

SENATE BILL 169

F2

4lr0640

By: Senators Conway and Pugh, Pugh, Benson, Ferguson, McFadden, and Muse

Introduced and read first time: January 14, 2014

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 5, 2014

CHAPTER _____

1 AN ACT concerning

2 **Maryland Higher Education Commission – Review of Duplicative Academic**
3 **Program Proposals – Revisions**

4 FOR the purpose of requiring the Maryland Higher Education Commission to review
5 certain program proposals through certain processes, including certain
6 testimony and the weighing of evidence; requiring the Commission to adopt
7 certain regulations that provide for the receipt of certain comments and
8 objections under certain circumstances; altering certain circumstances under
9 which the Commission must act on certain program proposals before a proposal
10 is deemed approved; requiring the Commission to make certain determinations
11 concerning certain programs under certain circumstances; requiring the
12 Commission to include certain findings as part of certain determinations;
13 authorizing the Commission to take certain actions as a result of certain
14 determinations; providing that certain determinations of the Commission
15 concerning certain duplication of academic programs are subject to judicial
16 review in the circuit court in accordance with certain rules and certain
17 provisions of the Administrative Procedure Act; providing a certain exception to
18 a certain prohibition; requiring the Commission to make certain determinations
19 through certain processes, including receiving certain testimony and the
20 weighing of evidence; defining certain terms; and generally relating to the
21 review of duplicative academic program proposals by the Maryland Higher
22 Education Commission.

23 BY repealing and reenacting, with amendments,

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 Article – Education
2 Section 11–206 and 11–206.1
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2013 Supplement)

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

7 **Article – Education**

8 11–206.

9 (a) This section does not apply to:

10 (1) New programs proposed to be implemented by public and private
11 nonprofit institutions of higher education using existing program resources in
12 accordance with § 11–206.1 of this subtitle; and

13 (2) Programs offered by institutions of higher education that operate
14 in the State without a certificate of approval in accordance with § 11–202.1(b) of this
15 subtitle.

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

19 (i) A new program; or

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

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

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

24 (ii) Except as provided in § 16–108(c) of this article, with respect
25 to each private nonprofit or for–profit institution of higher education, either
26 recommend that the proposal be implemented or that the proposal not be
27 implemented; and

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

30 **(3) THE COMMISSION SHALL ADOPT REGULATIONS THAT**
31 **PROVIDE FOR:**

1 (ii) The expected date of discontinuation.

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

5 (d) The Commission shall review and make recommendations on programs in
6 private nonprofit and for-profit institutions of higher education.

7 (e) (1) **(I)** In this subsection[, “governing”] **THE FOLLOWING WORDS**
8 **HAVE THE MEANINGS INDICATED.**

9 **(II)** **“GOVERNING board”** includes the board of trustees of a
10 community college.

11 **(III)** **“SOUND EDUCATIONAL JUSTIFICATION” MEANS THAT A**
12 **PROGRAM THAT CREATES UNNECESSARY DUPLICATION CANNOT BE**
13 **PRACTICABLY ELIMINATED OR ESTABLISHED BY LESS SEGREGATIVE MEANS.**

14 **(IV)** **“UNNECESSARY DUPLICATION” MEANS THE OFFERING**
15 **BY TWO OR MORE INSTITUTIONS OF:**

16 **1. THE SAME NONESSENTIAL OR NONCORE**
17 **PROGRAMS;**

18 **2. NONBASIC LIBERAL ARTS AND SCIENCES**
19 **COURSEWORK AT THE BACHELOR’S LEVEL; OR**

20 **3. ALL DUPLICATION AT THE MASTER’S LEVEL AND**
21 **ABOVE.**

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

24 (3) The Commission may review existing programs at public
25 institutions of postsecondary education if the Commission has reason to believe that
26 academic programs are unreasonably duplicative or inconsistent with an institution’s
27 adopted mission.

