

SENATE BILL 464

F2

8lr2548

By: **Senators Conway, Currie, Dyson, Exum, Forehand, Frosh, Gladden, Jones, Kelley, Madaleno, McFadden, Muse, Pinsky, Pugh, ~~and Raskin~~ Raskin, and Harrington**

Introduced and read first time: January 31, 2008

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2008

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of requiring the Maryland Higher Education Commission to adopt
5 regulations that establish definitions for determining unreasonable duplication
6 of programs; requiring certain regulations to include a consideration of certain
7 factors; requiring a certain review conducted by the Commission to include
8 written input from certain public institutions of postsecondary education;
9 requiring the ~~Maryland Higher Education~~ Commission to require certain
10 governing boards of public institutions of postsecondary education to submit
11 certain plans to resolve unreasonable duplication of programs that address ~~the~~
12 possibility of an expansion of an existing program under certain circumstances
13 certain standards; requiring the Commission to issue a written decision
14 including certain findings, conclusions, and rationale for certain
15 determinations; requiring the Commission to provide certain institutions
16 certain notification and requiring certain institutions to take certain steps if
17 certain plans address ~~the possibility of an expansion of an existing program~~
18 ~~under certain circumstances~~ certain standards; authorizing the Commission to
19 take certain steps to eliminate certain duplication if certain plans do not
20 address ~~the possibility of an expansion of an existing program under certain~~
21 ~~circumstances~~ certain standards; requiring the Commission to ~~explore the~~
22 possibility of an expansion of an existing program under certain circumstances
23 require certain plans to address certain standards; requiring the Commission to
24 adopt certain regulations on or before a certain date; and generally relating to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 the ~~expansion of existing programs as a solution to~~ standards for determining
2 unreasonable program duplication.

3 BY repealing and reenacting, with amendments,
4 Article – Education
5 Section 11–206 and 11–206.1
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2007 Supplement)

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

10 **Article – Education**

11 11–206.

12 (a) This section does not apply to:

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

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

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

22 (i) A new program; or

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

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

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

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

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

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

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

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

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

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

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

17 (i) The name of the program; and

18 (ii) The expected date of discontinuation.

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

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

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

26 (2) The Commission shall adopt regulations establishing
27 **DEFINITIONS AND** standards for determining whether 2 or more programs are
28 unreasonably duplicative.

29 **(3) THE REGULATIONS ESTABLISHED UNDER PARAGRAPH (2) OF**
30 **THIS SUBSECTION SHALL INCLUDE A CONSIDERATION OF:**

31 **(I) THE DEGREE TO BE AWARDED;**

32 **(II) THE AREA OF SPECIALIZATION;**

1 (III) THE PURPOSE OR OBJECTIVES OF THE PROGRAM OR
2 COURSE OF STUDY TO BE OFFERED;

3 (IV) THE SPECIFIC ACADEMIC CONTENT OF THE PROGRAM
4 OR COURSE OF STUDY;

5 (V) EVIDENCE OF THE QUALITY OF THE PROPOSED
6 PROGRAM IN COMPARISON TO EXISTING PROGRAMS;

7 (VI) AN ANALYSIS OF THE MARKET DEMAND FOR THE
8 PROGRAM;

9 (VII) WHETHER THE EXPANSION OF AN EXISTING PROGRAM
10 WOULD SATISFY A GROWING NEED FOR THE PROGRAM;

11 (VIII) WHETHER COOPERATIVE PROGRAMS BETWEEN THE
12 INSTITUTIONS MAY BE FEASIBLE IN ORDER TO ELIMINATE OR REDUCE
13 DUPLICATION; AND

14 (IX) THE EXTENT TO WHICH HAVING SEPARATE PROGRAMS
15 ADVANCES THE GOALS AND OBJECTIVES OF THE STATE PLAN FOR HIGHER
16 EDUCATION.

17 ~~(3)~~ **(4)(I)** The Commission may review existing programs at public
18 institutions of postsecondary education if the Commission has reason to believe that
19 academic programs are unreasonably duplicative or inconsistent with an institution's
20 adopted mission.

21 (II) A REVIEW CONDUCTED UNDER THIS PARAGRAPH SHALL
22 INCLUDE WRITTEN INPUT FROM THE AFFECTED INSTITUTIONS.

