

# SENATE BILL 169

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By: **Senators Conway and Pugh**

Introduced and read first time: January 14, 2014

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Higher Education Commission – Review of Duplicative Academic**  
3 **Program Proposals – Revisions**

4 FOR the purpose of requiring the Maryland Higher Education Commission to review  
5 certain program proposals through certain processes, including certain  
6 testimony and the weighing of evidence; requiring the Commission to adopt  
7 certain regulations that provide for the receipt of certain comments and  
8 objections under certain circumstances; altering certain circumstances under  
9 which the Commission must act on certain program proposals before a proposal  
10 is deemed approved; requiring the Commission to make certain determinations  
11 concerning certain programs under certain circumstances; requiring the  
12 Commission to include certain findings as part of certain determinations;  
13 authorizing the Commission to take certain actions as a result of certain  
14 determinations; providing that certain determinations of the Commission  
15 concerning certain duplication of academic programs are subject to judicial  
16 review in the circuit court in accordance with certain rules and certain  
17 provisions of the Administrative Procedure Act; providing a certain exception to  
18 a certain prohibition; requiring the Commission to make certain determinations  
19 through certain processes, including receiving certain testimony and the  
20 weighing of evidence; defining certain terms; and generally relating to the  
21 review of duplicative academic program proposals by the Maryland Higher  
22 Education Commission.

23 BY repealing and reenacting, with amendments,  
24 Article – Education  
25 Section 11–206 and 11–206.1  
26 Annotated Code of Maryland  
27 (2008 Replacement Volume and 2013 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Education**

2 11–206.

3 (a) This section does not apply to:

4 (1) New programs proposed to be implemented by public and private  
5 nonprofit institutions of higher education using existing program resources in  
6 accordance with § 11–206.1 of this subtitle; and7 (2) Programs offered by institutions of higher education that operate  
8 in the State without a certificate of approval in accordance with § 11–202.1(b) of this  
9 subtitle.10 (b) (1) Prior to the proposed date of implementation, the governing body  
11 of an institution of postsecondary education shall submit to the Commission each  
12 proposal for:

13 (i) A new program; or

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

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

16 (i) With respect to each public institution of postsecondary  
17 education, either approve or disapprove the proposal;18 (ii) Except as provided in § 16–108(c) of this article, with respect  
19 to each private nonprofit or for-profit institution of higher education, either  
20 recommend that the proposal be implemented or that the proposal not be  
21 implemented; and22 (iii) With respect to a private career school, either approve or  
23 disapprove the proposal.24 **(3) THE COMMISSION SHALL ADOPT REGULATIONS THAT**  
25 **PROVIDE FOR:**26 **(I) THE RECEIPT OF COMMENTS AND OBJECTIONS FROM**  
27 **APPROPRIATE PARTIES FOLLOWING SUBMISSION OF A COMPLETED PROPOSAL;**  
28 **AND**29 **(II) THE REVIEW OF OBJECTIONS RECEIVED BY THE**  
30 **COMMISSION IN ACCORDANCE WITH A DELIBERATIVE FACT-FINDING PROCESS,**  
31 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE.**

1           **[(3)] (4)**     If the Commission **DOES NOT RECEIVE ANY COMMENTS**  
2 **OR OBJECTIONS TO THE COMPLETED PROPOSAL AND** fails to act within 60 days of  
3 the date of submission of the completed proposal, the proposal shall be deemed  
4 approved.

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

8           **[(5)] (6)**     (i)     Except as provided in paragraph **[(3)] (4)** of this  
9 subsection, and subject to subparagraph (ii) of this paragraph, a program that has not  
10 received a positive recommendation by the Commission may be implemented by:

11                                 1.     Subject to the provisions of § 17–105 of this article, a  
12 private nonprofit institution of higher education; or

13                                 2.     A for–profit institution of higher education.

14                                 (ii)    If a private nonprofit or for–profit institution of higher  
15 education implements a proposal despite the recommendation from the Commission  
16 that a program not be implemented, the institution shall notify both prospective  
17 students of the program and enrolled students in the program that the program has  
18 not been recommended for implementation by the Commission.