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

31 **(5) (I) THE COMMISSION SHALL MAKE A DETERMINATION**
32 **WHETHER AN UNNECESSARY DUPLICATION OF PROGRAMS EXISTS AFTER**

1 RECEIPT OF A REQUEST FOR SUCH A DETERMINATION FROM BOWIE STATE
2 UNIVERSITY, COPPIN STATE UNIVERSITY, MORGAN STATE UNIVERSITY, OR
3 THE UNIVERSITY OF MARYLAND, EASTERN SHORE.

4 (II) IF THE COMMISSION DETERMINES THAT AN
5 UNNECESSARY DUPLICATION OF PROGRAMS EXISTS UNDER SUBPARAGRAPH (I)
6 OF THIS PARAGRAPH, THE COMMISSION SHALL DETERMINE WHETHER THE
7 UNNECESSARY DUPLICATION HAS SOUND EDUCATIONAL JUSTIFICATION.

8 (III) THE COMMISSION SHALL DETERMINE THAT THE
9 UNNECESSARY DUPLICATION IS UNJUSTIFIED IF THE PROGRAM:

10 1. DOES NOT HAVE SOUND EDUCATIONAL
11 JUSTIFICATION; AND

12 2. VIOLATES THE STATE'S AGREEMENT WITH THE
13 UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS OR
14 THE STATE'S EQUAL EDUCATIONAL OPPORTUNITY OBLIGATIONS UNDER STATE
15 OR FEDERAL LAW.

16 (IV) A DETERMINATION OF THE COMMISSION UNDER THIS
17 PARAGRAPH SHALL INCLUDE THE CRITERIA USED BY THE COMMISSION IN
18 MAKING THE DETERMINATION.

19 [(5)] (6) (i) If the Commission makes a determination under
20 paragraph (4) OR (5) of this subsection the Commission may:

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

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

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

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

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

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

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

15 ~~[(6)]~~ **(8)** (i) Prior to imposing a sanction under paragraph ~~[(5)]~~
16 **(6)** of this subsection, the Commission shall give notice of the proposed sanction to the
17 governing board of each affected institution.

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

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

23 (iii) **[The] EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**
24 **SUBSECTION, THE** Commission's decision shall be final and is not subject to further
25 administrative appeal or judicial review.

26 11-206.1.

27 (a) (1) In this section the following words have the meanings indicated.

28 (2) "Public institution of higher education" means:

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

30 (ii) A community college.

31 (3) "Private nonprofit institution of higher education" has the meaning
32 stated in § 10-101(k) of this article.

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

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

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

7 (2) A president of a private nonprofit institution of higher education
8 may propose to establish a new program if the action:

9 (i) Is consistent with the mission statement published in the
10 official catalog of the private nonprofit institution; and

11 (ii) Can be implemented within the existing resources of the
12 institution.

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

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

17 (ii) The Maryland Higher Education Commission.

18 (4) The president of a private nonprofit institution of higher education
19 shall report any programs that are proposed to be established in accordance with
20 paragraph (2) of this subsection to the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **[(4)] (5)** Violation of the State's equal educational opportunity
26 obligations 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] THROUGH A DELIBERATIVE FACT-FINDING PROCESS,**
32 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE,**
33 **THE** Commission shall determine if an institution's objection is justified based on the
34 criteria in subsection (e) of this section.

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

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

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

10 **(6) A DECISION OF THE COMMISSION UNDER THIS SUBSECTION,**
11 **AFTER AN OBJECTION UNDER SUBSECTION (E)(4) OR (5) OF THIS SECTION, IS**
12 **SUBJECT TO JUDICIAL REVIEW IN THE CIRCUIT COURT IN ACCORDANCE WITH**
13 **MARYLAND RULE 7-201 ET SEQ. AND § 10-222 OF THE STATE GOVERNMENT**
14 **ARTICLE.**

15 (g) (1) The Commission shall:

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

18 (ii) Identify low productivity programs at public institutions of
19 higher education.

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

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

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

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

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

31 (i) The Commission shall:

32 (1) Monitor the program development and review process established
33 under this section;

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

4 (3) Make available a copy of the report under item (2) of this
5 subsection to the public institutions of higher education and the private nonprofit
6 institutions of higher education.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.