

# HOUSE BILL 1260

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CF SB 1043

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By: **The Speaker and Delegates Sample–Hughes, D. Barnes, Haynes, Anderson, Boyce, Conaway, Holmes, McIntosh, Mosby, Valentino–Smith, ~~and Wells~~ Wells, and Fennell**

Introduced and read first time: February 7, 2020

Assigned to: Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Historically Black Colleges and Universities – Funding**

3 FOR the purpose of requiring the Maryland Higher Education Commission to establish  
4 ~~certain new units~~ a certain new unit to assist in evaluating and reviewing certain  
5 proposals for new programs and substantial modifications of existing programs by  
6 an institution of postsecondary education; requiring the Governor, beginning in a  
7 certain fiscal year, to include in the annual State operating budget an amount  
8 sufficient to employ certain staff; requiring the Governor, in certain fiscal years, to  
9 include in the annual State operating budget certain funds for certain historically  
10 black colleges and universities in the State; specifying how certain funds shall be  
11 allocated; providing for the allowable uses of certain funds; providing that certain  
12 funds be in addition to certain base funds appropriated to certain institutions;  
13 prohibiting certain funds from being included in certain calculations of State funding  
14 for certain institutions of higher education under certain provisions of law; requiring  
15 certain historically black colleges and universities to report annually, for a certain  
16 duration, certain information to the Governor, the President of the Senate, ~~and~~ the  
17 Speaker of the House of Delegates, the House Appropriations Committee, and the  
18 Senate Budget and Taxation Committee; establishing the Historically Black Colleges  
19 and Universities Reserve Fund as a special, nonlapsing fund; specifying the purpose  
20 of the Fund; requiring the Commission to administer the Fund; requiring the State  
21 Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying  
22 the contents of the Fund; specifying the purpose for which the Fund may be used;  
23 providing for the investment of money in and expenditures from the Fund; requiring

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#### 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 interest earnings of the Fund to be credited to the Fund; exempting the Fund from a  
2 certain provision of law requiring interest earnings on State money to accrue to the  
3 General Fund of the State; stating certain findings of the General Assembly; defining  
4 a certain term; requiring the University of Maryland Global Campus System of  
5 Maryland William E. Kirwan Center for Academic Innovation, in collaboration with  
6 UMUC Ventures, to assist certain historically black colleges and universities with  
7 developing and offering online academic programs; providing that certain  
8 procurements and contracts are not subject to the approval of the Board of Public  
9 Works under a certain provision of law; authorizing the Board of Regents of the  
10 University System of Maryland to use the fund balance to support the development  
11 and offering of certain online programs; requiring the Commission, in consultation  
12 with certain institutions, to study its own policies and practices and report the  
13 results on or before a certain date; encouraging certain historically black colleges  
14 and universities to hire a certain consultant and report the results and any findings  
15 on or before a certain date; encouraging certain historically black colleges and  
16 universities to use certain funds to implement and support the Blueprint for  
17 Maryland's Future; requiring the Governor to provide a certain allocation in a  
18 certain fiscal year for certain fees and expenses under certain circumstances;  
19 authorizing the Attorney General to execute a certain final settlement agreement;  
20 making certain provisions of this Act subject to a certain contingency; and generally  
21 relating to historically black colleges and universities in the State.

22 BY adding to

23 Article – Education

24 Section 10–214, 11–206.3, 15–126, and 15–127

25 Annotated Code of Maryland

26 (2018 Replacement Volume and 2019 Supplement)

27 BY repealing and reenacting, without amendments,

28 Article – State Finance and Procurement

29 Section 6–226(a)(2)(i)

30 Annotated Code of Maryland

31 (2015 Replacement Volume and 2019 Supplement)

32 BY repealing and reenacting, with amendments,

33 Article – State Finance and Procurement

34 Section 6–226(a)(2)(ii)121. and 122.

35 Annotated Code of Maryland

36 (2015 Replacement Volume and 2019 Supplement)

37 BY adding to

38 Article – State Finance and Procurement

39 Section 6–226(a)(2)(ii)123.

40 Annotated Code of Maryland

41 (2015 Replacement Volume and 2019 Supplement)

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

**Article – Education**

**10–214.**

**THE GENERAL ASSEMBLY FINDS THAT:**

**(1) THE STATE OF MARYLAND WISHES TO PROVIDE ALL OF ITS  
CITIZENS WITH EQUAL ACCESS TO HIGHER EDUCATION AT EXCELLENT AND  
AFFORDABLE PUBLIC COLLEGES AND UNIVERSITIES;**

