

2020 SESSION MAJOR ISSUES REVIEW

A Review of the
2020 Legislative Session



Department of Legislative Services
Maryland General Assembly

Additional School Construction Funding: The Act creates the Public School Facilities Priority Fund to provide State funds, beginning in fiscal 2025, to address the facility needs of the highest priority schools identified by the statewide facilities assessment completed by the IAC under current law, with highest priority given to schools with a severe facility issue that required the school to be closed. The Governor must appropriate at least \$40 million to the fund in fiscal 2025 and 2026 and at least \$80 million annually beginning in fiscal 2027. The Act expresses the intent that funding for the Aging Schools Program and the School Safety Grant Program be consolidated into the priority fund beginning in fiscal 2027 and repeals these programs effective July 1, 2026. The Act also extends the deadline for completion of the Workgroup on Facilities Assessment and Funding of School Facilities final report based on the statewide facilities assessment to December 1, 2021, and makes other changes related to the workgroup.

In addition to repealing the Aging Schools Program and the School Safety Grant Program, the legislation makes several changes to existing public school construction programs. For EGRC, the Act increases the funding mandate to \$80 million beginning in fiscal 2027, establishes new allocation criteria for funding in excess of \$40 million, and adjusts the eligibility criteria for the program. The Act extends mandated funding for the Healthy School Facility Fund by three years, through fiscal 2024, with at least \$30.0 million mandated in fiscal 2022 and at least \$40.0 million mandated in each of fiscal 2023 and 2024. For fiscal 2021 through 2024, 50% of money appropriated to the fund must be awarded to public schools in Baltimore City.

Eligible School Construction Costs: The Act makes architectural, engineering, consulting, and other school construction planning costs eligible for reimbursement from the State (including for projects funded under PSCP and by MSA bonds). It also requires IAC to develop regulations that define eligibility criteria for State reimbursement of expenditures on furniture, fixtures, and equipment with a median useful life of at least 15 years. For school construction projects in Baltimore City that are managed by MSA, bond proceeds may be used for specified expenditures that are otherwise not currently eligible costs for State funding, including furniture, fixtures, equipment, and project staffing. The Act also alters the State-local cost share for counties that meet specified criteria for PSCP and MSA funded projects.

Higher Education

Operating Budget

State support for higher education in the fiscal 2021 budget totals \$2.4 billion, an increase of \$150.9 million, or 6.8%, over fiscal 2020, as shown in **Exhibit L-1**. Public four-year institutions receive the bulk of the new State funds totaling \$94.6 million, which includes \$29.8 million for general salary increases (effective January 1, 2021) in fiscal 2021. Overall, funding grows 13.4% and 5.3% for Morgan State University (MSU) and the University System of Maryland (USM), respectively, after accounting for legislative reductions. The budget assumes a 2% increase in resident undergraduate tuition at USM and MSU; this is contingent upon approval of the governing boards. St. Mary's College of Maryland's Board of Trustees approved a 0% increase in tuition and fees (and room and board) for all students in fiscal 2021.

Exhibit L-1
State Support for Higher Education
Fiscal 2020 and 2021
(\$ in Thousands)

	<u>2020¹</u>	<u>2021²</u>	<u>\$ Change</u> <u>2020-2021</u>	<u>% Change</u> <u>2020-2021</u>
University System of Maryland	\$1,503,086	\$1,582,524	\$79,438	5.3%
Morgan State University	102,717	116,505	13,788	13.4%
St. Mary's College	27,158	28,510	1,352	5.0%
MHEC Special Grants ³	5,764	5,742	-23	-0.4%
MHEC Grants for Maryland 529	10,166	10,068	-99	-1.0%
Community Colleges ⁴	330,998	367,217	36,219	10.9%
Baltimore City Community College	40,316	40,413	96	0.2%
Independent Institutions	59,025	69,625	10,600	18.0%
MHEC Administration	6,814	6,814	0	0.0%
MHEC Student Financial Aid	122,058	131,572	9,514	7.8%
Total	\$2,208,103	\$2,358,989	\$150,886	6.8%

MHEC: Maryland Higher Education Commission

¹ Fiscal 2020 general funds are adjusted to reflect mid-year general salary increase.