19           **[(6)] (7)**     (i)     If the Commission disapproves a proposal, the  
20 Commission shall provide to the governing body that submits the proposal a written  
21 explanation of the reasons for the disapproval.

22                                 (ii)    After revising a proposal to address the Commission’s  
23 reasons for disapproval, the governing body may submit the revised proposal to the  
24 Commission for approval.

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

28                                 (i)     The name of the program; and

29                                 (ii)    The expected date of discontinuation.

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

33           (d)     The Commission shall review and make recommendations on programs in  
34 private nonprofit and for–profit institutions of higher education.

1           (e)   (1)   **(I)**   In this subsection[, “governing] **THE FOLLOWING WORDS**  
2 **HAVE THE MEANINGS INDICATED.**

3                           **(II)**   **“GOVERNING board”** includes the board of trustees of a  
4 community college.

5                           **(III)**   **“SOUND EDUCATIONAL JUSTIFICATION”** MEANS THAT A  
6 **PROGRAM THAT CREATES UNNECESSARY DUPLICATION CANNOT BE**  
7 **PRACTICABLY ELIMINATED OR ESTABLISHED BY LESS SEGREGATIVE MEANS.**

8                           **(IV)**   **“UNNECESSARY DUPLICATION”** MEANS THE OFFERING  
9 **BY TWO OR MORE INSTITUTIONS OF:**

10   1.   **THE SAME NONESSENTIAL OR NONCORE**  
11 **PROGRAMS;**

12   2.   **NONBASIC LIBERAL ARTS AND SCIENCES**  
13 **COURSEWORK AT THE BACHELOR’S LEVEL; OR**

14   3.   **ALL DUPLICATION AT THE MASTER’S LEVEL AND**  
15 **ABOVE.**

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

18                           (3)   The Commission may review existing programs at public  
19 institutions of postsecondary education if the Commission has reason to believe that  
20 academic programs are unreasonably duplicative or inconsistent with an institution’s  
21 adopted mission.

22                           (4)   The Commission may make a determination that an unreasonable  
23 duplication of programs exists on its own initiative or after receipt of a request for  
24 determination from any directly affected public institution of postsecondary education.

25                           **(5) (I) THE COMMISSION SHALL MAKE A DETERMINATION**  
26 **WHETHER AN UNNECESSARY DUPLICATION OF PROGRAMS EXISTS AFTER**  
27 **RECEIPT OF A REQUEST FOR SUCH A DETERMINATION FROM BOWIE STATE**  
28 **UNIVERSITY, COPPIN STATE UNIVERSITY, MORGAN STATE UNIVERSITY, OR**  
29 **THE UNIVERSITY OF MARYLAND, EASTERN SHORE.**

30   **(II) IF THE COMMISSION DETERMINES THAT AN**  
31 **UNNECESSARY DUPLICATION OF PROGRAMS EXISTS UNDER SUBPARAGRAPH (I)**  
32 **OF THIS PARAGRAPH, THE COMMISSION SHALL DETERMINE WHETHER THE**  
33 **UNNECESSARY DUPLICATION HAS SOUND EDUCATIONAL JUSTIFICATION.**

1                   **(III) THE COMMISSION SHALL DETERMINE THAT THE**  
2 **UNNECESSARY DUPLICATION IS UNJUSTIFIED IF THE PROGRAM:**

3                   **1. DOES NOT HAVE SOUND EDUCATIONAL**  
4 **JUSTIFICATION; AND**

5                   **2. VIOLATES THE STATE'S AGREEMENT WITH THE**  
6 **UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS OR**  
7 **THE STATE'S EQUAL EDUCATIONAL OPPORTUNITY OBLIGATIONS UNDER STATE**  
8 **OR FEDERAL LAW.**

9                   **(IV) A DETERMINATION OF THE COMMISSION UNDER THIS**  
10 **PARAGRAPH SHALL INCLUDE THE CRITERIA USED BY THE COMMISSION IN**  
11 **MAKING THE DETERMINATION.**

12                   **[(5)] (6)** (i) If the Commission makes a determination under  
13 paragraph (4) **OR (5)** of this subsection the Commission may:

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

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

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

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

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

30                   (iv) If in the Commission's judgment the plan does not  
31 satisfactorily eliminate the duplication, or if no plan is jointly submitted within the  
32 time period specified in paragraph **[(6)] (8)** of this subsection, the governing board of  
33 the affected institutions shall be so notified. The Commission may then seek to  
34 eliminate the duplication by revoking the authority of a public institution of

1 postsecondary education to offer the unreasonably **OR UNNECESSARILY** duplicative  
2 program.

