

**SB0029/424662/1**

BY: Appropriations Committee

AMENDMENTS TO SENATE BILL 29  
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert “EMERGENCY BILL”; in line 2, strike beginning with “Maryland” down through “Review” and substitute “Higher Education – Appeal”; and strike beginning with “requiring” in line 4 down through “programs.” in line 21 and substitute “authorizing certain parties to appeal a certain decision made by the Maryland Higher Education Commission between certain dates; requiring an appeal to be filed within a certain time period; requiring the Secretary of Higher Education to contract with a certain entity to assist in the conduct of a certain appeal; authorizing the Secretary to apply for a certain grant to assist in the conduct of a certain appeal; requiring parties to the appeal to participate in mediation and specifying the process and time period for mediation; requiring parties to the appeal to submit to binding arbitration under certain circumstances; specifying the process, procedures, and time period for arbitration; specifying that a certain decision shall be based on compliance with a certain agreement and certain State and federal laws; clarifying that a pre-existing program is not affected by a certain decision; requiring public institutions of higher education to accept certain students if a certain program is discontinued; requiring the Commission to convene a certain workgroup; stating a certain intent of the General Assembly; making this Act an emergency measure; and generally relating to the appeal process of certain duplicative academic programs.”.

On page 2, in line 1, strike “with amendments” and substitute “without amendments”.

AMENDMENT NO. 2

On pages 2 through 10, strike in their entirety the lines beginning with line 8 on page 2 through line 23 on page 10, inclusive, and substitute:

“Article – Education”

(Over)

11-206.

(a) This section does not apply to:

(1) New programs proposed to be implemented by public and nonpublic 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(c)(2) or (3) 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) With respect to each nonpublic 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) If the Commission fails to act within 60 days of the date of submission of the completed proposal, the proposal shall be deemed approved.

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

(6) (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.

(Over)

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

(e) (1) In this subsection, “governing board” includes the board of trustees of a community college.

(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) If the Commission makes a determination under paragraph (4) 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 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 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) 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 duplicative program.

(6) (i) Prior to imposing a sanction under paragraph (5) 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 Commission's decision shall be final and is not subject to further administrative appeal or judicial review.

11-206.1.

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

(1) “Public institution of higher education” means:

(i) A public senior higher education institution; and

(ii) A community college.

(2) “Nonpublic institution of higher education” means a regionally accredited institution of higher education eligible for aid under § 17-103 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 nonpublic 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 nonpublic 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 nonpublic 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 nonpublic 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) 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 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 nonpublic institution of higher education.

(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 paragraph (2) of this subsection to the public institutions of higher education and the nonpublic institutions of higher education.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) This section applies only to a program that was approved by the Maryland Higher Education Commission under § 11-206 or § 11-206.1 of the Education Article after July 1, 2005, but before December 1, 2005, and about which an objection based on unnecessary duplication of programs was filed by Morgan State

University, Coppin State University, Bowie State University, or the University of Maryland Eastern Shore.

(2) (i) Notwithstanding § 11–206 (e)(6)(iii) of the Education Article or any other provision of law, a party listed in paragraph (1) of this subsection who filed an objection to a program described in paragraph (1) of this subsection may appeal the Commission’s decision, in accordance with this section.

(ii) An appeal under this section shall be submitted in writing to the Commission no later than 10 days after the effective date of this Act.

(b) Upon receiving a request to appeal and in order to assist in the conduct of an appeal under this section, the Secretary of Higher Education:

(1) shall contract with an independent entity with professional expertise in alternative dispute resolution to develop lists of qualified mediators and arbitrators and to provide any other assistance; and

(2) may apply for a funding or technical assistance grant.

(c) (1) As an initial step in the appeal, the party who filed the appeal and the prevailing party in the Commission’s decision under subsection (a) of this section shall participate in mediation.

(2) The parties shall jointly choose one mediator or a co-mediation team of two mediators from a list of qualified, independent, unbiased, and trained professional mediators with a depth of mediation experience and skill.

(3) The parties may submit for consideration qualified candidates for inclusion on the list who meet the qualifications of this subsection.

(4) From the individuals on the list, without consulting the other party, each party shall select three names. If there is a name of an individual or team of individuals that both parties selected, that individual or team of individuals shall become the mediator or a co-mediation team of two mediators. If there is no name in common, each party shall continue to select three additional names from the list until a name in common is identified and that individual or team of individuals shall be the mediator or a co-mediation team of two mediators.

