

# SENATE BILL 856

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CF HB 1057

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By: **Senators Sydnor, Augustine, Ellis, Hayes, Kelley, McCray, and Smith**

Introduced and read first time: February 3, 2020

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – Education  
3 Section 11–206 and 11–206.1  
4 Annotated Code of Maryland  
5 (2018 Replacement Volume and 2019 Supplement)

6 BY adding to  
7 Article – Education  
8 Section 12–119 and 14–111  
9 Annotated Code of Maryland  
10 (2018 Replacement Volume and 2019 Supplement)

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

13 **Article – Education**

14 11–206.

15 (a) This section does not apply to:

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

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

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

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

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

28 **(2) ENHANCING EXISTING ACADEMIC PROGRAMS; AND**

29 **(3) PROMOTING THE OVERALL COMPETITIVENESS OF:**

30 **(I) BOWIE STATE UNIVERSITY;**

31 **(II) COPPIN STATE UNIVERSITY;**

1                   **(III) UNIVERSITY OF MARYLAND EASTERN SHORE; AND**

2                   **(IV) MORGAN STATE UNIVERSITY.**

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

6                   (i)     A new program; or

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

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

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

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

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

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

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

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

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

26                             2.     A for–profit institution of higher education.

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

32                   (6)     (i)     If the Commission disapproves a proposal, the Commission shall

1 provide to the governing body that submits the proposal a written explanation of the  
2 reasons for the disapproval.

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

6 **[(c)] (D)** (1) Prior to discontinuation, each institution of postsecondary  
7 education that proposes to discontinue an existing program shall provide written  
8 notification to the Commission specifying:

9 (i) The name of the program; and

10 (ii) The expected date of discontinuation.

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

14 **[(d)] (E)** The Commission shall review and make recommendations on programs  
15 in private nonprofit and for-profit institutions of higher education.

16 **[(e)] (F)** (1) In this subsection, "governing board" includes the board of  
17 trustees of a community college.

18 (2) The Commission shall adopt regulations establishing standards for  
19 determining whether 2 or more programs are **[unreasonably] UNNECESSARILY**  
20 duplicative.

21 (3) The Commission may review existing programs at public institutions of  
22 postsecondary education if the Commission has reason to believe that academic programs  
23 are **[unreasonably] UNNECESSARILY** duplicative or inconsistent with an institution's  
24 adopted mission.

25 (4) The Commission may make a determination that an **[unreasonable]**  
26 **UNNECESSARY** duplication of programs exists on its own initiative or after receipt of a  
27 request for determination from any directly affected public institution of postsecondary  
28 education.

29 (5) (i) If the Commission makes a determination under paragraph (4)  
30 of this subsection the Commission may:

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

33 2. Require any affected governing board to submit a plan to

1 resolve the duplication; and

2                   3. Negotiate, as necessary, with any affected governing  
3 board until the [unreasonable] **UNNECESSARY** duplication is eliminated.

4                   (ii) Notwithstanding the provisions of subparagraph (i) of this  
5 paragraph, if the Commission determines that 2 or more existing programs offered by  
6 institutions under the governance of different governing boards are [unreasonably]  
7 **UNNECESSARILY** duplicative, the governing boards of the institutions of postsecondary  
8 education at which the programs are offered shall have 180 days from the date of the  
9 Commission's determination to formulate and present to the Commission a joint plan to  
10 eliminate the duplication.

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

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

20                   (6) (i) Prior to imposing a sanction under paragraph (5) of this  
21 subsection, the Commission shall give notice of the proposed sanction to the governing  
22 board of each affected institution.

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

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

28                   (iii) The Commission's decision shall be final and is not subject to  
29 further administrative appeal or judicial review.

30 11-206.1.

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

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

34                   (3) "Public institution of higher education" means:

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

2 (ii) A community college.

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

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

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

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

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

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

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

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

19 (ii) The Maryland Higher Education Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5           (g) (1) The Commission shall:

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

8                   (ii) Identify low productivity programs at public institutions of  
9 higher education.

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

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

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

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

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

21           (i) The Commission shall:

22                   (1) Monitor the program development and review process established  
23 under this section;

24                   (2) Report annually to the Governor and, in accordance with § 2-1257 of  
25 the State Government Article, the General Assembly on the nature and extent of any  
26 duplication or proliferation of programs; and

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

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

32 **12-119.**



1           **(A) IN THIS SECTION, “USM HISTORICALLY BLACK COLLEGES AND**  
2 **UNIVERSITIES” MEANS:**

3                   **(1) BOWIE STATE UNIVERSITY;**

4                   **(2) COPPIN STATE UNIVERSITY; AND**

5                   **(3) UNIVERSITY OF MARYLAND EASTERN SHORE.**

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

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

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

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

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

15                   **(3) THE PURPOSE OF THE FUNDS PROVIDED UNDER THIS SECTION IS**  
16 **TO STRENGTHEN AND ENHANCE THE USM HISTORICALLY BLACK COLLEGES AND**  
17 **UNIVERSITIES TO BENEFIT THE STATE.**

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

19                   **(1) SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS**  
20 **APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE**  
21 **BUDGET; AND**

22                   **(2) ALLOCATED FOR THE FOLLOWING PURPOSES:**

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

25                   **(II) STUDENT FINANCIAL AID AND SCHOLARSHIPS;**

26                   **(III) STUDENT RECRUITMENT;**

27                   **(IV) FACULTY RECRUITMENT; AND**

1 (V) MARKETING.

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

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

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

14 (2) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

15 (3) STUDENT RECRUITMENT;

16 (4) FACULTY RECRUITMENT; AND

17 (5) MARKETING.

18 14-111.

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

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

25 (3) THE PURPOSE OF THE FUNDS PROVIDED UNDER THIS SECTION IS  
26 TO STRENGTHEN AND ENHANCE MORGAN STATE UNIVERSITY TO BENEFIT THE  
27 STATE.

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

29 (1) SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS

1 APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE  
2 BUDGET; AND

3 (2) ALLOCATED FOR THE FOLLOWING PURPOSES:

4 (I) DEVELOPMENT AND IMPLEMENTATION OF NEW UNIQUE  
5 ACADEMIC PROGRAMS AND ENHANCEMENT OF EXISTING PROGRAMS;

6 (II) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

7 (III) STUDENT RECRUITMENT;

8 (IV) FACULTY RECRUITMENT; AND

9 (V) MARKETING.

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

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

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

21 (2) STUDENT FINANCIAL AID AND SCHOLARSHIPS;

22 (3) STUDENT RECRUITMENT;

23 (4) FACULTY RECRUITMENT; AND

24 (5) MARKETING.

25 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

- 3 (1) (i) an individual to be appointed as Special Monitor; or  
4 (ii) the parties' ability to petition a court to appoint a Special  
5 Monitor; and  
6 (2) any other relief.

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

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

14 (2) it is the intent of the General Assembly to consider legislation in the  
15 2021 Legislative Session to implement any statutory changes necessary as a result of the  
16 appointment of a Special Monitor.

17 SECTION 4. AND BE IT FURTHER ENACTED, That:

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

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

24 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
25 1, 2020.