

HOUSE BILL 1057

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CF SB 856

By: Delegates D. Barnes, Acevero, Anderson, Atterbeary, B. Barnes, Barron, Bartlett, Boyce, C. Branch, Bridges, Brooks, Carr, Charles, Conaway, Crosby, Crutchfield, D.E. Davis, D.M. Davis, Feldmark, Fennell, W. Fisher, Harrison, Haynes, Henson, Holmes, Ivey, C. Jackson, M. Jackson, Krimm, Lehman, J. Lewis, R. Lewis, Mosby, Patterson, Pena-Melnyk, Proctor, Queen, Rogers, Smith, Turner, Valderrama, Valentino-Smith, Walker, Washington, R. Watson, Wells, Wilkins, and Williams

Introduced and read first time: February 6, 2020

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Historically Black Colleges and Universities –**
3 **Comparability and Competitiveness**

4 FOR the purpose of requiring the Maryland Higher Education Commission to coordinate
5 with the historically black colleges and universities (HBCUs) in the State to approve
6 and prioritize certain academic programs and to promote the overall competitiveness
7 of the HBCUs; requiring the Commission to adopt regulations establishing
8 standards for determining whether certain programs are unnecessarily duplicative;
9 authorizing the Commission to make a determination that an unnecessary
10 duplication of programs exists under certain circumstances; authorizing the
11 Commission to make a certain determination and to negotiate in certain
12 circumstances until a certain unnecessarily duplicative program is eliminated;
13 requiring, under certain circumstances, that certain governing boards formulate and
14 present a certain plan to the Commission within a certain time; authorizing the
15 Commission to eliminate an unnecessarily duplicative program under certain
16 circumstances; authorizing the Commission or certain institutions of higher
17 education to file a certain objection on the basis of unnecessary program duplication
18 after a certain notice is received; requiring the Governor, in certain fiscal years, to
19 include in the annual State operating budget certain funds for certain HBCUs;
20 stating the purpose of certain funds; providing for the allowable uses of certain funds;
21 requiring certain funds to be adjusted annually for inflation for a certain duration;
22 requiring certain funds to be supplemental to certain funds appropriated to certain
23 institutions; requiring that certain funds become part of the base funds for certain
24 HBCUs after certain fiscal years; requiring certain HBCUs to report certain
25 information to the Senate Budget and Taxation Committee, the House

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Appropriations Committee, and the General Assembly each year; encouraging the Attorney General to negotiate a certain final settlement agreement by a certain date; requiring a special monitor to oversee a certain agreement under a certain circumstance; stating the intent of the General Assembly; defining a certain term; and generally relating to HBCUs in the State.

BY repealing and reenacting, with amendments,
Article – Education
Section 11–206 and 11–206.1
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY adding to
Article – Education
Section 12–119 and 14–111
Annotated Code of Maryland
(2018 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

11–206.

(a) This section does not apply to:

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

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

(3) The Cyber Warrior Diversity Program established under Subtitle 14 of this title.

(B) THE COMMISSION SHALL COORDINATE WITH THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES IN THE STATE TO IMPROVE THE QUALITY OF THE INSTITUTIONS BY:

(1) EXPEDITING THE APPROVAL OF PROPOSED NEW ACADEMIC PROGRAMS;

(2) ENHANCING EXISTING ACADEMIC PROGRAMS; AND

(3) PROMOTING THE OVERALL COMPETITIVENESS OF:

(I) BOWIE STATE UNIVERSITY;

(II) COPPIN STATE UNIVERSITY;

(III) UNIVERSITY OF MARYLAND EASTERN SHORE; AND

(IV) MORGAN STATE UNIVERSITY.

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

(i) A new program; or

(ii) A substantial modification of an existing program.

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

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

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

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

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

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

(5) (i) Except as provided in paragraph (3) of this subsection, and subject to subparagraph (ii) of this paragraph, a program that has not received a positive recommendation by the Commission may be implemented by:

1. Subject to the provisions of § 17–105 of this article, a private nonprofit institution of higher education; or

2. A for–profit institution of higher education.

(ii) If a private nonprofit or for-profit institution of higher education implements a proposal despite the recommendation from the Commission that a program not be implemented, the institution shall notify both prospective students of the program and enrolled students in the program that the program has not been recommended for implementation by the Commission.

