

SENATE BILL 1

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SB 1043/20 – B&T & EHE

EMERGENCY BILL
(PRE-FILED)

1lr1743
CF HB 1

By: **Senators Sydnor, Beidle, Feldman, Griffith, Hayes, Hettleman, Kelley, Lam, Patterson, Waldstreicher, Washington, and Young**

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

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

A BILL ENTITLED

1 AN ACT concerning

2 **Historically Black Colleges and Universities – Funding**

3 FOR the purpose of requiring the Maryland Higher Education Commission to establish a
4 certain new unit to assist in evaluating and reviewing certain proposals for new
5 programs and substantial modifications of existing programs by an institution of
6 postsecondary education; requiring the Governor, beginning in a certain fiscal year,
7 to include in the annual budget bill an amount sufficient to employ certain staff;
8 requiring the Governor, in certain fiscal years, to include in the annual budget bill
9 certain funds for certain historically black colleges and universities in the State;
10 specifying how certain funds shall be allocated; providing for the allowable uses of
11 certain funds; providing that certain funds be in addition to certain base funds
12 appropriated to certain institutions; prohibiting certain funds from being included
13 in certain calculations of State funding for certain institutions of higher education
14 under certain provisions of law; requiring certain historically black colleges and
15 universities to report annually, for a certain duration, certain information to the
16 Governor, the President of the Senate, the Speaker of the House, the House
17 Appropriations Committee, and the Senate Budget and Taxation Committee;
18 establishing the Historically Black Colleges and Universities Reserve Fund as a
19 special, nonlapsing fund; specifying the purpose of the Fund; requiring the
20 Commission to administer the Fund; requiring the State Treasurer to hold the Fund
21 and the Comptroller to account for the Fund; specifying the contents of the Fund;
22 specifying the purpose for which the Fund may be used; providing for the investment
23 of money in and expenditures from the Fund; requiring interest earnings of the Fund
24 to be credited to the Fund; exempting the Fund from a certain provision of law
25 requiring interest earnings on State money to accrue to the General Fund of the
26 State; stating certain findings of the General Assembly; defining a certain term;
27 requiring the University System of Maryland William E. Kirwan Center for
28 Academic Innovation, in collaboration with UMUC Ventures, to assist certain
29 historically black colleges and universities with developing and offering online

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 academic programs; providing that certain procurements and contracts are not
2 subject to the approval of the Board of Public Works under a certain provision of law;
3 authorizing the Board of Regents of the University System of Maryland to use the
4 fund balance to support the development and offering of certain online programs;
5 requiring the Commission, in consultation with certain institutions, to study its own
6 policies and practices and report the results on or before a certain date; encouraging
7 certain historically black colleges and universities to hire a certain consultant and
8 report the results and any findings on or before a certain date; encouraging certain
9 historically black colleges and universities to use certain funds to implement and
10 support the Blueprint for Maryland's Future; requiring the Governor to provide a
11 certain allocation in a certain fiscal year for certain fees and expenses under certain
12 circumstances; authorizing the Attorney General to execute a certain final
13 settlement agreement; making certain provisions of this Act subject to a certain
14 contingency; making this Act an emergency measure; and generally relating to
15 historically black colleges and universities in the State.

16 BY adding to
17 Article – Education
18 Section 10–214, 11–206.3, 15–126, and 15–127
19 Annotated Code of Maryland
20 (2018 Replacement Volume and 2020 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – State Finance and Procurement
23 Section 6–226(a)(2)(i)
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2020 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – State Finance and Procurement
28 Section 6–226(a)(2)(ii)122. and 123.
29 Annotated Code of Maryland
30 (2015 Replacement Volume and 2020 Supplement)

31 BY adding to
32 Article – State Finance and Procurement
33 Section 6–226(a)(2)(ii)124.
34 Annotated Code of Maryland
35 (2015 Replacement Volume and 2020 Supplement)

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

38 **Article – Education**

39 **10–214.**

1 **THE GENERAL ASSEMBLY FINDS THAT:**

2 **(1) THE STATE OF MARYLAND WISHES TO PROVIDE ALL OF ITS**
3 **CITIZENS WITH EQUAL ACCESS TO HIGHER EDUCATION AT EXCELLENT AND**
4 **AFFORDABLE PUBLIC COLLEGES AND UNIVERSITIES;**

