discussion purposes.

CHANCELLOR’S RECOMMENDATION: This item is presented for information and discussion purposes.

COMMITTEE RECOMMENDATION: Received as information. DATE: October 17, 2012

BOARD ACTION:

DATE:

SUBMITTED BY: Joseph F. Vivona (301) 445-1923

SUMMARY OF CHAPTER 450 (HB 442) ESTABLISHING HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITIES & ENTITIES AND POLICY CONSIDERATIONS

The E&E Committee and the Board approved in December 2011 the Policy on the Role of the University System of Maryland as a Public Corporation

The Board endorsed a statement of purpose and principles governing the USM as a public corporation and endorsed the System to pursue new law and/or amendments to existing law that would strengthen its public corporation status.

Chapter 450 (HB 442)

Chapter 450 reaffirms the System's status as a public corporation and provides it with certain flexibility to establish and participate in high impact economic development activities and entities that promote the economic interests of the State.

1. Three major components of Chapter 450:

- a. Defines and establishes the qualifications for the USM and its institutions to undertake High Impact Economic Development Activities (HIEDA);
- b. Provides for USM institution to create, invest and finance in, operate and participate in entities in support of HIEDA as-well-as flexibility for state institutions in procurement activities with HIEDA entities and
- c. Administer the review and comment process for real and personal property matters as they relate to HIEDA.

2. Policy Considerations

- a. Certification: The Chancellor must certify that a proposed activity is high economic impact consistent with Chapter 450. Proposals would be submitted to the Chancellor by institutions providing certain information from which an objective recommendation could be made. This information would include:
 - a description of the HIEDA and how it is consistent with the definition of HIEDA provided in Chapter 450;
 - how the HIEDA will promote the interests of the State of Maryland and the University System of Maryland;
 - how will the HIEDA be implemented;
 - the description of the entity or entities to be established to implement and promote the HIEDA;
 - the critical path for development of the activity
 - financial and human resources necessary to establish the activity and/or the entity to implement the activity;
 - financial proforma including costs to establish and implement the HIEDA, resources existing and/or borrowed and statement of revenues and expenses over a minimum of a 5-year period.

The Chancellor shall notify the Board of Regents and the Board of Public Works of any certified activity.

b. Entity Creation: Under Chapter 450 an institution of the USM may establish, invest in, finance and operate a corporation, foundation, consortium or other entity in support of a HIEDA. What separates this provision of Chapter 450 and the Board's authority to establish business entities is that an official or employee of an institution establishing the entity may be a director, official or employee of the HIEDA entity if that participation advances the interests of the institution. Chapter 450 also provides that Division II of the State Finance and Procurement Article does not apply to transactions between an entity established, financed or operated under Chapter 450 and the institution creating that entity.

Policy considerations would include:

- structure of the entity
- sources of operating funds
- business plan
- institution employees participating in the entity and their role
- statement of how the entity will advance a HIEDA
- relationship to the USM and to other USM institutions
- external borrowing
- capital structure including equity and debt financing, grants and/or other forms of financial support)
- potential local and regional impact including current and potential effect on job creation, economic development and/or community benefits such as tax generation and sustainability

Policies and procedures must provide for Board of Regents recognition of the entity, an annual audit and safeguards with regard to conflicts of interest, proper contracting practices and other fundamental ethical and business practice standards.

c. Real and Personal Property: Chapter 450 extends to the Board of Regents the authority to administer the review and comment process where real and property are an element of an HIEDA and/or creation of an HIEDA entity. Review and comment by units of State government would include:

- Committees of the General Assembly
- BPW
- Maryland Historic Trust
- DBM
- MDE
- DNR

Policies and procedures must ensure adequate review and comment time while not impairing an institution's capacity for expeditious and successful pursuit of a HIEDA.

By October 1 of each year, the Board of Regents shall report the Board of Public Works and certain legislative committees on the HIEDA undertaken under Chapter 450 during the preceding fiscal year.

3. Implementation

Chapter 450 specifically requires the creation of policies and procedures for the establishment of an HIEDA entity and for the administration of the real and personal property review and comment process. It does not however, have the same requirement for certifying an activity as having a high economic impact. It is suggested that the BOR adopt policy that outlines the minimum requirements necessary for certifying a HIEDA similar to 2a above.

a. Next Steps

- October 2012: complete draft policy for distribution and review
- November 2012: distribute draft policy to Board committees, finance and administration and research vice presidents and Office of the Attorney General for review and comment
- December 2012: revise policy to reflect review comments, meet and/or discuss with stake holders as might be required
- January 2013: Submit to Presidents Council for approval
Submit to Board Committees for approval
- February 2013: Board approval

b. Implementation

- Distribute policy with message from the Chancellor
- Meet with stakeholders as is needed to answer questions and advise on implementation.