

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

A BILL ENTITLED

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 concerning a program approved or implemented after a
6 certain date under certain circumstances; providing that certain decisions of the
7 Commission concerning duplication of academic programs are subject to judicial
8 review in the circuit court in accordance with certain rules and certain
9 provisions of the Maryland Administrative Procedure Act; and generally
10 relating to the review of duplicative academic programs.

11 BY repealing and reenacting, with amendments,
12 Article – Education
13 Section 11–206 and 11–206.1
14 Annotated Code of Maryland
15 (2006 Replacement Volume)

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

18 **Article – Education**

19 11–206.

20 (a) This section does not apply to:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

10 (i) A new program; or

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

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

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

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

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

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

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

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

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

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

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

10 (i) The name of the program; and

11 (ii) The expected date of discontinuation.

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

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

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

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

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

25 (4) [The] **EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS**
26 **SUBSECTION, THE** Commission may make a determination that an unreasonable
27 duplication of programs exists on its own initiative or after receipt of a request for
28 **SUCH A** determination from any directly affected public institution of postsecondary
29 education.

30 **(5) FOR A PROGRAM THAT HAS BEEN APPROVED OR**
31 **IMPLEMENTED AFTER JULY 1, 2005, THE COMMISSION SHALL MAKE A**

1 **DETERMINATION WHETHER A DUPLICATION OF PROGRAMS EXISTS AFTER**
2 **RECEIPT OF A REQUEST FOR SUCH A DETERMINATION FROM ANY AFFECTED**
3 **PUBLIC INSTITUTION OF POSTSECONDARY EDUCATION.**

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

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

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

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

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

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

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

29 **(7) A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,**
30 **BASED ON A REQUEST UNDER SUBSECTION (E)(5) OF THIS SECTION, IS SUBJECT**
31 **TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH MARYLAND**
32 **RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT ARTICLE.**

1 [(6)] (8) (i) Prior to imposing a sanction under paragraph [(5)]
2 (6) of this subsection, the Commission shall give notice of the proposed sanction to the
3 governing board of each affected institution.

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

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

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

11 11-206.1.

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

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

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

15 (ii) A community college.

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

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

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

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

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

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

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

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

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

7 (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (3) Unreasonable program duplication which would cause
13 demonstrable harm to another institution; or

14 (4) Violation of the State's equal educational opportunity obligations
15 under State and federal law.

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

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

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

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

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

31 **(6) A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,**
32 **AFTER AN OBJECTION UNDER SUBSECTION (E)(3) OF THIS SECTION, IS SUBJECT**

1 **TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH MARYLAND**
2 **RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT ARTICLE.**

3 (g) (1) The Commission shall:

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

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

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

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

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

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

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

19 (i) The Commission shall:

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

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

25 (3) Make available a copy of the report under paragraph (2) of this
26 subsection to the public institutions of higher education and the nonpublic institutions
27 of higher education.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 July 1, 2007.