5 **(2) THE GENERAL ASSEMBLY HAS CAREFULLY REVIEWED THE**
6 **MEMORANDUM OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF MARYLAND, ISSUED OCTOBER 7, 2013, AND NOVEMBER 8,**
8 **2017, IN THE ACTION, THE COALITION FOR EQUITY AND EXCELLENCE IN**
9 **MARYLAND HIGHER EDUCATION, ET AL. V. MARYLAND HIGHER EDUCATION**
10 **COMMISSION, ET AL., 06-CV-02773-CCB;**

11 **(3) THE DISTRICT COURT FOUND THAT THE STATE FAILED TO**
12 **ELIMINATE A TRACEABLE DE JURE ERA POLICY OF UNNECESSARY DUPLICATION OF**
13 **PROGRAMS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES IN THE STATE**
14 **THAT HAS EXACERBATED THE RACIAL IDENTIFIABILITY OF MARYLAND'S**
15 **HISTORICALLY BLACK COLLEGES AND UNIVERSITIES;**

16 **(4) MARYLAND'S HISTORICALLY BLACK COLLEGES AND**
17 **UNIVERSITIES, WHICH ARE BOWIE STATE UNIVERSITY, COPPIN STATE**
18 **UNIVERSITY, MORGAN STATE UNIVERSITY, AND UNIVERSITY OF MARYLAND**
19 **EASTERN SHORE, SHOULD RECEIVE ADDITIONAL SUPPORT TO REMEDY THE**
20 **FINDINGS OF THE DISTRICT COURT;**

21 **(5) THE ADDITIONAL SUPPORT SHALL BE PROVIDED IN THE FORM OF**
22 **ADDITIONAL FUNDING IN THE AMOUNT OF \$577,000,000, WHICH SHALL BE**
23 **PROVIDED IN AMOUNTS AS CALCULATED UNDER § 15-126 OF THIS ARTICLE IN EACH**
24 **OF FISCAL YEARS 2023 THROUGH 2032, AND SHALL BE ALLOCATED AMONG THE**
25 **INSTITUTIONS; AND**

26 **(6) THE PROVISIONS OF §§ 15-126 AND 15-127 OF THIS ARTICLE**
27 **SHALL ENSURE THAT MARYLAND'S HISTORICALLY BLACK COLLEGES AND**
28 **UNIVERSITIES SHALL RECEIVE THIS SUPPORT.**

29 **11-206.3.**

30 **(A) THE COMMISSION SHALL ESTABLISH A PROGRAM EVALUATION UNIT TO**
31 **EVALUATE NEW PROGRAMS AND SUBSTANTIAL MODIFICATIONS.**

32 **(B) (1) THE UNIT ESTABLISHED IN THIS SECTION SHALL HAVE AT LEAST**
33 **10 STAFF MEMBERS WHO ARE EMPLOYEES OF THE COMMISSION.**

34 **(2) THE STAFF MEMBERS ASSIGNED TO THIS UNIT SHALL BE IN**

1 ADDITION TO THE CURRENT WORKFORCE OF THE COMMISSION.

2 (C) THE UNIT ESTABLISHED IN THIS SECTION SHALL ASSIST THE
3 COMMISSION IN REVIEWING AND EVALUATING PROPOSALS FOR NEW PROGRAMS
4 AND SUBSTANTIAL MODIFICATIONS OF EXISTING PROGRAMS IN ACCORDANCE WITH
5 §§ 11-206 AND 11-206.1 OF THIS SUBTITLE.

6 (D) BEGINNING IN FISCAL YEAR 2023, THE GOVERNOR SHALL INCLUDE IN
7 THE ANNUAL BUDGET BILL AN APPROPRIATION IN AN AMOUNT SUFFICIENT TO
8 EMPLOY THE 10 STAFF MEMBERS REQUIRED UNDER THIS SECTION.

9 15-126.

10 (A) FOR FISCAL YEAR 2023, THE GOVERNOR SHALL INCLUDE IN THE
11 ANNUAL BUDGET BILL A GENERAL FUND APPROPRIATION OF AT LEAST:

12 (1) \$16,790,700 FOR BOWIE STATE UNIVERSITY;

13 (2) \$9,000,000 FOR COPPIN STATE UNIVERSITY;

14 (3) \$24,003,200 FOR MORGAN STATE UNIVERSITY; AND

15 (4) \$9,693,600 FOR UNIVERSITY OF MARYLAND EASTERN SHORE.