(6) (i) If the Commission disapproves a proposal, the Commission shall provide to the governing body that submits the proposal a written explanation of 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)] (D) (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)] (E) The Commission shall review and make recommendations on programs in private nonprofit and for-profit institutions of higher education.

[(e)] (F) (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] UNNECESSARILY** 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] UNNECESSARILY** duplicative or inconsistent with an institution's adopted mission.

(4) The Commission may make a determination that an **[unreasonable] UNNECESSARY** 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) If the Commission makes a determination under paragraph (4) 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] **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] **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) 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] **UNNECESSARILY** duplicative program.

(6) (i) Prior to imposing a sanction under paragraph (5) 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.

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

(2) “Private nonprofit institution of higher education” has the meaning stated in § 10–101(k) of this article.

(3) “Public institution of higher education” means:

(i) A public senior higher education institution; and

(ii) A community college.

(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.

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

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

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

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

(i) The institution’s governing board; and

(ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

(iv) Can be implemented within the existing program resources of the institution **OR ADDITIONAL FUNDING PROVIDED UNDER § 12–119 OR § 14–111 OF THIS ARTICLE**, verified by a process established in consultation with the Commission.

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

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

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

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

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

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

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

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

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

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

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

(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 § 2-1257 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 item (2) of this subsection to the public institutions of higher education and the private nonprofit institutions of higher

1 education.

2 (J) THE COMMISSION SHALL ACT IN ACCORDANCE WITH § 11-206(B) OF
3 THIS SUBTITLE WHEN PERFORMING A DUTY UNDER THIS SECTION.

4 12-119.

5 (A) IN THIS SECTION, “USM HISTORICALLY BLACK COLLEGES AND
6 UNIVERSITIES” MEANS:

7 (1) BOWIE STATE UNIVERSITY;

8 (2) COPPIN STATE UNIVERSITY; AND

9 (3) UNIVERSITY OF MARYLAND EASTERN SHORE.

10 (B) (1) FOR EACH OF FISCAL YEARS 2022 THROUGH 2031, THE
11 GOVERNOR SHALL INCLUDE IN THE ANNUAL STATE OPERATING BUDGET A
12 GENERAL FUND APPROPRIATION OF AT LEAST:

13 (I) \$12,200,000 FOR BOWIE STATE UNIVERSITY;

14 (II) \$10,000,000 FOR COPPIN STATE UNIVERSITY; AND

15 (III) \$12,400,000 FOR UNIVERSITY OF MARYLAND EASTERN
16 SHORE.

17 (2) IN FISCAL YEARS 2023 THROUGH 2031, THE FUNDS PROVIDED
18 UNDER THIS SECTION SHALL BE ADJUSTED EACH YEAR BY THE RATE OF INFLATION.

19 (3) THE PURPOSE OF THE FUNDS PROVIDED UNDER THIS SECTION IS
20 TO STRENGTHEN AND ENHANCE THE USM HISTORICALLY BLACK COLLEGES AND
21 UNIVERSITIES TO BENEFIT THE STATE.

22 (C) THE FUNDS PROVIDED UNDER THIS SECTION SHALL BE:

23 (1) SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS
24 APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE
25 BUDGET; AND

26 (2) ALLOCATED FOR THE FOLLOWING PURPOSES:

27 (I) DEVELOPMENT AND IMPLEMENTATION OF NEW UNIQUE
28 ACADEMIC PROGRAMS AND ENHANCEMENT OF EXISTING PROGRAMS;

(II) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

(III) STUDENT RECRUITMENT;

(IV) FACULTY RECRUITMENT; AND

(V) MARKETING.

(D) FUNDS PROVIDED UNDER THIS SECTION THAT WERE ALLOCATED FOR THE ONGOING COST OF NEW ACADEMIC PROGRAMS IN FISCAL YEAR 2031 SHALL BE INCLUDED IN THE BASE FUNDS APPROPRIATED TO THE USM HISTORICALLY BLACK COLLEGES AND UNIVERSITIES IN THE STATE FOR FISCAL YEAR 2032 AND EACH FISCAL YEAR THEREAFTER.

