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By: **Senators Conway, Britt, Currie, Exum, Gladden, Hughes, Jones, Kelley,  
Lawlah, and McFadden**

Introduced and read first time: March 1, 2006

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Institutions of Higher Education - Academic Programs and Funding - Parity**

3 FOR the purpose of amending the Maryland Charter for Higher Education to require  
4 certain funding policies to allocate certain resources in a certain manner to  
5 certain similarly classified institutions of higher education; requiring the  
6 Maryland Higher Education Commission to ensure that parity exists between  
7 certain academic programs at certain institutions of higher education and that  
8 certain programs receive equitable and comparable funding; requiring the  
9 Commission to determine whether certain proposed academic programs meet  
10 certain requirements; prohibiting the Commission from approving certain  
11 duplicative academic programs; requiring the Commission to consider certain  
12 programs unnecessarily and unreasonably duplicative if the program meets  
13 certain criteria; requiring the Commission to review certain existing programs  
14 at certain institutions for certain reasons; requiring the Commission to initiate  
15 and conduct a review of certain programs if a certain request for a certain  
16 determination is made by certain institutions; providing that certain decisions  
17 of the Commission concerning duplication of existing academic programs is  
18 subject to administrative appeal and judicial review; requiring the Commission  
19 to contract with a consultant to conduct a comprehensive review of similarly  
20 classified institutions of higher education in the State for certain purposes;  
21 requiring the consultant to consider certain factors in the review required by  
22 this Act; defining a certain term; and generally relating to institutions of higher  
23 education and parity of academic programs and funding.

24 BY repealing and reenacting, with amendments,  
25 Article - Education  
26 Section 10-101, 10-203, 11-105(h), and 11-206  
27 Annotated Code of Maryland  
28 (2004 Replacement Volume and 2005 Supplement)

29 BY repealing and reenacting, without amendments,  
30 Article - Education  
31 Section 11-105(a)

1 Annotated Code of Maryland  
2 (2004 Replacement Volume and 2005 Supplement)

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

5 **Article - Education**

6 10-101.

7 (a) In this division the following words have the meanings indicated.

8 (b) "Charter" means the Maryland Charter for Higher Education.

9 (c) "Commission" means the Maryland Higher Education Commission.

10 (d) "Governing board" means:

11 (1) The Board of Regents of the University System of Maryland;

12 (2) The Board of Regents of Morgan State University;

13 (3) The Board of Trustees of St. Mary's College of Maryland; and

14 (4) The Board of Trustees of Baltimore City Community College.

15 (e) "Governing body" means:

16 (1) A governing board;

17 (2) A board of trustees of a community college;

18 (3) The governing entity of nonpublic institutions of higher education; or

19 (4) The governing entity of a regional higher education center.

20 (f) "Institution of higher education" means an institution of postsecondary  
21 education that generally limits enrollment to graduates of secondary schools, and  
22 awards degrees at either the associate, baccalaureate, or graduate level.

23 (g) (1) "Institution of postsecondary education" means a school or other  
24 institution that offers an educational program in the State for individuals who are at  
25 least 16 years old and who have graduated from or left elementary or secondary  
26 school.

27 (2) "Institution of postsecondary education" does not include:

28 (i) Any adult education, evening high school, or high school  
29 equivalence program conducted by a public school system of the State; or

1 (ii) Any apprenticeship or on-the-job training program subject to  
2 approval by the Apprenticeship and Training Council.

3 (h) "Private career school" means a privately owned and privately operated  
4 institution of postsecondary education other than an institution of higher education  
5 that furnishes or offers to furnish programs, whether or not requiring a payment of  
6 tuition or fee, for the purpose of training, retraining, or upgrading individuals for  
7 gainful employment as skilled or semiskilled workers or technicians in recognized  
8 occupations or in new and emerging occupations.

9 (i) "Program" or "educational program" means an organized course of study  
10 that leads to the award of a certificate, diploma, or degree.

11 (j) "Public senior higher education institution" means:

12 (1) The constituent institutions of the University System of Maryland;

13 (2) Morgan State University; and

14 (3) St. Mary's College of Maryland.

15 (k) "Regional higher education center" means a higher education facility in the  
16 State that:

17 (1) Is operated by a public institution of higher education in the State or  
18 a nonpublic institution of higher education operating under a charter granted by the  
19 General Assembly and includes participation by two or more institutions of higher  
20 education in the State;

21 (2) Consists of an array of program offerings from institutions of higher  
22 education approved to operate in the State by the Commission or by an act of the  
23 General Assembly that specifically satisfies the criteria set forth in § 10-212(b) of this  
24 title;

25 (3) Offers multiple degree levels; and

26 (4) Is either approved by the Commission to operate in the State or is  
27 established by statute.

