

SENATE BILL 464

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By: **Senators Conway, Currie, Dyson, Exum, Forehand, Frosh, Gladden, Jones, Kelley, Madaleno, McFadden, Muse, Pinsky, Pugh, and Raskin**
Introduced and read first time: January 31, 2008
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Higher Education Commission – Unreasonable Duplication of**
3 **Programs – Expansion of Existing Programs**

4 FOR the purpose of requiring the Maryland Higher Education Commission to require
5 certain governing boards of public institutions of postsecondary education to
6 submit certain plans to resolve unreasonable duplication of programs that
7 address the possibility of an expansion of an existing program under certain
8 circumstances; requiring the Commission to provide certain institutions certain
9 notification and requiring certain institutions to take certain steps if certain
10 plans address the possibility of an expansion of an existing program under
11 certain circumstances; authorizing the Commission to take certain steps to
12 eliminate certain duplication if certain plans do not address the possibility of an
13 expansion of an existing program under certain circumstances; requiring the
14 Commission to explore the possibility of an expansion of an existing program
15 under certain circumstances; and generally relating to the expansion of existing
16 programs as a solution to unreasonable program duplication.

17 BY repealing and reenacting, with amendments,
18 Article – Education
19 Section 11–206 and 11–206.1
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2007 Supplement)

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

24 **Article – Education**

25 11–206.

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



1 (a) This section does not apply to:

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

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

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

11 (i) A new program; or

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

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

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

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

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

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

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

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

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

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

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

7 (i) The name of the program; and

8 (ii) The expected date of discontinuation.

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

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

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

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) If the Commission makes a determination under paragraph
26 (4) of this subsection the Commission [may]:

27 1. [Make] **MAY MAKE** recommendations to a governing
28 board on the continuation or modification of the programs;

29 2. **A.** [Require] **SHALL REQUIRE** any affected
30 governing board to submit a plan to resolve the duplication; and

31 **B.** **SHALL REQUIRE THE PLAN TO ADDRESS THE**
32 **POSSIBILITY OF AN EXPANSION OF AN EXISTING PROGRAM TO SATISFY A**
33 **GROWING NEED FOR THE PROGRAM; AND**

1 3. [Negotiate,] **MAY NEGOTIATE**, as necessary, with
2 any affected governing board until the unreasonable duplication is eliminated.

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

10 (iii) If in the Commission's judgment the plan satisfactorily
11 eliminates the duplication **AND ADDRESSES THE POSSIBILITY OF AN EXPANSION**
12 **OF AN EXISTING PROGRAM TO SATISFY A GROWING NEED FOR THE PROGRAM**,
13 the governing board of the affected institutions shall be so notified and shall take
14 appropriate steps to implement the plan.

15 (iv) If in the Commission's judgment the plan does not
16 satisfactorily eliminate the duplication **AND DOES NOT ADDRESS THE POSSIBILITY**
17 **OF AN EXPANSION OF AN EXISTING PROGRAM TO SATISFY A GROWING NEED FOR**
18 **THE PROGRAM**, or if no plan is jointly submitted within the time period specified in
19 paragraph (6) of this subsection, the governing board of the affected institutions shall
20 be so notified. The Commission may then seek to eliminate the duplication by revoking
21 the authority of a public institution of postsecondary education to offer the
22 unreasonably duplicative program.

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

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

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

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

33 11-206.1.

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

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

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

1 (ii) A community college.

2 (2) “Nonpublic institution of higher education” means a regionally
3 accredited institution of higher education eligible for aid under § 17–103 of this article.

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

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

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

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

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

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

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

19 (i) The institution’s governing board; and

20 (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

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

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

17 (1) Inconsistency of the proposed program with the institution's
18 approved mission for a public institution of higher education and the mission
19 statement published in the official catalog of a nonpublic institution of higher
20 education;

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

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

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

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

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

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

1 (4) If the Commission determines that an objection is justified, the
2 Commission shall:

3 **(I) EXPLORE THE POSSIBILITY OF AN EXPANSION OF AN**
4 **EXISTING PROGRAM TO SATISFY A GROWING NEED FOR THE PROGRAM; AND**

5 **(II) [negotiate] NEGOTIATE** with the institution's governing
6 board and president to modify the proposed program in order to resolve the objection.

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

11 (g) (1) The Commission shall:

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

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

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

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

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

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

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

27 (i) The Commission shall:

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

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

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2008.