

HOUSE BILL 1062

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EMERGENCY BILL

8lr0664
CF SB 827

By: Delegates Sydnor, Barron, Hayes, Ali, Anderson, Angel, Atterbeary, D. Barnes, Branch, Brooks, Conaway, Davis, Fennell, Gibson, Glenn, Haynes, Hettleman, Hill, Holmes, C. Howard, Jackson, Knotts, J. Lewis, R. Lewis, McCray, McIntosh, A. Miller, Mosby, Otto, Patterson, Pena-Melnyk, Proctor, Queen, Sample-Hughes, Sanchez, Turner, Vallario, Walker, A. Washington, M. Washington, Wilkins, Wilson, and P. Young

Introduced and read first time: February 7, 2018

Assigned to: Appropriations

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 segregated higher education; and

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

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

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

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

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

19 WHEREAS, Attempts at reconciliation between the parties failed between 2006 and
20 2010; and

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

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

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

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

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

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

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

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
5 That:

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

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

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

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

19 (i) shall consult with both the plaintiffs and the defendants in The
20 Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland
21 Higher Education Commission, et al.;

22 (ii) may consult with witnesses and consultants who were involved
23 with the case;

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

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

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

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

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

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

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

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

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