

SENATE BILL 29

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By: **Senators Conway, Exum, Gladden, Jones, Kelley, McFadden, and Pugh**

Introduced and read first time: January 15, 2007

Assigned to: Education, Health, and Environmental Affairs and Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 8, 2007

CHAPTER _____

1 AN ACT concerning

2 **Maryland Higher Education Commission – Review of Duplicative Academic**
3 **Programs**

4 FOR the purpose of requiring the Maryland Higher Education Commission to make a
5 certain ~~determination~~ determinations concerning ~~a program~~ certain programs
6 approved or implemented ~~after a certain date~~ during or after certain dates
7 under certain circumstances; requiring the Commission to include certain
8 findings as part of certain determinations; authorizing the Commission to take
9 certain actions as a result of certain determinations; providing that certain
10 decisions of the Commission concerning certain duplication of academic
11 programs are subject to judicial review in the a circuit court in accordance with
12 certain rules and certain provisions of the Maryland Administrative Procedure
13 Act; providing that this Act shall be construed to require the Commission to
14 review certain determinations regarding certain duplication of academic
15 programs; authorizing a certain institution to continue operating a certain
16 program for no less than a certain period of time if a certain court enters a
17 certain judgment; requiring Morgan State University or the University of
18 Baltimore to accept certain students enrolled in a certain program at Towson
19 University that has been discontinued under a certain order of the Commission
20 or a court; and generally relating to the review of duplicative academic
21 programs.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article – Education
3 Section 11–206 and 11–206.1
4 Annotated Code of Maryland
5 (2006 Replacement Volume)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Education**

9 11–206.

10 (a) This section does not apply to:

11 (1) New programs proposed to be implemented by public and
12 nonpublic institutions of higher education using existing program resources in
13 accordance with § 11–206.1 of this subtitle; and

14 (2) Programs offered by institutions of higher education that operate
15 in the State without a certificate of approval in accordance with § 11–202(c)(2) or (3) of
16 this subtitle.

17 (b) (1) Prior to the proposed date of implementation, the governing body
18 of an institution of postsecondary education shall submit to the Commission each
19 proposal for:

20 (i) A new program; or

21 (ii) A substantial modification of an existing program.

22 (2) The Commission shall review each such proposal and:

23 (i) With respect to each public institution of postsecondary
24 education, either approve or disapprove the proposal;

25 (ii) With respect to each nonpublic institution of higher
26 education, either recommend that the proposal be implemented or that the proposal
27 not be implemented; and

28 (iii) With respect to a private career school, either approve or
29 disapprove the proposal.

1 (3) If the Commission fails to act within 60 days of the date of
2 submission of the completed proposal, the proposal shall be deemed approved.

3 (4) Except as provided in paragraph (3) of this subsection, a public
4 institution of postsecondary education and private career school may not implement a
5 proposal without the prior approval of the Commission.

6 (5) Except as provided in paragraph (3) of this subsection, and subject
7 to the provisions of § 17–105 of this article, a nonpublic institution of higher education
8 may implement a proposal that has not received a positive recommendation by the
9 Commission.

10 (6) (i) If the Commission disapproves a proposal, the Commission
11 shall provide to the governing body that submits the proposal a written explanation of
12 the reasons for the disapproval.

13 (ii) After revising a proposal to address the Commission's
14 reasons for disapproval, the governing body may submit the revised proposal to the
15 Commission for approval.

16 (c) (1) Prior to discontinuation, each institution of postsecondary
17 education that proposes to discontinue an existing program shall provide written
18 notification to the Commission specifying:

19 (i) The name of the program; and

20 (ii) The expected date of discontinuation.

21 (2) By rule or regulation, the Commission may require the payment by
22 a private career school of a refund to any student or enrollee who, because of the
23 discontinuation of an ongoing program, is unable to complete such program.

24 (d) The Commission shall review and make recommendations on programs in
25 nonpublic institutions of higher education that receive State funds.

26 (e) (1) In this subsection, "governing board" includes the board of trustees
27 of a community college.

28 (2) The Commission shall adopt regulations establishing standards for
29 determining whether 2 or more programs are unreasonably duplicative.

1 (3) The Commission may review existing programs at public
2 institutions of postsecondary education if the Commission has reason to believe that
3 academic programs are unreasonably duplicative or inconsistent with an institution's
4 adopted mission.

