

**Department of Legislative Services**  
 Maryland General Assembly  
 2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 254 (Senator Hayes, *et al.*)  
 Education, Health, and Environmental Affairs

**Baltimore City Community College - Procurement Authority**

This bill generally exempts Baltimore City Community College (BCCC) from most provisions of State procurement law and from State oversight of its capital improvement program and information technology (IT) policies, standards, and procurement. **The bill takes effect July 1, 2019.**

**Fiscal Summary**

**State Effect:** Higher education expenditures for BCCC decrease by \$90,700 annually beginning in FY 2020 as BCCC retains revenues that would otherwise be remitted to the Major Information Technology Development Project Fund (MITDPF); special fund revenues for MITDPF within the Department of Information Technology (DoIT) decrease correspondingly. It is unclear whether, under the bill, BCCC must repay the \$2.3 million it currently owes to MITDPF, as discussed below. BCCC may require additional personnel over time to carry out the substantially greater responsibilities with regard to procurement and capital improvement projects that it assumes under the bill.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	(\$90,700)	(\$90,700)	(\$90,700)	(\$90,700)	(\$90,700)
Higher Ed Exp.	(\$90,700)	(\$90,700)	(\$90,700)	(\$90,700)	(\$90,700)
Net Effect	\$0	\$0	\$0	\$0	\$0

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** Subject to the review and approval of the Board of Public Works (BPW) and the Joint Committee on Administrative, Executive, and Legislative Review, the BCCC board of trustees must develop policies and procedures governing procurement by the college. The policies and procedures must promote the purposes of State procurement law. The board of trustees must also develop an IT plan that includes IT policies and standards that are functionally compatible with the statewide IT master plan and BCCC's strategic plan.

BCCC's capital improvement and service contracts valued at more than \$500,000 are still subject to review and approval by BPW, and any BCCC contracts for engineering services or public improvements that are valued at more than \$500,000 must, at the request of BPW, be reviewed by the Department of General Services (DGS). Specified provisions in State procurement law that also apply to other State higher education institutions also apply to BCCC, most notably provisions governing the State's Minority Business Enterprise program.

The Maryland State Board of Contract Appeals' authority over contract claims related to BCCC contracts terminates on July 1, 2019, but the BCCC board of trustees can elect to restore its authority, subject to approval by BPW.

### **Current Law:**

#### *Procurement Exemptions*

State law exempts the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) from the same provisions of procurement law that BCCC is exempt from under the bill, with some variations. Most notably, service and capital improvement contracts for those institutions are exempt from BPW review and approval if they are valued at more than \$1.0 million, rather than \$500,000 for BCCC. For most other Executive Branch agencies, BPW approval is required for *any* contract valued at more than \$200,000 (except for road and bridge projects).

Consistent with the bill's provisions for BCCC, the following provisions in procurement law still apply to USM, MSU, and SMCM:

- anti-collusion provisions;
- prohibitions against falsification and concealment of material facts;
- a required nondiscrimination contract clause;
- retainage requirements;

- minority business enterprise participation;
- procurement contract administration requirements;
- timing of payment and dispute resolution provisions; and
- suspension and debarment of contractors.

### *Capital Project Oversight*

DGS supervises any engineering question or matter concerning a public improvement. Any contract, plan, or specification for a public improvement must be submitted to and approved by DGS. However, some State agencies, including USM, MSU, and SMCM, are exempt from general oversight by DGS. For those institutions, DGS must, at BPW's request, provide advice on any contract that exceeds \$500,000 if the contract involves an engineering question.

### *Information Technology Oversight*

DoIT manages and oversees the purchase, lease, and rental of IT by Executive Branch agencies. Agencies must develop their own IT policies, standards, and plans that must be consistent with the State's IT master plan developed by DoIT. Agencies must also remit money received from (1) the sale, lease, or exchange of communication sites or frequencies for IT purpose and (2) an IT agreement involving resource sharing to MITDPF. However, USM, MSU, and SMCM, in addition to a small number of other agencies, are exempt from DoIT's oversight of IT procurement and planning and from participation in MITDPF.

### **State Fiscal Effect:**

#### *Resource Sharing Agreements*

BCCC has had two resource sharing agreements (RSAs) with AT&T and iHeart Media since 1988. The agreement with AT&T is for \$28,092 per year (\$2,341 month), and the agreement with iHeart Media is for \$62,652 per year (\$5,221 per month); in total, BCCC receives \$90,744 annually from these RSAs. Because the bill exempts BCCC from DoIT oversight and MITDPF participation, these revenues are kept by BCCC instead of being remitted to MITDPF. Therefore, higher education expenditures for BCCC and special fund revenues for MITDPF both decrease by \$90,744 annually beginning in fiscal 2020.

Furthermore, DoIT advises that BCCC owes MITDPF \$2.3 million in back pay because, over the lifetime of BCCC's 30-year RSA, BCCC has only remitted a total of \$90,744 to MITDPF. Given recent audit findings, this analysis assumes that, absent the bill, BCCC would begin to remit RSA revenues on an ongoing basis rather than retain them. However, it is unclear whether BCCC is required to remit the back pay to MITDPF under the bill

(since it represents a debt incurred prior to the bill's effective date). As such, the disposition of that payment is not addressed in this analysis.

### *Procurement Autonomy*

BCCC assumes substantially greater responsibilities for procurement and capital improvement projects under the bill. Currently, DGS manages BCCC procurements valued at more than \$50,000; BCCC reports that it had 32 active contracts that exceeded \$50,000 in value during fiscal 2018. DGS also provides project management, design review, contract management, and other related services for capital improvement projects because DGS maintains a full staff of experts in these fields. Under the bill, BCCC assumes responsibility for most of those tasks. BCCC advises that the autonomy granted by the bill creates operational efficiencies for the college and that it can assume the new responsibilities with existing resources. The Department of Legislative Services believes that BCCC may ultimately require additional procurement and technical staff to carry out these responsibilities, but a reliable estimate is not feasible.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Board of Contract Appeals; Baltimore City Community College; Department of General Services; Board of Public Works; Department of Legislative Services

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