**(2) THE GENERAL ASSEMBLY HAS CAREFULLY REVIEWED THE  
MEMORANDUM OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND, ISSUED OCTOBER 7, 2013, AND NOVEMBER 8,  
2017, IN THE ACTION, THE COALITION FOR EQUITY AND EXCELLENCE IN  
MARYLAND HIGHER EDUCATION, ET AL. V. MARYLAND HIGHER EDUCATION  
COMMISSION, ET AL., 06–CV–02773–CCB;**

**(3) THE DISTRICT COURT FOUND THAT THE STATE FAILED TO  
ELIMINATE A TRACEABLE DE JURE ERA POLICY OF UNNECESSARY DUPLICATION OF  
PROGRAMS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES IN THE STATE  
THAT HAS EXACERBATED THE RACIAL IDENTIFIABILITY OF MARYLAND’S  
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES;**

**(4) MARYLAND’S HISTORICALLY BLACK COLLEGES AND  
UNIVERSITIES, WHICH ARE BOWIE STATE UNIVERSITY, COPPIN STATE  
UNIVERSITY, MORGAN STATE UNIVERSITY, AND THE UNIVERSITY OF MARYLAND  
EASTERN SHORE, SHOULD RECEIVE ADDITIONAL SUPPORT TO REMEDY THE  
FINDINGS OF THE DISTRICT COURT;**

**(5) THE ADDITIONAL SUPPORT SHALL BE PROVIDED IN THE FORM OF  
ADDITIONAL FUNDING IN THE AMOUNT OF \$577,000,000, WHICH SHALL BE  
PROVIDED IN EQUAL AMOUNTS IN EACH OF FISCAL YEARS 2022 THROUGH 2031, AND  
SHALL BE ALLOCATED AMONG THE INSTITUTIONS; AND**

**(6) THE PROVISIONS OF §§ 15–126 AND 15–127 OF THIS ARTICLE  
SHALL ENSURE THAT MARYLAND’S HISTORICALLY BLACK COLLEGES AND  
UNIVERSITIES SHALL RECEIVE THIS SUPPORT.**

**11–206.3.**

**(A) THE COMMISSION SHALL ESTABLISH:**

~~(1) A NEW PROGRAM EVALUATION UNIT; AND~~

~~(2) A SUBSTANTIAL PROGRAM MODIFICATION UNIT~~ A PROGRAM EVALUATION UNIT TO EVALUATE NEW PROGRAMS AND SUBSTANTIAL MODIFICATIONS.

(B) (1) ~~EACH OF THE UNITS~~ THE UNIT ESTABLISHED IN THIS SECTION SHALL HAVE AT LEAST ~~FIVE~~ 10 STAFF MEMBERS WHO ARE EMPLOYEES OF THE COMMISSION.

(2) THE STAFF MEMBERS ASSIGNED TO ~~THESE UNITS~~ THIS UNIT SHALL BE IN ADDITION TO THE CURRENT WORKFORCE OF THE COMMISSION.

(C) ~~THE UNITS~~ UNIT ESTABLISHED IN THIS SECTION SHALL ASSIST THE COMMISSION IN REVIEWING AND EVALUATING PROPOSALS FOR NEW PROGRAMS AND SUBSTANTIAL MODIFICATIONS OF EXISTING PROGRAMS IN ACCORDANCE WITH §§ 11-206 AND 11-206.1 OF THIS SUBTITLE.

(D) BEGINNING IN FISCAL YEAR 2022, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL STATE OPERATING BUDGET FUNDS IN AN AMOUNT SUFFICIENT TO EMPLOY THE 10 STAFF MEMBERS REQUIRED UNDER THIS SECTION.

15-126.

(A) (1) FOR FISCAL YEAR 2022, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL STATE OPERATING BUDGET GENERAL FUNDS OF AT LEAST:

(I) \$16,790,700 FOR BOWIE STATE UNIVERSITY;

(II) \$7,212,500 FOR COPPIN STATE UNIVERSITY;

(III) \$24,003,200 FOR MORGAN STATE UNIVERSITY; AND

(IV) \$9,693,600 FOR THE UNIVERSITY OF MARYLAND EASTERN SHORE.

(B) (1) FOR EACH OF FISCAL YEARS 2023 THROUGH 2031, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL STATE OPERATING BUDGET GENERAL FUNDS OF AT LEAST \$57,700,000 TO BE ALLOCATED TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(2) THE FUNDS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ALLOCATED TO EACH INSTITUTION IN AN AMOUNT THAT EQUALS THE PRODUCT OF:

(I) THE PERCENTAGE SHARE OF STUDENTS ENROLLED DURING THE IMMEDIATELY PRECEDING ACADEMIC YEAR AT EACH INSTITUTION COMPARED TO THE TOTAL NUMBER OF STUDENTS ENROLLED AT ALL OF THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES; AND

(II) \$57,700,000.