5 (4) ~~{The} EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS~~
6 ~~SUBSECTION, THE~~ Commission may make a determination that an unreasonable
7 duplication of programs exists on its own initiative or after receipt of a request for
8 ~~SUCH A~~ determination from any directly affected public institution of postsecondary
9 education.

10 (5) (I) THIS PARAGRAPH APPLIES ONLY TO A PROGRAM THAT:

11 1. HAS BEEN APPROVED OR IMPLEMENTED AFTER
12 JULY 1, 2005, BUT BEFORE DECEMBER 1, 2005, AND ABOUT WHICH AN
13 OBJECTION WAS FILED WITH THE COMMISSION UNDER PARAGRAPH (4) OF THIS
14 SUBSECTION BY MORGAN STATE UNIVERSITY, COPPIN STATE UNIVERSITY,
15 BOWIE STATE UNIVERSITY, OR THE UNIVERSITY OF MARYLAND EASTERN
16 SHORE; OR

17 2. HAS BEEN APPROVED OR IMPLEMENTED AFTER
18 JULY 1, 2007.

19 (II) ~~FOR A PROGRAM THAT HAS BEEN APPROVED OR~~
20 ~~IMPLEMENTED AFTER JULY 1, 2005, THE~~ THE COMMISSION SHALL MAKE A
21 DETERMINATION WHETHER ~~A~~ AN UNNECESSARY DUPLICATION OF PROGRAMS
22 EXISTS AFTER RECEIPT OF A REQUEST FOR SUCH A DETERMINATION FROM ~~ANY~~
23 ~~AFFECTED PUBLIC INSTITUTION OF POSTSECONDARY EDUCATION~~ MORGAN
24 STATE UNIVERSITY, COPPIN STATE UNIVERSITY, BOWIE STATE UNIVERSITY,
25 OR THE UNIVERSITY OF MARYLAND EASTERN SHORE.

26 (III) IF THE COMMISSION DETERMINES THAT AN
27 UNNECESSARY DUPLICATION OF PROGRAMS EXISTS UNDER SUBPARAGRAPH (II)
28 OF THIS PARAGRAPH, THE COMMISSION SHALL DETERMINE THAT THE
29 UNNECESSARY DUPLICATION IS UNJUSTIFIED IF THE PROGRAM VIOLATES THE
30 STATE'S AGREEMENT WITH THE UNITED STATES DEPARTMENT OF EDUCATION
31 OFFICE FOR CIVIL RIGHTS OR THE STATE'S EQUAL EDUCATIONAL
32 OPPORTUNITY OBLIGATIONS UNDER STATE OR FEDERAL LAW.

1 **(IV) A DETERMINATION OF THE COMMISSION UNDER**
2 **SUBPARAGRAPH (III) OF THIS PARAGRAPH SHALL INCLUDE THE CRITERIA USED**
3 **BY THE COMMISSION IN MAKING A DETERMINATION UNDER SUBPARAGRAPH**
4 **(III) OF THIS PARAGRAPH.**
5

6 **[(5)] (6)** (i) If the Commission makes a determination under
7 paragraph (4) **OR (5)** of this subsection the Commission may:

8 1. Make recommendations to a governing board on the
9 continuation or modification of the programs;

10 2. Require any affected governing board to submit a plan
11 to resolve the duplication; and

12 3. Negotiate, as necessary, with any affected governing
13 board until the unreasonable **OR UNNECESSARY** duplication is eliminated.

14 (ii) Notwithstanding the provisions of subparagraph (i) of this
15 paragraph, if the Commission determines that 2 or more existing programs offered by
16 institutions under the governance of different governing boards are unreasonably **OR**
17 **UNNECESSARILY** duplicative, the governing boards of the institutions of
18 postsecondary education at which the programs are offered shall have 180 days from
19 the date of the Commission's determination to formulate and present to the
20 Commission a joint plan to eliminate the duplication.

21 (iii) If in the Commission's judgment the plan satisfactorily
22 eliminates the duplication, the governing board of the affected institutions shall be so
23 notified and shall take appropriate steps to implement the plan.