(5) With the assistance of the mediator, the parties shall seek to agree on all aspects of the conduct of the mediation.

(6) The mediator shall provide a written report of the mediation to both parties, and, if the dispute is not resolved in mediation, to the arbitrators.

(d) The parties shall submit the dispute or parts of the dispute that are unresolved to binding arbitration if the parties are unable to reach an agreement for the resolution of the dispute or parts of the dispute within 30 days from the date of the filing of the appeal, unless both parties and the mediator or mediators agree to extend the mediation.

(e) (1) Arbitration under this section shall comply with the requirements of this subsection.

(2) Arbitration shall be conducted by a panel of three arbitrators, who shall be selected from a list of individuals who meet the qualifications of this subsection.

(3) The parties may submit for consideration qualified candidates for inclusion on the list who meet the qualifications of this subsection.

(4) The list shall consist of a racially and ethnically diverse group of individuals who:

(i) are experienced arbitrators;  
(ii) are objective and unbiased; and  
(iii) have experience in higher education, civil rights law, or both.

(5) Individuals on the list described in paragraph (4) of this subsection may be, but are not required to be, residents of the State.

(6) From the list of qualified individuals, without consultation with the other party, each party shall choose one arbitrator.

(7) From the remaining individuals on the list, without consulting the other party, each party shall select three names. If there is a name that both parties selected, that individual shall become the third arbitrator. If there is no name in common, each party shall continue to select three additional names from the list until a name in common is identified and that individual shall be the third arbitrator.

(f) (1) Arbitration proceedings shall be completed within 30 days after the appeal is submitted to arbitration.

(2) The arbitration panel shall issue its written decision within 15 days after the conclusion of its proceedings and its decision is binding.

(g) (1) The arbitration panel's decision shall be based on whether the program complies with the State's agreement with the United States Department of Education Office for Civil Rights and the State's equal educational opportunity obligations under State and federal law.

(2) The arbitration panel's decision shall be limited to the program decision described in subsection (a) of this section and may not affect any other pre-existing program.

(h) (1) Arbitration shall be conducted in accordance with the requirements of this section.

(2) The arbitrators shall designate a time and place for the proceedings.

(3) The arbitration proceedings shall be heard and conducted by all the arbitrators.

(4) The arbitrators may adjourn the proceedings from time to time as necessary or postpone the proceedings for good cause shown.

(5) The parties have the right:

(i) to be represented by an attorney;

(ii) to be heard;

(iii) to present evidence; and

(iv) to cross examine witnesses.

(6) The arbitrators shall provide for the recording and transcription of the proceedings.

(7) Arbitration shall be conducted in accordance with the Maryland Rules of Evidence.

(8) The arbitrators may require witnesses to testify under oath and, if requested by either party, shall do so.

(9) A majority of the arbitrators shall determine any question and render a final decision.

(10) The arbitrators may issue subpoenas for the attendance of witnesses or the production of documents.

(11) A party or the arbitrators may file a petition with a court to enforce a subpoena.

(12) A subpoena shall be enforced in the manner provided by law or rule for the enforcement of subpoenas in a civil action.

(13) The arbitrators may permit a deposition to be taken in the manner and upon the terms designated by the arbitrators if:

(i) the witness cannot be subpoenaed; or

(ii) the witness is unable to attend a hearing.

(14) If an arbitrator for any reason ceases to act during the course of the proceedings, the remaining arbitrators shall continue with the proceedings and render a decision.

(15) The arbitrators shall deliver copies of their decision to the parties and the Maryland Higher Education Commission.

SECTION 3. AND BE IT FURTHER ENACTED, That if a program is discontinued by agreement of the parties through mediation or binding arbitration, a

public institution of higher education shall accept transfer students in good standing in the discontinued program.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Higher Education Commission shall convene an intersegmental workgroup that includes members of the higher education community and State officials, including at least one expert in alternative dispute resolution.

(b) The workgroup shall review the academic program approval process and shall make recommendations regarding the program approval and appeal process.

(c) On or before December 1, 2007, the workgroup shall report its findings and recommendations, in accordance with § 2-1246 of the State Government Article, to the General Assembly.

SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Maryland Higher Education Commission may request a deficiency appropriation for the cost of conducting an appeal under Section 2 of this Act if a grant is not received or does not cover all of the costs incurred as the result of an appeal.”

AMENDMENT NO. 3

On page 10, strike in their entirety lines 24 and 25 and substitute:

“SECTION 6. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.”