(3) AT THE END OF EACH FISCAL YEAR, ANY UNUSED FUNDS PROVIDED UNDER THIS SECTION SHALL BE DISTRIBUTED TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES RESERVE FUND ESTABLISHED UNDER § 15-127 OF THIS SUBTITLE.

(C) FUNDS PROVIDED UNDER THIS SECTION:

(1) SHALL BE SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE BUDGET; ~~AND~~

(2) MAY BE USED FOR THE FOLLOWING PURPOSES, AS DETERMINED BY THE UNIVERSITY RECEIVING THE FUNDS:

(I) SCHOLARSHIPS AND FINANCIAL AID SUPPORT SERVICES;

(II) FACULTY RECRUITMENT AND DEVELOPMENT;

(III) EXPANDING AND IMPROVING EXISTING ACADEMIC PROGRAMS, INCLUDING ONLINE PROGRAMS;

(IV) DEVELOPMENT AND IMPLEMENTATION OF NEW ACADEMIC PROGRAMS, INCLUDING ONLINE PROGRAMS;

(V) ACADEMIC SUPPORT; AND

(VI) MARKETING; AND

(3) MAY NOT BE INCLUDED IN THE CALCULATIONS OF STATE FUNDING UNDER §§ 16-305, 16-512, AND 17-104 OF THIS ARTICLE.

(D) ON OR BEFORE DECEMBER 1 EACH YEAR, BEGINNING IN 2022 AND GOING THROUGH 2032, EACH HISTORICALLY BLACK COLLEGE OR UNIVERSITY

1 SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE  
2 STATE GOVERNMENT ARTICLE, THE PRESIDENT OF THE SENATE ~~AND~~, THE  
3 SPEAKER OF THE HOUSE OF DELEGATES, THE HOUSE APPROPRIATIONS  
4 COMMITTEE, AND THE SENATE BUDGET AND TAXATION COMMITTEE ON:

5 (1) THE USES OF THE FUNDS IN ACCORDANCE WITH SUBSECTION  
6 (C)(2) OF THIS SECTION; AND

7 (2) ANY NEW ACADEMIC PROGRAM DEVELOPED WITH RESPECT TO:

8 (I) DEVELOPMENT COSTS;

9 (II) STARTUP COSTS; AND

10 (III) ONGOING COSTS TO MAINTAIN THE PROGRAM.

11 15-127.

12 (A) IN THIS SECTION, "FUND" MEANS THE HISTORICALLY BLACK  
13 COLLEGES AND UNIVERSITIES RESERVE FUND.

14 (B) THERE IS A HISTORICALLY BLACK COLLEGES AND UNIVERSITIES  
15 RESERVE FUND.

16 (C) THE PURPOSE OF THE FUND IS TO PROVIDE RESERVE FUNDING FOR  
17 BOWIE STATE UNIVERSITY, COPPIN STATE UNIVERSITY, MORGAN STATE  
18 UNIVERSITY, AND THE UNIVERSITY OF MARYLAND EASTERN SHORE THAT IS USED  
19 FOR PURPOSES CONSISTENT WITH THE USES SPECIFIED UNDER § 15-126 OF THIS  
20 SUBTITLE.

21 (D) THE MARYLAND HIGHER EDUCATION COMMISSION SHALL  
22 ADMINISTER THE FUND.

23 (E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT  
24 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

25 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,  
26 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

27 (F) THE FUND CONSISTS OF:

28 (1) THE REMAINDER OF ANY FUNDS UNUSED AT THE END OF A FISCAL  
29 YEAR THAT IS DISTRIBUTED TO THE FUND UNDER § 15-126 OF THIS SUBTITLE;

(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

(3) INTEREST EARNINGS; AND

(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(G) THE FUND MAY BE USED ONLY FOR THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE.

(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.

(I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

(J) MONEY EXPENDED FROM THE FUND FOR THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE IS SUPPLEMENTAL TO AND IS NOT INTENDED TO TAKE THE PLACE OF FUNDING THAT OTHERWISE WOULD BE APPROPRIATED FOR THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE OR ANY OTHER FUNDS APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE BUDGET.

#### Article – State Finance and Procurement

6–226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

121. the Markell Hendricks Youth Crime Prevention and Diversion Parole Fund; [and]

122. the Federal Government Shutdown Employee Assistance Loan Fund; AND

**123. THE HISTORICALLY BLACK COLLEGES AND  
UNIVERSITIES RESERVE FUND.**

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) ~~The University of Maryland Global Campus~~ System of Maryland William E. Kirwan Center for Academic Innovation, in collaboration with UMUC Ventures, shall work with the State's historically black colleges and universities, Bowie State University, Coppin State University, Morgan State University, and the University of Maryland Eastern Shore with the goal of developing and offering online academic programs.