28 (l) "Secretary" means the Secretary of Higher Education.

29 (M) "SIMILARLY CLASSIFIED INSTITUTIONS" MEANS INSTITUTIONS OF  
30 HIGHER EDUCATION THAT SHARE A SIMILAR CLASSIFICATION UNDER THE  
31 CARNEGIE CLASSIFICATION OF INSTITUTIONS OF HIGHER EDUCATION REPORT  
32 PUBLISHED BY THE CARNEGIE FOUNDATION.

33 [(m)] (N) "State Plan for Higher Education" means the plan for postsecondary  
34 education and research required to be developed by the Maryland Higher Education  
35 Commission under § 11-105(b) of this article.

1 10-203.

2 (a) It is the goal of the State that public senior higher education institutions  
3 be funded at 100 percent of funding guidelines developed by the Maryland Higher  
4 Education Commission.

5 (b) Funding policies shall allocate State resources efficiently while providing  
6 incentives for quality and institutional diversity.

7 (C) FUNDING POLICIES SHALL ALLOCATE STATE RESOURCES COMPARABLY  
8 AND EQUITABLY TO SIMILARLY CLASSIFIED INSTITUTIONS OFFERING SIMILAR OR  
9 DUPLICATE ACADEMIC PROGRAMS.

10 [(c)] (D) Funding proposals for public senior higher education institutions  
11 shall include:

12 (1) Base funding in accordance with the role and mission of the  
13 institution, as approved by the Maryland Higher Education Commission;

14 (2) Special initiative funding:

15 (i) For academic programs at historically African American  
16 colleges and universities; and

17 (ii) For the reward of academic innovation and enhancement; and

18 (3) Capital funding to support construction, operation, and maintenance  
19 of a physical plant that is consistent with each institution's mission.

20 [(d)] (E) (1) Funding proposals for regional higher education centers may  
21 include:

22 (i) Ongoing operating support to provide access to affordable  
23 postsecondary education in unserved and underserved areas of the State;

24 (ii) Incentive funding to promote collaboration among the  
25 institutions of higher education and regional higher education centers; and

26 (iii) Capital funding to support construction, operation, and  
27 maintenance of a physical plant consistent with the approved mission statement of  
28 the center.

29 (2) Operating funds for each regional higher education center that is  
30 administered by the University System of Maryland shall be included in the  
31 appropriation of the system office as a separate line item in the Governor's operating  
32 budget.

33 [(e)] (F) Student financial aid programs should be developed in order to  
34 provide reasonable access to the appropriate academic programs for individuals who  
35 exhibit financial need, who are educationally disadvantaged, or who exhibit special  
36 merit.

1 11-105.

2 (a) In addition to any other powers granted and duties imposed by this title  
3 and subject to any restrictions imposed by law, the Commission has the powers and  
4 duties set forth in this section.

5 (h) The Commission:

6 (1) May secure, compile, and evaluate information on any matter within  
7 its authority, in the format it requires, from any person, agency, regional higher  
8 education center, or institution subject to its authority;

9 (2) May engage in research, data compilation, and publication of reports  
10 concerning postsecondary education in the State;

11 (3) Through its representatives, may visit at any reasonable times and  
12 make reasonable inspections of any institution of postsecondary education or regional  
13 higher education center subject to its authority;

14 (4) In consultation with the segments of higher education, shall develop  
15 guidelines to assess the adequacy of operating and capital funding based on  
16 comparisons with institutions designated as peer institutions and other appropriate  
17 factors; [and]

18 (5) (I) SHALL ENSURE THAT PARITY EXISTS BETWEEN DUPLICATE  
19 ACADEMIC PROGRAMS THAT EXISTED ON OR BEFORE JULY 1, 2006 AT  
20 GEOGRAPHICALLY PROXIMATE INSTITUTIONS AND THAT THE PROGRAMS RECEIVE  
21 EQUITABLE AND COMPARABLE FUNDING; AND

22 (II) IN ASSESSING COMPARABILITY AND PARITY AS REQUIRED  
23 UNDER ITEM (I) OF THIS PARAGRAPH, SHALL CONSIDER THE FOLLOWING CRITERIA:

24 1. AN INSTITUTION'S STUDENT-FACULTY RATIO AS IT  
25 RELATES TO THE CARNEGIE CLASSIFICATION, MISSION, AND COMPOSITION OF THE  
26 STUDENT BODY OF THE INSTITUTION;

27 2. THE DISTRIBUTION OF FINANCIAL AID CONSISTENT WITH  
28 THE NEEDS OF THE STUDENT POPULATION SERVED BY THE INSTITUTION;

29 3. THE COMPOSITION AND QUALITY OF FACULTY AND STAFF  
30 AT THE INSTITUTION;

31 4. THE QUALITY OF THE INSTITUTION'S FACILITIES, BOTH  
32 DEDICATED AND NONDEDICATED;

33 5. THE QUALITY AND EXISTENCE OF AUXILIARY RESEARCH  
34 CENTERS AND INSTITUTES;

35 6. THE AMOUNT OF OPERATIONAL FUNDING;

36 7. SCHOLARSHIPS AND FELLOWSHIPS; AND

1 8. ANY OTHER FACTORS THAT AID IN THE DETERMINATION  
2 OF PROGRAM PARITY; AND

3 [(5)] (6) In consultation with the Department of Budget and  
4 Management, annually shall make recommendations consistent with the Charter and  
5 the plan under subsection (b) of this section on the appropriate level of funding for  
6 higher education.

7 11-206.

8 (a) This section does not apply to:

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

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

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

18 (i) A new program; or

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

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

21 (I) DETERMINE WHETHER THE PROPOSAL MEETS THE  
22 REQUIREMENTS OF SUBSECTION (E) OF THIS SECTION; AND

23 [(i)] (II) 1. With respect to each public institution of  
24 postsecondary education, either approve or disapprove the proposal;

25 [(ii)] 2. 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)] 3. With respect to a private career school, either approve or  
29 disapprove the proposal.

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

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



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

5           [(4)]   (II)   The Commission may make a determination that an  
6 unreasonable duplication of programs exists on its own initiative or SHALL INITIATE  
7 AND CONDUCT A REVIEW after receipt of a request for determination from any  
8 directly affected public institution of postsecondary education.

9           (5)   (i)    If the Commission makes a determination under paragraph  
10 (4)(II) of this subsection the Commission may:

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

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

15                           3.    Negotiate, as necessary, with any affected governing board  
16 until the unreasonable duplication is eliminated.

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

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

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

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

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

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

3                                 (iii)     The Commission's decision [shall be final and] is [not] subject  
4 to further administrative appeal [or] AND judicial review.

5        SECTION 2. AND BE IT FURTHER ENACTED, That:

6        (a)        On or after July 1, 2006, and subject to subsection (b) of this section, the  
7 Commission shall contract with an independent consultant to conduct a  
8 comprehensive review of similarly classified institutions of higher education in the  
9 State that offer similar academic programs. The consultant's review shall determine  
10 whether the State has distributed resources equitably so that the similarly classified  
11 institutions are comparable and are able to compete equally for the student  
12 population served by the duplicate academic programs;

13        (b)        the governing bodies or a designee of the governing bodies of the  
14 institutions of higher education that are being compared shall jointly select the  
15 consultant;

16        (c)        the independent consultant shall consider the following factors in  
17 conducting the review required under subsection (a) of this section:

18                (1)        the distinctiveness of each institution's programmatic mission;

19                (2)        the uniqueness, quality, and mix of an institution's academic  
20 programs;

21                (3)        operational funding provided to the institution including  
22 consideration of whether the funding is consistent with the mix and degree level of  
23 academic programs offered, how the funding supports the development of research  
24 infrastructure, and whether the funding is consistent with the academic profile of the  
25 student body;

26                (4)        the student-faculty ratio and how the ratio supports the mission of  
27 the institution;

28                (5)        the expanse, functionality, and architectural quality of the physical  
29 features of the institution;

30                (6)        the appearance, attractiveness, ambiance, and security of the campus  
31 including paths, walkways, landscaping, and lighting;

32                (7)        the surrounding public infrastructure including roads, lighting, and  
33 access to public transportation;

34                (8)        the availability, quality, and adequacy of facilities necessary to  
35 support the mission and programs offered by an institution;

1           (9)     the amount of funding required to support the student body's quality  
2 of life on campus; and

3           (10)    any other factors that the institutions or the consultant consider  
4 necessary or helpful in determining the comparability of the institutions; and

5           (d)     the consultant shall complete its review and submit its findings and  
6 recommendations to the Commission on or before December 31, 2006.

7     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 July 1, 2006.