

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 1039

(Senator Conway, *et al.*)

Rules

Historically Black Colleges and Universities - Parity and Investment

This bill mandates the Governor to include in the State operating and capital budgets of the State's historically black colleges and universities (HBCUs) a total of \$3.4 billion over 10 years (fiscal 2016 through 2025) as follows: \$798.3 million for Bowie State University (BSU); \$870.3 million for Coppin State University (CSU); \$657.0 million for the University of Maryland Eastern Shore (UMES); and \$1.1 billion for Morgan State University (MSU). The funding is intended to be enhancement funding for the purpose of ensuring that these universities are comparable and competitive with other public four-year higher education institutions in all facets of their operations and programs as measured by generally recognized indicators of disparity; the funding must be in addition to the base funds appropriated to the institutions.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: General fund expenditures for public HBCUs increase by approximately \$343.8 million per year from FY 2016 through 2025 (a total of \$3.4 billion over 10 years) as required by the bill. This estimate assumes that the mandated funds are distributed evenly over the 10 years; however, under the bill the funds could be distributed over the years unevenly. **This bill establishes a mandated appropriation for FY 2016 through 2025.**

(\$ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	343.8	343.8	343.8	343.8
Net Effect	\$0	(\$343.8)	(\$343.8)	(\$343.8)	(\$343.8)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: By July 1, 2014, and each year through July 1, 2023, the Board of Visitors for BSU, CSU, and UMES must submit to the Board of Regents of the University System of Maryland (USM) requests for appropriations necessary to implement the institution's 10-Year Plan for the next fiscal year. The USM Board of Regents must have 30 days to review and comment on the requests for appropriations submitted by an institution. By August 31, 2014, and each year through August 31, 2023, the Boards of Visitors of BSU, CSU, and UMES must submit to the Governor and the Maryland Higher Education Commission (MHEC) requests for appropriations necessary to implement each institution's 10-Year Plan for the next fiscal year.

By August 31, 2014, and each year through August 31, 2023, the Board of Regents of MSU must submit to the Governor and MHEC requests for appropriations necessary to implement MSU's 10-Year Plan for the next fiscal year.

Current Law/Background: In October 2006, the Coalition for Equity and Excellence in Maryland Higher Education, which is a group of former, current, and prospective students of Maryland's HBCUs, filed suit against MHEC alleging violations of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, which protect against discrimination on the basis of race, color, or national origin.

In the coalition's lawsuit, three policies of the Maryland system of higher education allegedly traceable to the prior *de jure* (as a matter of law) segregated system were at issue: (1) limited institutional missions; (2) operational funding deficiencies; and (3) unnecessary program duplication. After a six-week bench trial in January and February 2013, the court did not find that mission-related policies or practices or current operational funding were traceable to the *de jure* era; however, the court did find that the State has failed to eliminate unnecessary program duplication for Maryland's HBCUs and that this policy is traceable to the *de jure* era. The 2014 issue paper on this topic, which includes a discussion of the case, can be found at the following link: (<http://mgaleg.maryland.gov/pubs/legislegal/2014rs-issue-papers.pdf>).

The court had previously granted the State's motion for summary judgment in part in June 2011 by ruling that a genuine dispute of material fact did not exist relating to capital budget funding and its traceability to the prior *de jure* system.

U.S. Office for Civil Rights

In 1969, the U.S. Office for Civil Rights (OCR) required Maryland, along with nine other states, to submit for approval by OCR a plan to remove all vestiges of its formerly segregated system of higher education. OCR asserted that Maryland and the other states had a responsibility to overcome past segregative practices and that it would not be enough to simply maintain nondiscriminatory admissions policies if the student racial demographic at an institution was still reflective of the formerly *de jure* racial identification of that institution.

Over the course of the next 30 years, Maryland submitted and resubmitted various plans to OCR in order to enhance its public HBCUs. In December 2000, the State and OCR entered into a partnership agreement that included a commitment from the State to further enhance its four HBCUs and to improve higher education opportunities for African American students. This partnership agreement expired on December 31, 2005, and on June 19, 2006, Maryland submitted a final report on the Partnership Agreement Commitments to OCR. OCR acknowledged receipt of that 2006 report in 2008, but the State has not yet been released from its obligations under the agreement. Five other states (Florida, Ohio, Oklahoma, Pennsylvania, and Texas) also continue to be subject to monitoring by OCR in this regard.

The State's HBCUs continue to receive \$4.9 million in general funds annually for OCR enhancement funding through MHEC since the OCR partnership agreement expired at the end of 2005. This funding is not used to calculate the base operational funding for the public four-year institutions, which means that funding for community colleges and private nonprofit institutions of higher education is not increased due to this funding.

The OCR partnership agreement also included additional operating funding and capital funding for HBCUs.

State Expenditures: General fund expenditures for public HBCUs increase by approximately \$343.8 million per year from fiscal 2016 through 2025 (a total of \$3.4 billion over 10 years) as required by the bill. This estimate assumes that the mandated funds are distributed evenly over the 10 years. However, since this funding includes capital funding, it is likely that the funding requests made by each HBCU will vary by year based on their needs. The bill only mandates the total amount that must be distributed to HBCUs over 10 years, not yearly amounts and not specific amounts for operating and capital funding. To the extent capital funds required by the bill are provided through the capital budget, general obligation bonds for capital projects at HBCUs increase (and general fund expenditures in the operating budget decrease). Generally, this would not alter the *total* amount of capital funds available, and other capital projects would receive less or no funding.

The bill mandates that the amounts shown in **Exhibit 1** be distributed to the public HBCUs over a 10-year period from fiscal 2016 through 2025. These funds must be enhancement funds in addition to the base funds appropriated to HBCUs. It is assumed that these funds will be treated the same as the current OCR enhancement funding for HBCUs; thus, it is assumed that the funding for the community colleges and private nonprofit institutions of higher education does not increase due to the bill.

Exhibit 1
Mandated Enhancement Funding for Public HBCUs
Fiscal 2016-2025

<u>Historically Black College or University</u>	<u>Total Enhancement Funding</u>
Bowie State University	\$798,250,000
Coppin State University	870,310,000
University of Maryland, Eastern Shore	657,009,819
Total USM HBCUs	\$2,325,569,819
Morgan State University	1,111,977,588
Total State Funds for HBCUs	\$3,437,547,407

Additional Information

Prior Introductions: None.

Cross File: HB 1194 (Delegate Braveboy, *et al.*) - Appropriations.

Information Source(s): Department of Budget and Management, Maryland Higher Education Commission, Department of Legislative Services

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mc/rhh

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