(E) ON OR BEFORE DECEMBER 1 EACH YEAR, EACH USM HISTORICALLY BLACK COLLEGE OR UNIVERSITY SHALL REPORT TO THE SENATE BUDGET AND TAXATION COMMITTEE AND THE HOUSE APPROPRIATIONS COMMITTEE IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE ON THE USE OF THE FUNDS RECEIVED UNDER THIS SECTION WITH RESPECT TO:

(1) DEVELOPMENT AND IMPLEMENTATION OF NEW UNIQUE ACADEMIC PROGRAMS AND ENHANCEMENT OF EXISTING PROGRAMS;

(2) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

(3) STUDENT RECRUITMENT;

(4) FACULTY RECRUITMENT; AND

(5) MARKETING.

14-111.

(A) (1) FOR EACH OF FISCAL YEARS 2022 THROUGH 2031, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL STATE OPERATING BUDGET AN ADDITIONAL GENERAL FUND APPROPRIATION OF AT LEAST \$23,100,000 FOR MORGAN STATE UNIVERSITY.

(2) IN FISCAL YEARS 2023 THROUGH 2031, THE FUNDS PROVIDED UNDER THIS SECTION SHALL BE ADJUSTED EACH YEAR BY THE RATE OF INFLATION.

(3) THE PURPOSE OF THE FUNDS PROVIDED UNDER THIS SECTION IS

1 TO STRENGTHEN AND ENHANCE MORGAN STATE UNIVERSITY TO BENEFIT THE
2 STATE.

3 (B) THE FUNDS PROVIDED UNDER THIS SECTION SHALL BE:

4 (1) SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS
5 APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE
6 BUDGET; AND

7 (2) ALLOCATED FOR THE FOLLOWING PURPOSES:

8 (I) DEVELOPMENT AND IMPLEMENTATION OF NEW UNIQUE
9 ACADEMIC PROGRAMS AND ENHANCEMENT OF EXISTING PROGRAMS;

10 (II) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

11 (III) STUDENT RECRUITMENT;

12 (IV) FACULTY RECRUITMENT; AND

13 (V) MARKETING.

14 (D) FUNDS PROVIDED UNDER THIS SECTION THAT WERE ALLOCATED FOR
15 THE ONGOING COST OF NEW ACADEMIC PROGRAMS IN FISCAL YEAR 2031 SHALL BE
16 INCLUDED IN THE BASE FUNDS APPROPRIATED TO MORGAN STATE UNIVERSITY
17 FOR FISCAL YEAR 2032 AND EACH FISCAL YEAR THEREAFTER.

18 (E) ON OR BEFORE DECEMBER 1 EACH YEAR, MORGAN STATE UNIVERSITY
19 SHALL REPORT TO THE SENATE BUDGET AND TAXATION COMMITTEE AND THE
20 HOUSE APPROPRIATIONS COMMITTEE, IN ACCORDANCE WITH § 2-1257 OF THE
21 STATE GOVERNMENT ARTICLE, ON THE USE OF THE FUNDS RECEIVED UNDER THIS
22 SECTION WITH RESPECT TO:

23 (1) DEVELOPMENT AND IMPLEMENTATION OF NEW UNIQUE
24 ACADEMIC PROGRAMS AND ENHANCEMENT OF EXISTING PROGRAMS;

25 (2) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

26 (3) STUDENT RECRUITMENT;

27 (4) FACULTY RECRUITMENT; AND

28 (5) MARKETING.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Attorney General is encouraged to negotiate a final settlement agreement in the case of The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission, et al., on or before September 30, 2020.

(b) The final settlement agreement described in subsection (a) of this section may provide for:

(1) (i) an individual to be appointed as Special Monitor; or

(ii) the parties' ability to petition a court to appoint a Special Monitor; and

(2) any other relief.

SECTION 3. AND BE IT FURTHER ENACTED, That if a Special Monitor is appointed as part of a final settlement agreement or court order in the case of The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission, et al.:

(1) the Special Monitor shall oversee the settlement agreement or court order, which includes resolving disputes over creation of new programs and issues related to program duplication; and

(2) it is the intent of the General Assembly to consider legislation in the 2021 Legislative Session to implement any statutory changes necessary as a result of the appointment of a Special Monitor.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) Section 1 of this Act is intended to facilitate a final settlement agreement, including attorneys' fees, being entered in the case of The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission, et al. on or before December 1, 2020.

(b) On or before December 11, 2020, the Attorney General shall provide written notice of the final settlement agreement to the Department of Legislative Services.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.