23 ~~(4)~~ **(5)** The Commission may make a determination that an
24 unreasonable duplication of programs exists on its own initiative or after receipt of a
25 request for determination from any directly affected public institution of
26 postsecondary education.

27 ~~(5)~~ **(6)** (i) If the Commission makes a determination under
28 paragraph ~~(4)~~ **(5)** of this subsection the Commission [may]:

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

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

1 ~~**B. SHALL REQUIRE THE PLAN TO ADDRESS THE**~~
 2 ~~**POSSIBILITY OF AN EXPANSION OF AN EXISTING PROGRAM TO SATISFY A**~~
 3 ~~**GROWING NEED FOR THE PROGRAM; AND**~~

4 **B. SHALL ADDRESS THE STANDARDS REQUIRED TO**
 5 **BE ESTABLISHED IN REGULATIONS UNDER PARAGRAPH (2) OF THIS**
 6 **SUBSECTION; AND**

7 **C. SHALL ISSUE A WRITTEN DECISION INCLUDING**
 8 **DETAILED FINDINGS, CONCLUSIONS, AND A RATIONALE FOR THE**
 9 **DETERMINATION; AND**

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

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

19 (iii) If in the Commission's judgment the plan satisfactorily
 20 eliminates the duplication ~~**AND ADDRESSES THE POSSIBILITY OF AN EXPANSION**~~
 21 ~~**OF AN EXPANSION OF AN EXISTING PROGRAM TO SATISFY A GROWING NEED FOR THE PROGRAM**~~
 22 **STANDARDS REQUIRED TO BE ESTABLISHED IN REGULATIONS UNDER**
 23 **PARAGRAPH (2) OF THIS SUBSECTION**, the governing board of the affected
 24 institutions shall be so notified and shall take appropriate steps to implement the
 25 plan.

26 (iv) If in the Commission's judgment the plan does not
 27 satisfactorily eliminate the duplication ~~**AND DOES NOT ADDRESS THE POSSIBILITY**~~
 28 ~~**OF AN EXPANSION OF AN EXISTING PROGRAM TO SATISFY A GROWING NEED FOR**~~
 29 ~~**THE PROGRAM**~~ **STANDARDS REQUIRED TO BE ESTABLISHED IN REGULATIONS**
 30 **UNDER PARAGRAPH (2) OF THIS SUBSECTION**, or if no plan is jointly submitted
 31 within the time period specified in paragraph ~~(6)~~ **(7)** of this subsection, the governing
 32 board of the affected institutions shall be so notified. The Commission may then seek
 33 to eliminate the duplication by revoking the authority of a public institution of
 34 postsecondary education to offer the unreasonably duplicative program.

35 ~~(6)~~ **(7)** (i) Prior to imposing a sanction under paragraph ~~(5)~~ **(6)**
 36 of this subsection, the Commission shall give notice of the proposed sanction to the
 37 governing board of each affected institution.

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

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

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

8 11-206.1.

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

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

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

12 (ii) A community college.

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

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

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

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

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

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

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

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

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

31 (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

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

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

28 (1) Inconsistency of the proposed program with the institution's
29 approved mission for a public institution of higher education and the mission
30 statement published in the official catalog of a nonpublic institution of higher
31 education;

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

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

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

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

9 (2) The Commission shall determine if an institution's objection is
10 justified based on the criteria in subsection (e) of this section **AND THE REGULATIONS**
11 **REQUIRED TO BE ESTABLISHED UNDER § 11-206(E)(2) OF THIS SUBTITLE.**

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

14 (4) If the Commission determines that an objection is justified, the
15 Commission shall:

16 ~~(I) EXPLORE THE POSSIBILITY OF AN EXPANSION OF AN~~
17 ~~EXISTING PROGRAM TO SATISFY A GROWING NEED FOR THE PROGRAM; AND~~

18 **(I) REQUIRE THE PLAN TO ADDRESS THE STANDARDS**
19 **REQUIRED TO BE ESTABLISHED UNDER § 11-206(E)(2) OF THIS SUBTITLE; AND**

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

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

26 (g) (1) The Commission shall:

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

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

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

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

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

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

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

9 (i) The Commission shall:

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

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

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
19 31, 2008, the Maryland Higher Education Commission shall adopt the regulations
20 required under § 11-206(e)(2) of the Education Article, as amended by Section 1 of this
21 Act.

22 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect ~~October~~ June 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.