² Fiscal 2021 general funds are adjusted to reflect general salary increases; reductions related to legislative actions; anticipated transfers from MHEC to University of Maryland, Baltimore Campus for the WellMobile; and University of Maryland Global Campus for management of the Waldorf Center.

³ Special grants funded with State general and special funds are included.

⁴ Community College funds include the Senate John A. Cade formula, other programs, and fringe benefits.

Source: Maryland State Budget Books; Department of Legislative Services

In fiscal 2021, under current law, independent institutions were to receive \$91.1 million through the Joseph A. Sellinger formula, an increase of \$32.0 million, or 54.3%, over fiscal 2020. However, a provision in the Budget Reconciliation and Financing Act of 2020, *Senate Bill 192 (Ch. 538)*, reduces funding by \$21.4 million to \$69.6 million, resulting in an increase of \$10.6 million, or 18.0% over fiscal 2020. State funding for community colleges increases \$36.2 million, or 10.9%, to \$367.2 million, in fiscal 2021, which includes full funding for the Senator John A. Cade funding formula. Funding for Baltimore City Community College, which has a separate statutory funding formula, grows 0.2%, or \$96,300.

State support for student financial aid increases 7.8%, or \$9.5 million, to \$131.6 million in fiscal 2021. This does not include State matching grants for Maryland 529, which are funded at

\$10.1 million in fiscal 2021. After accounting for a fiscal 2020 reversion of \$11.0 million, funding for the Maryland Community College Promise Scholarship increases \$7.5 million, to \$11.5 million in fiscal 2021. The largest need-based aid program, the Delegate Howard P. Rawlings Educational Excellence Awards Program, receives \$88.4 million, an increase of \$1.7 million, or 2.0%, over fiscal 2020.

The Coalition for Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission

The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. MHEC, et al. (06-CV-02773-CCB) is a lawsuit filed in the U.S. District Court for the District of Maryland in which the State of Maryland has been a defendant for the last 13 years. The action arose out of allegations by former and current students of historically black colleges and universities (HBCU) that the State, through ongoing policies and practices within the State’s system of higher education, violated the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment.

After previously rejecting plaintiffs’ claims related to limited institutional missions and operating funding deficiencies, on October 7, 2013, the District Court found that the State failed to eliminate a traceable *de jure* (as a matter of law) era policy of unnecessary program duplication that has exacerbated the racial identifiability of Maryland’s HBCUs, which are MSU and Bowie State University, Coppin State University, and the University of Maryland Eastern Shore within USM. Unnecessary duplication is defined as the offering by two or more institutions of the same nonessential or noncore programs, nonbasic liberal arts and sciences course work at the bachelor’s level, and all duplication at the master’s level and above. Moreover, the court cited the Maryland Higher Education Commission’s (MHEC) decision to approve a joint University of Baltimore/Towson University Masters of Business Administration program over the objections of MSU in 2005 as an example of how the State failed to prevent additional unnecessary duplication. (The joint program terminated in 2015 and reverted to University of Baltimore.)

The case remains unresolved after years of mediation, attempted negotiations, and a 2017 District Court Memorandum Opinion and Order on remedies. The plaintiffs’ attorneys made a proposal to settle the case for \$577 million in fall 2019. The Governor subsequently proposed a \$200 million “final offer” settlement amount, which was rejected by the plaintiffs. If the parties do not reach an agreement, it will move back to the federal appeals court for further litigation.

Legislation Mandates Funding for HBCUs Contingent on Final Settlement

House Bill 1260 (passed) provides an additional \$577 million to support HBCUs, contingent on final settlement of the lawsuit by December 1, 2020. The bill provides \$57.7 million annually for HBCUs from fiscal 2022 through 2031 to be distributed and used as discussed below. A new academic program evaluation unit is also established in MHEC with 10 additional staff mandated for the unit to provide sufficient capacity for MHEC to perform its duties. The estimated distribution of funds to HBCUs and estimated MHEC expenditures for fiscal 2022 through 2025

are shown in **Exhibit L-2**. Excluding the MHEC document management system costs, all expenditures shown in Exhibit L-2 are mandated by the bill.

On May 7, 2020, the Governor vetoed the bill due to concerns regarding the economic challenges resulting from the COVID-19 pandemic.

