

# SENATE BILL 1115

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SB 49/08 – EHE

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By: **Senator Jones**  
Introduced and read first time: March 8, 2010  
Assigned to: Rules

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## 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 after a certain date under certain circumstances; requiring the Commission to  
7 include certain findings as part of certain determinations; authorizing the  
8 Commission to take certain actions as a result of certain determinations;  
9 providing that certain decisions of the Commission concerning certain  
10 duplication of academic programs are subject to judicial review in the circuit  
11 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; and generally relating to the review of  
15 duplicative academic programs.

16 BY repealing and reenacting, with amendments,  
17 Article – Education  
18 Section 11–206 and 11–206.1  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2009 Supplement)

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

23 **Article – Education**

24 11–206.

25 (a) This section does not apply to:

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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.

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

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

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

4 (i) The name of the program; and

5 (ii) The expected date of discontinuation.

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

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

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

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

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

19 (4) The Commission may make a determination that an unreasonable  
20 duplication of programs exists on its own initiative or after receipt of a request for  
21 determination from any directly affected public institution of postsecondary education.

22 **(5) (I) THIS PARAGRAPH APPLIES ONLY TO A PROGRAM THAT**  
23 **HAS BEEN APPROVED OR IMPLEMENTED AFTER JANUARY 1, 2009, AND AGAINST**  
24 **WHICH AN OBJECTION WAS FILED WITH THE COMMISSION UNDER PARAGRAPH**  
25 **(4) OF THIS SUBSECTION BY MORGAN STATE UNIVERSITY, COPPIN STATE**  
26 **UNIVERSITY, BOWIE STATE UNIVERSITY, OR THE UNIVERSITY OF MARYLAND**  
27 **EASTERN SHORE.**

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

33 **(III) IF THE COMMISSION DETERMINES THAT AN**  
34 **UNNECESSARY DUPLICATION OF PROGRAMS EXISTS UNDER SUBPARAGRAPH (II)**  
35 **OF THIS PARAGRAPH, THE COMMISSION SHALL DETERMINE THAT THE**

1 UNNECESSARY DUPLICATION IS UNJUSTIFIED IF THE PROGRAM VIOLATES THE  
2 STATE'S AGREEMENT WITH THE UNITED STATES DEPARTMENT OF EDUCATION  
3 OFFICE FOR CIVIL RIGHTS OR THE STATE'S EQUAL EDUCATIONAL  
4 OPPORTUNITY OBLIGATIONS UNDER STATE OR FEDERAL LAW.

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

9 [(5)] (6) (i) If the Commission makes a determination under  
10 paragraph (4) OR (5) of this subsection the Commission may:

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

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

15 3. Negotiate, as necessary, with any affected governing  
16 board until the unreasonable OR UNNECESSARY duplication is eliminated.

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

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

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

34 (7) A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,  
35 BASED ON A REQUEST UNDER PARAGRAPH (5) OF THIS SUBSECTION, IS SUBJECT  
36 TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH MARYLAND  
37 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

28            (ii)    Can be implemented within the existing resources of the  
29 institution.

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

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

5                   (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

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

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

33                   (1) Inconsistency of the proposed program with the institution's  
34 approved mission for a public institution of higher education and the mission

1 statement published in the official catalog of a nonpublic institution of higher  
2 education;

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

5 (3) Unreasonable program duplication which would cause  
6 demonstrable harm to another institution; [or]

7 (4) **UNNECESSARY PROGRAM DUPLICATION AS DETERMINED BY**  
8 **THE COMMISSION UNDER § 11-206(E)(5) OF THIS SUBTITLE; OR**

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

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

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

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

19 (4) If the Commission determines that an objection is justified, the  
20 Commission shall negotiate with the institution's governing board and president to  
21 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 (6) **A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,**  
27 **AFTER AN OBJECTION UNDER SUBSECTION (E)(4) OR (5) OF THIS SECTION, IS**  
28 **SUBJECT TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH**  
29 **MARYLAND RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT**  
30 **ARTICLE.**

31 (g) (1) The Commission shall:

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

1 (ii) Identify low productivity programs at public institutions of  
2 higher education.

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

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

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

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

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

14 (i) The Commission shall:

15 (1) Monitor the program development and review process established  
16 under this section;

17 (2) Report annually to the Governor and, in accordance with § 2–1246  
18 of the State Government Article, the General Assembly on the nature and extent of  
19 any duplication or proliferation of programs; and

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
24 construed to require the Maryland Higher Education Commission to review any  
25 determinations regarding unreasonable or unnecessary duplication for programs  
26 approved or implemented after January 1, 2009, under § 11–206 or § 11–206.1 of the  
27 Education Article as enacted by this Act.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 July 1, 2010.