16 (B) (1) FOR EACH OF FISCAL YEARS 2024 THROUGH 2031, THE
17 GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL A GENERAL FUND
18 APPROPRIATION TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AS
19 CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

20 (2) THE FUNDS PROVIDED UNDER PARAGRAPH (1) OF THIS
21 SUBSECTION SHALL BE ALLOCATED TO EACH INSTITUTION IN AN AMOUNT THAT IS
22 THE GREATER OF:

23 (I) \$9,000,000; OR

24 (II) THE PRODUCT OF:

25 1. THE PERCENTAGE SHARE OF STUDENTS ENROLLED
26 DURING THE IMMEDIATELY PRECEDING ACADEMIC YEAR AT EACH INSTITUTION
27 COMPARED TO THE TOTAL NUMBER OF STUDENTS ENROLLED AT ALL OF THE
28 HISTORICALLY BLACK COLLEGES AND UNIVERSITIES; AND

29 2. \$57,700,000.

1 **(3) (I) FOR FISCAL YEAR 2032, THE GOVERNOR SHALL INCLUDE IN**
2 **THE ANNUAL BUDGET BILL A GENERAL FUND APPROPRIATION EQUAL TO THE**
3 **DIFFERENCE OF:**

4 **1. \$577,000,000; MINUS**

5 **2. THE SUM OF THE TOTAL FUNDS ALLOCATED FOR**
6 **EACH OF FISCAL YEARS 2023 THROUGH 2031 UNDER THIS SECTION.**

7 **(II) THE FUNDS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS**
8 **PARAGRAPH SHALL BE ALLOCATED TO EACH HISTORICALLY BLACK COLLEGE AND**
9 **UNIVERSITY IN AN AMOUNT THAT IS EQUAL TO THE PRODUCT OF:**

10 **1. THE PERCENTAGE SHARE OF STUDENTS ENROLLED**
11 **DURING THE IMMEDIATELY PRECEDING ACADEMIC YEAR AT EACH INSTITUTION**
12 **COMPARED TO THE TOTAL NUMBER OF STUDENTS ENROLLED AT ALL OF THE**
13 **HISTORICALLY BLACK COLLEGES AND UNIVERSITIES; AND**

14 **2. THE AMOUNT OF GENERAL FUNDS DETERMINED FOR**
15 **FISCAL YEAR 2032 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

16 **(4) AT THE END OF EACH FISCAL YEAR, ANY UNUSED FUNDS**
17 **PROVIDED UNDER THIS SECTION SHALL BE DISTRIBUTED TO THE HISTORICALLY**
18 **BLACK COLLEGES AND UNIVERSITIES RESERVE FUND ESTABLISHED UNDER §**
19 **15-127 OF THIS SUBTITLE.**

20 **(C) FUNDS PROVIDED UNDER THIS SECTION:**

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

24 **(2) MAY BE USED FOR THE FOLLOWING PURPOSES, AS DETERMINED**
25 **BY THE UNIVERSITY RECEIVING THE FUNDS:**

26 **(I) SCHOLARSHIPS AND FINANCIAL AID SUPPORT SERVICES;**

27 **(II) FACULTY RECRUITMENT AND DEVELOPMENT;**

28 **(III) EXPANDING AND IMPROVING EXISTING ACADEMIC**
29 **PROGRAMS, INCLUDING ONLINE PROGRAMS;**

30 **(IV) DEVELOPMENT AND IMPLEMENTATION OF NEW ACADEMIC**
31 **PROGRAMS, INCLUDING ONLINE PROGRAMS;**

1 (v) ACADEMIC SUPPORT; AND

2 (vi) MARKETING; AND

3 (3) MAY NOT BE INCLUDED IN THE CALCULATIONS OF STATE
4 FUNDING UNDER §§ 16-305, 16-512, AND 17-104 OF THIS ARTICLE.

5 (D) ON OR BEFORE DECEMBER 1 EACH YEAR, BEGINNING IN 2023 AND
6 GOING THROUGH 2033, EACH HISTORICALLY BLACK COLLEGE OR UNIVERSITY
7 SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE
8 STATE GOVERNMENT ARTICLE, THE PRESIDENT OF THE SENATE, THE SPEAKER OF
9 THE HOUSE, THE HOUSE APPROPRIATIONS COMMITTEE, AND THE SENATE BUDGET
10 AND TAXATION COMMITTEE ON:

11 (1) THE USES OF THE FUNDS IN ACCORDANCE WITH SUBSECTION
12 (C)(2) OF THIS SECTION; AND

13 (2) ANY NEW ACADEMIC PROGRAM DEVELOPED WITH RESPECT TO:

14 (i) DEVELOPMENT COSTS;

15 (ii) STARTUP COSTS; AND

16 (iii) ONGOING COSTS TO MAINTAIN THE PROGRAM.