Exhibit L-2
***House Bill 1260* Estimated General Fund Expenditures**
Fiscal 2022-2025
(\$ in Thousands)

	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
Bowie State University	\$10,379	\$16,850	\$16,890	\$16,926
Coppin State University	4,458	7,210	7,217	7,217
Morgan State University	14,838	23,964	23,950	23,938
Univ. of MD Eastern Shore	5,992	9,676	9,644	9,618
Attorney Fees and Expenses	22,032	0	0	0
MHEC Staffing	731	749	775	802
MHEC Document Management	428	32	32	17
Other Operating Costs	55	6	6	6
Total	\$58,914	\$58,487	\$58,513	\$58,525

MHEC: Maryland Higher Education Commission

Source: Department of Legislative Services

For fiscal 2022, the bill establishes a mandated distribution for the \$57.7 million to HBCUs, and attorney fees and expenses in an amount of at least \$14.0 million but no more than \$25.0 million must be taken proportionately from that distribution. The \$22 million amount shown in Exhibit L-1 reflects the most recent court filing by the plaintiffs' attorneys for fees and expenses. For each of fiscal 2023 through 2031, the Governor must include in the annual State operating budget general funds of at least \$57.7 million to be allocated to HBCUs based on the percentage share of full-time equivalent students enrolled during the immediately preceding academic year. Additionally, funds provided by the bill are supplemental and do not supplant any other funds appropriated to public institutions of higher education in the State budget. The funds may be used for the following purposes, as determined by the university receiving the funds: scholarships and financial aid support services; faculty recruitment and development; expanding and improving existing academic programs, including online programs; development and implementation of new academic programs, including online programs; academic support; and marketing. These funds are not to be included in the calculations of State funding for the higher education funding formulas.

During the duration of the funding distribution, each HBCU must report annually on (1) the uses of the funds and (2) any new academic program developed with respect to development costs, startup costs, and ongoing costs to maintain the program. At the end of each fiscal year, any unused funds provided under the bill must be distributed to the HBCU Reserve Fund established by the bill. MHEC must administer the fund, and the funds may be used for the same purpose as specified for the initial allocation of the funds.

Requirements for the Final Settlement Agreement: The bill authorizes the Attorney General to execute a final settlement agreement on behalf of the State that resolves the lawsuit. Section 1 of the bill, which includes all of the provisions discussed above, is contingent on the execution of the final settlement agreement by December 1, 2020. This settlement agreement is not subject to approval by the Board of Public Works and must (1) incorporate and not exceed the financial and programmatic commitments contained in Section 1 of the bill; (2) incorporate a court order regarding the case as discussed in (2) below; and (3) provide for attorney's fees and expenses in an amount of at least \$14.0 million but no more than \$25.0 million to plaintiffs' counsel in the case.

Importantly, Section 1 of the bill is null and void if, by December 11, 2020, (1) the Department of Legislative Services has not received notice of the settlement agreement and (2) an order has not been issued from the U.S. District Court for the District of Maryland or the U.S. Court of Appeals for the Fourth Circuit that reverses or vacates the District Court's holding that the State failed to eliminate traceable *de jure* era policy of unnecessary program duplication or holds that any policy of unnecessary program duplication traceable to *de jure* segregation has been cured by the terms of the settlement agreement.

Provisions Not Contingent on Final Settlement Agreement: The bill also has several other provisions that are not contingent on a final settlement agreement. These provisions take effect July 1, 2020. The University System of Maryland William E. Kirwan Center for Academic Innovation, in collaboration with UMUC Ventures, must work with the State's HBCUs with the goal of developing and offering online academic programs. Each institution must report on progress as specified by December 1, 2020. Also by December 1, 2020, MHEC must, in consultation with the public four-year institutions of higher education, study and report on its academic program review policies and practices and any changes made as a result of the bill for the purpose of evaluating, streamlining, and improving academic program review; enhancing the economic competitiveness of the State by ensuring the responsiveness of institutions of higher education to market demand; and effectively supporting the State's workforce development requirements. Finally, the bill encourages HBCUs to hire a consultant to assist the institutions, as a collective, with programmatic development. The State's HBCUs are also encouraged to use funds provided under the bill to support and implement [*House Bill 1300*](#), the Blueprint for Maryland's Future, which was also vetoed by the Governor.

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