3 **(7) A DECISION OF THE COMMISSION UNDER THIS SUBSECTION**  
4 **BASED ON A REQUEST UNDER PARAGRAPH (5) OF THIS SUBSECTION IS SUBJECT**  
5 **TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH MARYLAND**  
6 **RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT ARTICLE.**

7 ~~[(6)]~~ **(8)** (i) Prior to imposing a sanction under paragraph ~~[(5)]~~  
8 **(6)** of this subsection, the Commission shall give notice of the proposed sanction to the  
9 governing board of each affected institution.

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

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

15 (iii) ~~[The]~~ **EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**  
16 **SUBSECTION, THE** Commission's decision shall be final and is not subject to further  
17 administrative appeal or judicial review.

18 11-206.1.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) "Public institution of higher education" means:

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

22 (ii) A community college.

23 (3) "Private nonprofit institution of higher education" has the meaning  
24 stated in § 10-101(k) of this article.

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

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

29 (ii) Can be implemented within the existing program resources  
30 of the institution.

1           (2) A president of a private nonprofit institution of higher education  
2 may propose to establish a new program if the action:

3                   (i) Is consistent with the mission statement published in the  
4 official catalog of the private nonprofit institution; and

5                   (ii) Can be implemented within the existing resources of the  
6 institution.

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

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

11                   (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

30           (d) The Board of Regents of the University System of Maryland shall approve  
31 the proposed new program within 60 days if the program meets the criteria in

1 subsection (c)(2) of this section, subject to the provisions of subsections (e) and (f) of  
2 this section.

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

8 (1) Inconsistency of the proposed program with the institution's  
9 approved mission for a public institution of higher education and the mission  
10 statement published in the official catalog of a private nonprofit institution of higher  
11 education;

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

14 (3) Unreasonable program duplication which would cause  
15 demonstrable harm to another institution; [or]

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

18 **[(4)] (5)** Violation of the State's equal educational opportunity  
19 obligations under State and federal law.

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

24 (2) **[The] THROUGH A DELIBERATIVE FACT-FINDING PROCESS,**  
25 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE,**  
26 **THE** Commission shall determine if an institution's objection is justified based on the  
27 criteria in subsection (e) of this section.

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

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

33 (5) If the objection cannot be resolved within 30 days of receipt of an  
34 objection, the Commission shall make a final determination on approval of the new



1 program for a public institution of higher education or a final recommendation on  
2 implementation for a private nonprofit institution of higher education.

3 **(6) A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,**  
4 **AFTER AN OBJECTION UNDER SUBSECTION (E)(4) OR (5) OF THIS SECTION, IS**  
5 **SUBJECT TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH**  
6 **MARYLAND RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT**  
7 **ARTICLE.**

8 (g) (1) The Commission shall:

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

11 (ii) Identify low productivity programs at public institutions of  
12 higher education.

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

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

19 (i) An action plan to abolish or modify the program; or

20 (ii) Justification for the continuation of the program.

21 (h) The Commission and the governing boards of the public institutions of  
22 higher education shall jointly develop a definition and accepted criteria for  
23 determining low productivity programs.

24 (i) The Commission shall:

25 (1) Monitor the program development and review process established  
26 under this section;

27 (2) Report annually to the Governor and, in accordance with § 2-1246  
28 of the State Government Article, the General Assembly on the nature and extent of  
29 any duplication or proliferation of programs; and

30 (3) Make available a copy of the report under item (2) of this  
31 subsection to the public institutions of higher education and the private nonprofit  
32 institutions of higher education.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2014.