17 15-127.

18 (A) IN THIS SECTION, "FUND" MEANS THE HISTORICALLY BLACK
19 COLLEGES AND UNIVERSITIES RESERVE FUND.

20 (B) THERE IS A HISTORICALLY BLACK COLLEGES AND UNIVERSITIES
21 RESERVE FUND.

22 (C) THE PURPOSE OF THE FUND IS TO PROVIDE RESERVE FUNDING FOR
23 BOWIE STATE UNIVERSITY, COPPIN STATE UNIVERSITY, MORGAN STATE
24 UNIVERSITY, AND UNIVERSITY OF MARYLAND EASTERN SHORE THAT IS USED FOR
25 PURPOSES CONSISTENT WITH THE USES SPECIFIED UNDER § 15-126 OF THIS
26 SUBTITLE.

27 (D) THE MARYLAND HIGHER EDUCATION COMMISSION SHALL
28 ADMINISTER THE FUND.

29 (E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT

1 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

2 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,
3 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

4 (F) THE FUND CONSISTS OF:

5 (1) THE REMAINDER OF ANY FUNDS UNUSED AT THE END OF A FISCAL
6 YEAR THAT IS DISTRIBUTED TO THE FUND UNDER § 15-126 OF THIS SUBTITLE;

7 (2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

8 (3) INTEREST EARNINGS; AND

9 (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR
10 THE BENEFIT OF THE FUND.

11 (G) THE FUND MAY BE USED ONLY FOR THE USES SPECIFIED UNDER §
12 15-126 OF THIS SUBTITLE.

13 (H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND
14 IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

15 (2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO
16 THE FUND.

17 (I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE
18 WITH THE STATE BUDGET.

19 (J) MONEY EXPENDED FROM THE FUND FOR THE USES SPECIFIED UNDER §
20 15-126 OF THIS SUBTITLE IS SUPPLEMENTAL TO AND IS NOT INTENDED TO TAKE
21 THE PLACE OF FUNDING THAT OTHERWISE WOULD BE APPROPRIATED FOR THE
22 USES SPECIFIED UNDER § 15-126 OF THIS SUBTITLE OR ANY OTHER FUNDS
23 APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE
24 BUDGET.

25 **Article – State Finance and Procurement**

26 6-226.

27 (a) (2) (i) Notwithstanding any other provision of law, and unless
28 inconsistent with a federal law, grant agreement, or other federal requirement or with the
29 terms of a gift or settlement agreement, net interest on all State money allocated by the
30 State Treasurer under this section to special funds or accounts, and otherwise entitled to
31 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General

1 Fund of the State.

2 (ii) The provisions of subparagraph (i) of this paragraph do not apply
3 to the following funds:

4 122. the Racing and Community Development Financing Fund;
5 [and]

6 123. the Racing and Community Development Facilities Fund;
7 **AND**

8 **124. THE HISTORICALLY BLACK COLLEGES AND**
9 **UNIVERSITIES RESERVE FUND.**

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

11 (a) (1) The University System of Maryland William E. Kirwan Center for
12 Academic Innovation, in collaboration with UMUC Ventures, shall work with the State's
13 historically black colleges and universities, Bowie State University, Coppin State
14 University, Morgan State University, and University of Maryland Eastern Shore, with the
15 goal of developing and offering online academic programs.

16 (2) The procurements and contracts for developing and offering online
17 academic programs under paragraph (1) of this subsection are not subject to the approval
18 of the Board of Public Works under § 12–112 of the Education Article.

19 (3) The Board of Regents of the University System of Maryland may use
20 the fund balance to support the development and offering of online academic programs
21 under this subsection.

22 (b) On or before December 1, 2021, each institution shall submit a report on its
23 efforts and any findings to the Governor and, in accordance with § 2–1257 of the State
24 Government Article, the President of the Senate and the Speaker of the House that
25 summarizes the steps taken to comply with the requirement provided under subsection (a)
26 of this section.