24 (iv) If in the Commission's judgment the plan does not
25 satisfactorily eliminate the duplication, or if no plan is jointly submitted within the
26 time period specified in paragraph **[(6)] (8)** of this subsection, the governing board of
27 the affected institutions shall be so notified. The Commission may then seek to
28 eliminate the duplication by revoking the authority of a public institution of
29 postsecondary education to offer the unreasonably **OR UNNECESSARILY** duplicative
30 program.

31 **(7) (I) A DECISION OF THE COMMISSION UNDER THIS**
32 **SUBSECTION, BASED ON A REQUEST UNDER SUBSECTION (E)(5) OF THIS**
33 **SECTION, IS SUBJECT TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN A**
34 **JURISDICTION IN WHICH NEITHER INSTITUTION IS LOCATED IN ACCORDANCE**

1 WITH MARYLAND RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE
2 GOVERNMENT ARTICLE.

3 (II) IF A COMMISSION DECISION IS SUBJECT TO JUDICIAL
4 REVIEW UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH AND A COURT ENTERS
5 A JUDGMENT ORDERING AN INSTITUTION TO CEASE OPERATING A PROGRAM,
6 THE INSTITUTION SHALL HAVE NO LESS THAN 4 YEARS FROM THE DATE THE
7 JUDGMENT IS FINAL AND ALL APPEALS HAVE BEEN EXHAUSTED TO WIND UP
8 THE PROGRAM.

9 [(6)] (8) (i) Prior to imposing a sanction under paragraph [(5)]
10 (6) of this subsection, the Commission shall give notice of the proposed sanction to the
11 governing board of each affected institution.

12 (ii) 1. Within 20 days of receipt of the notice, any affected
13 institution may request an opportunity to meet with the Commission and present
14 objections.

15 2. If timely requested, the Commission shall provide
16 such opportunity prior to the Commission's decision to impose a sanction.

17 (iii) The Commission's decision shall be final and is not subject
18 to further administrative appeal or judicial review.

19 11-206.1.

20 (a) In this section the following words have the meanings indicated.

21 (1) "Public institution of higher education" means:

22 (i) A public senior higher education institution; and

23 (ii) A community college.

24 (2) "Nonpublic institution of higher education" means a regionally
25 accredited institution of higher education eligible for aid under § 17-103 of this article.

26 (b) (1) A president of a public institution of higher education may propose
27 to establish a new program or abolish an existing program if the action:

28 (i) Is consistent with the institution's adopted mission
29 statement under Subtitle 3 of this title; and

1 (ii) Can be implemented within the existing program resources
2 of the institution.

3 (2) A president of a nonpublic institution of higher education may
4 propose to establish a new program if the action:

5 (i) Is consistent with the mission statement published in the
6 official catalog of the nonpublic institution; and

7 (ii) Can be implemented within the existing resources of the
8 institution.

9 (3) The president of a public institution of higher education shall
10 report any programs that are proposed to be established or abolished in accordance
11 with paragraph (1) of this subsection to:

12 (i) The institution's governing board; and

13 (ii) The Maryland Higher Education Commission.

14 (4) The president of a nonpublic institution of higher education shall
15 report any programs that are proposed to be established in accordance with paragraph
16 (2) of this subsection to the Commission.

17 (5) Upon receipt of a proposed new program, the Commission shall
18 notify all other institutions of higher education in the State.

19 (c) The governing board of a public institution of higher education shall:

20 (1) Review the actions taken under subsection (b) of this section;

21 (2) Ensure that any new program proposed to be established by a
22 president:

23 (i) Is consistent with the institution's approved mission
24 statement under Subtitle 3 of this title;

25 (ii) Meets a regional or statewide need consistent with the
26 Maryland State Plan for Postsecondary Education;

27 (iii) Meets criteria for the quality of new programs, developed in
28 consultation with the Commission; and

1 (iv) Can be implemented within the existing program resources
2 of the institution, verified by a process established in consultation with the
3 Commission.

4 (d) The Board of Regents of the University System of Maryland shall approve
5 the proposed new program within 60 days if the program meets the criteria in
6 subsection (c)(2) of this section, subject to the provisions of subsections (e) and (f) of
7 this section.

