

SENATE BILL 402

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SB 49/08 – EHE

9lr1677

By: **Senators Conway, Currie, Dyson, Exum, Gladden, Harrington, Jones, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, and Pugh**

Introduced and read first time: February 2, 2009

Assigned to: Education, Health, and Environmental Affairs

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
5 certain determinations concerning certain programs approved or implemented
6 during or after certain dates under certain circumstances; requiring the
7 Commission to include certain findings as part of certain determinations;
8 authorizing the Commission to take certain actions as a result of certain
9 determinations; providing that certain decisions of the Commission concerning
10 certain duplication of academic programs are subject to judicial review in the
11 circuit court in accordance with certain rules and certain provisions of the
12 Administrative Procedure Act; providing that this Act shall be construed to
13 require the Commission to review certain determinations regarding certain
14 duplication of academic programs; requiring Morgan State University or the
15 University of Baltimore to accept certain students enrolled in a certain program
16 at Towson University that has been discontinued under a certain order of the
17 Commission or a court; and generally relating to the review of duplicative
18 academic programs.

19 BY repealing and reenacting, with amendments,
20 Article – Education
21 Section 11–206 and 11–206.1
22 Annotated Code of Maryland
23 (2008 Replacement Volume)

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

26 **Article – Education**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-206.

2 (a) This section does not apply to:

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

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

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

12 (i) A new program; or

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

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

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

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

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

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

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

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

31 (6) (i) If the Commission disapproves a proposal, the Commission
32 shall provide to the governing body that submits the proposal a written explanation of
33 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.

(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) THIS PARAGRAPH APPLIES ONLY TO A PROGRAM THAT:

1. HAS BEEN APPROVED OR IMPLEMENTED AFTER JULY 1, 2005, BUT BEFORE DECEMBER 1, 2005, AND AGAINST WHICH AN OBJECTION WAS FILED WITH THE COMMISSION UNDER PARAGRAPH (4) OF THIS SUBSECTION BY MORGAN STATE UNIVERSITY, COPPIN STATE UNIVERSITY, BOWIE STATE UNIVERSITY, OR THE UNIVERSITY OF MARYLAND EASTERN SHORE; OR

2. HAS BEEN APPROVED OR IMPLEMENTED AFTER JULY 1, 2007.

(II) THE COMMISSION SHALL MAKE A DETERMINATION WHETHER AN UNNECESSARY DUPLICATION OF PROGRAMS EXISTS AFTER RECEIPT OF A REQUEST FOR SUCH A DETERMINATION FROM MORGAN STATE UNIVERSITY, COPPIN STATE UNIVERSITY, BOWIE STATE UNIVERSITY, OR THE UNIVERSITY OF MARYLAND EASTERN SHORE.

(III) IF THE COMMISSION DETERMINES THAT AN UNNECESSARY DUPLICATION OF PROGRAMS EXISTS UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMMISSION SHALL DETERMINE THAT THE UNNECESSARY DUPLICATION IS UNJUSTIFIED IF THE PROGRAM VIOLATES THE STATE'S AGREEMENT WITH THE UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS OR THE STATE'S EQUAL EDUCATIONAL OPPORTUNITY OBLIGATIONS UNDER STATE OR FEDERAL LAW.

(IV) A DETERMINATION OF THE COMMISSION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH SHALL INCLUDE THE CRITERIA USED BY THE COMMISSION IN MAKING A DETERMINATION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH.

[(5)] (6) (i) If the Commission makes a determination under paragraph (4) **OR (5)** 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 **OR UNNECESSARY** 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 **OR UNNECESSARILY** 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)] **(8)** 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 **OR UNNECESSARILY** duplicative program.

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

~~[(6)]~~ **(8)** (i) Prior to imposing a sanction under paragraph ~~[(5)]~~ **(6)** 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.

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

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

5 (ii) Can be implemented within the existing resources of the
6 institution.

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

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

11 (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

30 (d) The Board of Regents of the University System of Maryland shall approve
31 the proposed new program within 60 days if the program meets the criteria in
32 subsection (c)(2) of this section, subject to the provisions of subsections (e) and (f) of
33 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) **UNNECESSARY PROGRAM DUPLICATION AS DETERMINED BY**
15 **THE COMMISSION UNDER § 11-206(E)(5) OF THIS SUBTITLE; OR**

16 (5) Violation of the State's equal educational opportunity obligations
17 under State and federal law.

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

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

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

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

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

33 (6) **A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,**
34 **AFTER AN OBJECTION UNDER SUBSECTION (E)(4) OR (5) OF THIS SECTION, IS**
35 **SUBJECT TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH**

**MARYLAND RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT
ARTICLE.**

(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 this Act shall be construed to require the Maryland Higher Education Commission to review any determinations regarding unreasonable or unnecessary duplication for programs approved or implemented after July 1, 2005, but before December 1, 2005, under § 11-206 or § 11-206.1 of the Education Article as enacted by this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That Morgan State University
2 or the University of Baltimore shall accept students in good standing enrolled in a
3 program at Towson University that has been discontinued under an order of the
4 Maryland Higher Education Commission or a court.

5 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2009.