

Department of Planning and Budget 2011 Fiscal Impact Statement

1. Bill Number: HB 2264

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Delegate Morgan

3. Committee: Education

4. Title: Issue credit enhancements for private higher education institutions

5. Summary: This bill amends the Educational Facilities Authority Act to permit the Virginia College Building Authority (VCBA) to issue or acquire credit enhancements to secure payment of bonds that it issues. Credit enhancements would include, without limitation, surety bonds, insurance policies, letters of credit, guarantees and other forms of collateral or security, as well as capital reserve funds for private institutions of higher education. Currently, the VCBA, acting as a conduit issuer, only provides for private nonprofit colleges access to the tax-exempt bond market through its private college program.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate (see Section 8)

8. Fiscal Implications: The Department of the Treasury estimates that there would be a fiscal impact resulting from this bill, which is difficult to determine at this time. However, Treasury would charge the private nonprofit colleges for the program's administration costs. Therefore, there should be no impact on the general fund.

The establishment and maintenance of a capital reserve fund through the addition of a moral obligation pledge of the Commonwealth to replenish any draws is based on the moral obligation provisions in the enabling legislation of the Virginia Resources Authority. The capital reserve fund could be funded with state appropriations; though presumably it would be funded with bond proceeds. Furthermore, using the Commonwealth's credit through the moral obligation mechanism to benefit private nonprofit colleges would be a departure from current state policy. The capital reserve fund would provide the first line of defense if one or more institutions were unable to pay their annual debt service. If there were a draw against the capital reserve fund, the VCBA would have to request an appropriation to replenish it. Assuming an appropriation was provided, the defaulting bonds would become tax-supported debt.

Unlike the Tuition Assistance Grant Program, where state funds are sent to private nonprofit colleges for the benefit of specific students, currently there is no direct financial connection

between the colleges and the Commonwealth. Without this connection, the value of the moral obligation created by this bill may not be considered as great as moral obligation programs. The Commonwealth has limited use of moral obligation debt programs providing a broad public purpose for such entities as the Virginia Housing and Development Authority and the Virginia Public School Authority – neither of which are active issuers of moral obligation debt. In addition, no implicit control exists over the private nonprofit colleges or corrective action available to the Commonwealth in the event of a payment default. Consequently, the lack of such remedies could affect the bond rating and ultimately the interest cost on the VCBA bonds for the private nonprofit colleges.

9. Specific Agency or Political Subdivisions Affected: Department of the Treasury and private nonprofit colleges

10. Technical Amendment Necessary: Yes. On line 63, strike “In addition, no bonds issued by the Authority”. Strike line 64.

11. Other Comments: It is unclear if the provisions of §23-30.59, lines 19-22 violate Article VIII, Section 11 of the Constitution of Virginia, which provides that the Commonwealth shall not be liable for any debt created by a VCBA borrowing assisting private nonprofit institutions.

Currently, this bill does not provide any means for the private nonprofit colleges to repay the Commonwealth if a payment default cause the capital reserve fund to be drawn upon. Lines 58 and 59 provide that if the General Assembly appropriates funds for restoration of a capital reserve fund, the VCBA would be required to repay those funds from its available operating funds. However, the VCBA is staffed by Treasury and has no operating funds from which to reimburse the Commonwealth. One possible solution would be to change the word “Authority” on lines 59 and 60 to “Institution of Higher Education” to require the private nonprofit colleges to reimburse the Commonwealth for funds used to replenish the capital reserve fund.

This legislation is identical to Senate Bill 1306.

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