(2) The procurements and contracts for developing and offering online academic programs under paragraph (1) of this subsection are not subject to the approval of the Board of Public Works under § 12-112 of the Education Article.

(3) The Board of Regents of the University System of Maryland may use the fund balance to support the development and offering of online academic programs under this subsection.

(b) On or before December 1, 2020, each institution shall submit a report on its efforts and any findings to the Governor and, in accordance with § 2-1257 of the State Government Article, the President of the Senate and the Speaker of the House of Delegates that summarizes the steps taken to comply with the requirement provided under subsection (a) of this section.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Higher Education Commission shall, in consultation with Morgan State University, the University System of Maryland, and St. Mary's College of Maryland, study the Commission's current policies and practices and any new policies or practices established in accordance with this Act for the purpose of:

(1) evaluating, streamlining, ~~and~~ improving, and making recommendations on the Commission's policies and practices with respect to academic program review;

(2) enhancing the economic competitiveness of the State by ensuring the responsiveness of institutions of higher education to market demand; and

(3) effectively supporting the State's workforce development requirements.

(b) On or before December 1, 2020, the Commission shall submit a report on its findings to the Governor and, in accordance with § 2-1257 of the State Government Article, the President of the Senate and the Speaker of the House of Delegates that summarizes the results of the study conducted in accordance with subsection (a) of this section.



SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) The State's historically black colleges and universities, Bowie State University, Coppin State University, Morgan State University, and the University of Maryland Eastern Shore, are encouraged to hire a consultant who would assist the institutions, as a collective, with programmatic development.

(b) On or before December 1, 2020, each institution shall submit a report on its efforts and any findings to the Governor and, in accordance with § 2-1257 of the State Government Article, the President of the Senate and the Speaker of the House of Delegates that summarizes the steps taken to comply with subsection (a) of this section.

SECTION 5. AND BE IT FURTHER ENACTED, That the State's historically black colleges and universities, Bowie State University, Coppin State University, Morgan State University, and the University of Maryland Eastern Shore, are encouraged to use funds provided by this Act to support and implement the Blueprint for Maryland's Future.

SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That:

(a) Section 1 of this Act is contingent on the execution of a final settlement agreement in the case of The Coalition for Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission, 06-CV-02773-CCB (D. MD) on or before December 1, 2020, that:

(1) incorporates and ~~is limited to the provisions of~~ does not exceed the financial and programmatic commitments contained in Section 1 of this Act; ~~and~~

(2) incorporates the order described in subsection (d)(2) of this section; and

(3) provides for attorney's fees and expenses in an amount not less than \$14,000,000 but not more than \$25,000,000 to plaintiffs' counsel in The Coalition for Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission, 06-CV-02773-CCB (D. MD).

(b) (1) In fiscal year 2022, the Governor shall provide an allocation for the attorney's fees and expenses in the amount specified in the final settlement agreement described in subsection (a) of this section.

(2) The amount allocated under paragraph (1) of this subsection shall be provided from the funds for the historically black colleges and universities under Section 1 of this Act, with the amounts allocated based on each institution's share of the total funds provided under Section 1 of this Act.

(3) Notwithstanding § 12-501 of the State Government Article or any other provision of law, the settlement agreement as provided in subsection (a) of this section,

including attorney's fees and expenses provided in the settlement agreement, are not subject to approval by the Board of Public Works.

(c) The Attorney General:

(1) is authorized to execute the final settlement agreement in subsection (a) of this section on behalf of the State on terms the Attorney General deems:

(i) as final resolution of the case of The Coalition for Equity and Excellence in Maryland Higher Education v. the Maryland Higher Education Commission, 06-CV-02773-CCB (D. MD); and

(ii) appropriate to carry out the purposes of Section 1 of this Act; and

(2) shall provide written notice of the executed settlement agreement to the Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

(d) ~~If notice of the settlement agreement is not received by the Department of Legislative Services on or before December 11, 2020,~~ Section 1 of this Act, with no further action required by the General Assembly, shall be null and void if, on or before December 11, 2020:

(1) the Department of Legislative Services has not received notice of the settlement agreement; and

(2) an order has not been issued from the United States District Court for the District of Maryland or the United States Court of Appeals for the Fourth Circuit that:

(i) reverses or vacates the District Court's holding that the State failed to eliminate traceable de jure era policy of unnecessary program duplication; or

(ii) holds that any policy of unnecessary program duplication traceable to de jure segregation has been cured by the terms of the settlement agreement.

SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That, except as provided in Section ~~5~~ 6 of this Act, this Act shall take effect July 1, 2020.