

# SENATE BILL 827

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EMERGENCY BILL

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CF HB 1062

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By: **Senators Conway, Oaks, and Robinson**

Introduced and read first time: February 5, 2018

Assigned to: Education, Health, and Environmental Affairs and Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Historically Black Colleges and Universities – Appointment of a Special Advisor**  
3 **– Development of a Remedial Plan**  
4 **(HBCU Equity Act of 2018)**

5 FOR the purpose of requiring the State Bar Association to submit certain names to the  
6 President of the Senate and the Speaker of the House of Delegates on or before a  
7 certain date; requiring the President and the Speaker to select a certain individual  
8 to serve as a Special Advisor within a certain period of time; requiring the Special  
9 Advisor to develop a certain remedial plan, consult with certain persons, incorporate  
10 certain elements into the remedial plan, and propose certain types of programs at  
11 certain institutions; authorizing the Special Advisor to consult with certain  
12 witnesses and consultants; requiring the remedial plan to include certain funding  
13 and a certain system of reporting and monitoring; prohibiting the Special Advisor  
14 from recommending certain program transfers or closings of institutions without  
15 certain agreement; requiring the Special Advisor to submit findings and  
16 recommendations to the Governor, the Department of Legislative Services, and the  
17 General Assembly on or before a certain date; requiring the Department to draft  
18 certain legislation on or before a certain date; making this Act an emergency  
19 measure; and generally relating to the appointment of a Special Advisor to develop  
20 a remedial plan relating to historically black colleges and universities in the State.

21 Preamble

22 WHEREAS, Maryland has been identified by the federal Office for Civil Rights  
23 (OCR) in the United States Department of Education as 1 of 10 states (in 1969) and later  
24 as 1 of 6 states (in 1985) that has failed to desegregate its formerly de jure system of  
25 segregated higher education; and

26 WHEREAS, Despite multiple desegregation plans having been developed and  
27 implemented in Maryland over the last 40–50 years, OCR has not formally released  
28 Maryland from its obligations to dismantle its formerly de jure system of segregated higher

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 education; and

2 WHEREAS, The Supreme Court decided *United States v. Fordice* in 1992, which set  
3 forth a three-step analysis for determining whether a state has discharged its duty to  
4 dismantle a formerly de jure system of higher education; and

5 WHEREAS, The *Fordice* analysis requires a plaintiff to show that a policy or practice  
6 is traceable to the de jure segregation, and if shown, then the State has the burden to prove  
7 that it has dismantled its de jure system of segregated higher education and that its policies  
8 and practices do not have continuing segregative effects; and

9 WHEREAS, If the State fails to meet the burden of *Fordice*, then the State must  
10 prove that its policies and practices have sound educational justification and cannot  
11 practicably be eliminated and established by less segregative means; and

12 WHEREAS, The unnecessary duplication of programs in Maryland, among other  
13 trespasses, spurred the filing of *The Coalition for Equity and Excellence in Maryland*  
14 *Higher Education, et al. v. Maryland Higher Education Commission, et al.* in 2006; and

15 WHEREAS, Attempts at reconciliation between the parties failed between 2006 and  
16 2010; and

17 WHEREAS, In 2012, oral arguments in the *Coalition* case took place in the United  
18 States District Court; and

19 WHEREAS, In 2013, the Court found that the *Coalition* was unable to demonstrate  
20 that the State limited institutional missions of historically black colleges and universities  
21 in the State or that operational funding deficiencies were a continuation of practices that  
22 were segregative and traceable to the de jure era; and

23 WHEREAS, The Court also found that unnecessary duplication of programs at  
24 historically black colleges and universities in the State continues and is a policy traceable  
25 to de jure segregation in the State; and

26 WHEREAS, The Court directed the parties to mediate, although attempts at  
27 mediation failed between 2013 and 2015; and

28 WHEREAS, A remedies phase of the trial took place in 2017; and

29 WHEREAS, In 2017, the Court directed the parties to be subject to the authority of  
30 a Special Master who would develop a remedial plan; and

31 WHEREAS, The appointment of a Special Master may be delayed or frustrated by  
32 the fact that both parties have appealed and briefs are not due until March 2018; now,  
33 therefore,

34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

1 That:

2 (a) On or before June 1, 2018, the State Bar Association shall submit to the  
3 President of the Senate and the Speaker of the House of Delegates the names of three  
4 individuals who specialize in education law and who are willing to serve as a Special  
5 Advisor in accordance with this section.

6 (b) Not more than 2 weeks after receiving the three names submitted under  
7 subsection (a) of this section, the President of the Senate and the Speaker of the House of  
8 Delegates jointly shall select one of the individuals to serve as a Special Advisor in  
9 accordance with this section.

10 (c) (1) The Special Advisor shall develop a remedial plan that will resolve the  
11 issues raised under *The Coalition for Equity and Excellence in Maryland Higher Education,*  
12 *et al. v. Maryland Higher Education Commission, et al.*

13 (2) In developing the remedial plan required under paragraph (1) of this  
14 subsection, the Special Advisor:

15 (i) shall consult with both the plaintiffs and the defendants in *The*  
16 *Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland*  
17 *Higher Education Commission, et al.*;

18 (ii) may consult with witnesses and consultants who were involved  
19 with the case;

20 (iii) shall incorporate elements of both the plaintiffs' and defendants'  
21 remedial plans submitted to the United States District Court as part of *The Coalition for*  
22 *Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education*  
23 *Commission, et al.*; and

24 (iv) shall propose a set of new unique programs, or high-demand  
25 programs, or both, at historically black colleges and universities (Bowie State University,  
26 Coppin State University, Morgan State University, and University of Maryland Eastern  
27 Shore) in the State that take into account each institution's strength, physical building  
28 capacity, and programmatic niches.

29 (3) The remedial plan developed under this subsection shall include:

30 (i) funding for a period to be used for student recruitment, financial  
31 aid, marketing, and related initiatives; and

32 (ii) a system of reporting and monitoring of the implementation of  
33 the remedial plan developed under this subsection.

34 (d) The Special Advisor may not recommend program transfers or closings of  
35 institutions of higher education without agreement from the affected institutions.

1 (e) On or before August 1, 2018, the Special Advisor shall submit the Special  
2 Advisor's findings and recommendations to the Governor, the Department of Legislative  
3 Services, and, in accordance with § 2-1246 of the State Government Article, the General  
4 Assembly.

5 (f) On or before December 1, 2018, the Department of Legislative Services shall  
6 draft legislation to implement any statutory changes that need to be made as the result of  
7 the Special Advisor's findings and recommendations.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
9 measure, is necessary for the immediate preservation of the public health or safety, has  
10 been passed by a ye and nay vote supported by three-fifths of all the members elected to  
11 each of the two Houses of the General Assembly, and shall take effect from the date it is  
12 enacted.