27 SECTION 3. AND BE IT FURTHER ENACTED, That:

28 (a) The Maryland Higher Education Commission shall, in consultation with
29 Morgan State University, the University System of Maryland, and St. Mary's College of
30 Maryland, study the Commission's current policies and practices and any new policies or
31 practices established in accordance with this Act for the purpose of:

32 (1) evaluating, streamlining, improving, and making recommendations on
33 the Commission's policies and practices with respect to academic program review;

1 (2) enhancing the economic competitiveness of the State by ensuring the
2 responsiveness of institutions of higher education to market demand; and

3 (3) effectively supporting the State's workforce development requirements.

4 (b) On or before December 1, 2021, the Commission shall submit a report on its
5 findings to the Governor and, in accordance with § 2–1257 of the State Government Article,
6 the President of the Senate and the Speaker of the House that summarizes the results of
7 the study conducted in accordance with subsection (a) of this section.

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

9 (a) The State's historically black colleges and universities, Bowie State
10 University, Coppin State University, Morgan State University, and University of Maryland
11 Eastern Shore, are encouraged to hire a consultant who would assist the institutions, as a
12 collective, with programmatic development.

13 (b) On or before December 1, 2021, each institution shall submit a report on its
14 efforts and any findings to the Governor and, in accordance with § 2–1257 of the State
15 Government Article, the President of the Senate and the Speaker of the House that
16 summarizes the steps taken to comply with subsection (a) of this section.

17 SECTION 5. AND BE IT FURTHER ENACTED, That the State's historically black
18 colleges and universities, Bowie State University, Coppin State University, Morgan State
19 University, and University of Maryland Eastern Shore, are encouraged to use funds
20 provided by this Act to support and implement the Blueprint for Maryland's Future.

21 SECTION 6. AND BE IT FURTHER ENACTED, That:

22 (a) Section 1 of this Act is contingent on the execution of a final settlement
23 agreement in the case of The Coalition for Equity and Excellence in Maryland Higher
24 Education v. Maryland Higher Education Commission, 06–CV–02773–CCB (D. MD) on or
25 before June 1, 2021, that:

26 (1) incorporates and does not exceed the financial and programmatic
27 commitments contained in Section 1 of this Act;

28 (2) incorporates the order described in subsection (d)(2) of this section; and

29 (3) provides for attorney's fees and expenses in an amount not less than
30 \$14,000,000 but not more than \$25,000,000 to plaintiffs' counsel in The Coalition for Equity
31 and Excellence in Maryland Higher Education v. Maryland Higher Education Commission,
32 06–CV–02773–CCB (D. MD).

33 (b) (1) In fiscal year 2023, the Governor shall provide an allocation for the
34 attorney's fees and expenses in the amount specified in the final settlement agreement
35 described in subsection (a) of this section.

1 (2) The amount allocated under paragraph (1) of this subsection shall be
2 provided from the funds for the historically black colleges and universities under Section 1
3 of this Act, with the amounts allocated based on each institution's share of the total funds
4 provided under Section 1 of this Act.

5 (3) Notwithstanding § 12-501 of the State Government Article or any other
6 provision of law, the settlement agreement as provided in subsection (a) of this section,
7 including attorney's fees and expenses provided in the settlement agreement, are not
8 subject to approval by the Board of Public Works.

9 (c) The Attorney General:

10 (1) is authorized to execute the final settlement agreement in subsection
11 (a) of this section on behalf of the State on terms the Attorney General deems:

12 (i) as final resolution of the case of The Coalition for Equity and
13 Excellence in Maryland Higher Education v. the Maryland Higher Education Commission,
14 06-CV-02773-CCB (D. MD); and

15 (ii) appropriate to carry out the purposes of Section 1 of this Act; and

16 (2) shall provide written notice of the executed settlement agreement to the
17 Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

18 (d) Section 1 of this Act, with no further action required by the General Assembly,
19 shall be null and void if, on or before June 11, 2021:

20 (1) the Department of Legislative Services has not received notice of the
21 settlement agreement; and

22 (2) an order has not been issued from the United States District Court for
23 the District of Maryland or the United States Court of Appeals for the Fourth Circuit that:

24 (i) reverses or vacates the District Court's holding that the State
25 failed to eliminate traceable de jure era policy of unnecessary program duplication; or

26 (ii) holds that any policy of unnecessary program duplication
27 traceable to de jure segregation has been cured by the terms of the settlement agreement.

28 SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in Section
29 6 of this Act, this Act is an emergency measure, is necessary for the immediate preservation
30 of the public health or safety, has been passed by a ye and nay vote supported by
31 three-fifths of all the members elected to each of the two Houses of the General Assembly,
32 and shall take effect from the date it is enacted.