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

A BILL ENTITLED

AN ACT concerning

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

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

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

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

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Article – Education

11–206.

(a) This section does not apply to:

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

(2) Programs offered by institutions of higher education that operate in the State without a certificate of approval in accordance with § 11–202.1(b) of this subtitle.

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

(i) A new program; or

(ii) A substantial modification of an existing program.

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

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

(ii) Except as provided in § 16–108(c) of this article, with respect to each private nonprofit or for–profit institution of higher education, either recommend that the proposal be implemented or that the proposal not be implemented; and

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

(3) THE COMMISSION SHALL ADOPT REGULATIONS THAT PROVIDE FOR:

(I) THE RECEIPT OF COMMENTS AND OBJECTIONS FROM APPROPRIATE PARTIES FOLLOWING SUBMISSION OF A COMPLETED PROPOSAL; AND

(II) THE REVIEW OF OBJECTIONS RECEIVED BY THE COMMISSION IN ACCORDANCE WITH A DELIBERATIVE FACT–FINDING PROCESS, INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE.

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

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

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

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

2. A for–profit institution of higher education.

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

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

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

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

(i) The name of the program; and

(ii) The expected date of discontinuation.

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

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

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

(II) "GOVERNING board" includes the board of trustees of a community college.

(III) "SOUND EDUCATIONAL JUSTIFICATION" MEANS THAT A PROGRAM THAT CREATES UNNECESSARY DUPLICATION CANNOT BE PRACTICABLY ELIMINATED OR ESTABLISHED BY LESS SEGREGATIVE MEANS.

(IV) "UNNECESSARY DUPLICATION" MEANS THE OFFERING BY TWO OR MORE INSTITUTIONS OF:

1. THE SAME NONESSENTIAL OR NONCORE PROGRAMS;

2. NONBASIC LIBERAL ARTS AND SCIENCES COURSEWORK AT THE BACHELOR'S LEVEL; OR

3. ALL DUPLICATION AT THE MASTER'S LEVEL AND ABOVE.

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

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

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

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

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

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

1. DOES NOT HAVE SOUND EDUCATIONAL JUSTIFICATION; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11–206.1.

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

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

(i) A public senior higher education institution; and

(ii) A community college.

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

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

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

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

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

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

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

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

(i) The institution's governing board; and

(ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) (1) The Commission shall:

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

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

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

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

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

(ii) Justification for the continuation of the program.

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

(i) The Commission shall:

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

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

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

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