8 (e) Within 30 days of receipt of a notice of an institution's intent to establish
9 a new program in accordance with subsection (b) of this section, the Commission may
10 file, or the institutions of higher education in the State may file with the Commission,
11 an objection to implementation of a proposed program provided the objection is based
12 on:

13 (1) Inconsistency of the proposed program with the institution's
14 approved mission for a public institution of higher education and the mission
15 statement published in the official catalog of a nonpublic institution of higher
16 education;

17 (2) Not meeting a regional or statewide need consistent with the
18 Maryland State Plan for Postsecondary Education;

19 (3) Unreasonable program duplication which would cause
20 demonstrable harm to another institution; ~~or~~

21 **(4) UNNECESSARY PROGRAM DUPLICATION AS DETERMINED BY**
22 **THE COMMISSION UNDER § 11-206(E)(5) OF THIS SUBTITLE; OR**

23 ~~(4)~~ **(5)** Violation of the State's equal educational opportunity obligations
24 under State and federal law.

25 (f) (1) If an objection is filed under subsection (e) of this section by the
26 Commission or an institution within 30 days of receipt of a notice of an institution's
27 intent to establish a new program, the Commission shall immediately notify the
28 institution's governing board and president.

29 (2) The Commission shall determine if an institution's objection is
30 justified based on the criteria in subsection (e) of this section.

1 (3) An objection shall be accompanied by detailed information
2 supporting the reasons for the objection.

3 (4) If the Commission determines that an objection is justified, the
4 Commission shall negotiate with the institution's governing board and president to
5 modify the proposed program in order to resolve the objection.

6 (5) If the objection cannot be resolved within 30 days of receipt of an
7 objection, the Commission shall make a final determination on approval of the new
8 program for a public institution of higher education or a final recommendation on
9 implementation for a nonpublic institution of higher education.

10 (6) **(I) A DECISION OF THE COMMISSION UNDER THIS**
11 **SUBSECTION, AFTER AN OBJECTION UNDER SUBSECTION ~~(E)(3)~~ (E)(4) OR (5) OF**
12 **THIS SECTION, IS SUBJECT TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN A**
13 **JURISDICTION IN WHICH NEITHER INSTITUTION IS LOCATED IN ACCORDANCE**
14 **WITH MARYLAND RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE**
15 **GOVERNMENT ARTICLE.**

16 **(II) IF A COMMISSION DECISION IS SUBJECT TO JUDICIAL**
17 **REVIEW UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH AND A COURT ENTERS**
18 **A JUDGMENT ORDERING AN INSTITUTION TO CEASE OPERATING A PROGRAM,**
19 **THE INSTITUTION SHALL HAVE NO LESS THAN 4 YEARS FROM THE DATE THE**
20 **JUDGMENT IS FINAL AND ALL APPEALS HAVE BEEN EXHAUSTED TO WIND UP**
21 **THE PROGRAM.**

22 (g) (1) The Commission shall:

23 (i) Identify programs established under subsection (b) of this
24 section that are inconsistent with the State Plan for Higher Education; and

25 (ii) Identify low productivity programs at public institutions of
26 higher education.

27 (2) If the Commission identifies any programs that meet the criteria
28 set forth in paragraph (1) of this subsection, the Commission shall notify the president
29 of the institution.

30 (3) If the Commission notifies a president of an institution under
31 paragraph (2) of this subsection, within 60 days the president of the institution shall
32 provide to the Commission in writing:

- 1 (i) An action plan to abolish or modify the program; or
- 2 (ii) Justification for the continuation of the program.
- 3 (h) The Commission and the governing boards of the public institutions of
4 higher education shall jointly develop a definition and accepted criteria for
5 determining low productivity programs.
- 6 (i) The Commission shall:
- 7 (1) Monitor the program development and review process established
8 under this section;
- 9 (2) Report annually to the Governor and, in accordance with § 2-1246
10 of the State Government Article, the General Assembly on the nature and extent of
11 any duplication or proliferation of programs; and
- 12 (3) Make available a copy of the report under paragraph (2) of this
13 subsection to the public institutions of higher education and the nonpublic institutions
14 of higher education.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
16 construed to require the Maryland Higher Education Commission to review any
17 determinations regarding unreasonable or unnecessary duplication for programs
18 approved or implemented after July 1, 2005, but before December 1, 2005, under
19 § 11-206 or § 11-206.1 of the Education Article as enacted by this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That Morgan State University
21 or the University of Baltimore shall accept students in good standing enrolled in a
22 program at Towson University that has been discontinued under an order of the
23 Maryland Higher Education Commission or a court.

24 SECTION ~~3.~~ ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect July 1, 2007.