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By: **Delegate Hammen**

Introduced and read first time: February 27, 2004

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education - University System of Maryland - Procurement**

3 FOR the purpose of exempting from certain policies and procedures of the State  
4 procurement law the procurement by the University System of Maryland of  
5 services relating to the investment and management of gift and endowment  
6 assets of the University System of Maryland; requiring the University System of  
7 Maryland Board of Regents to submit a certain annual report to the Governor  
8 and the General Assembly; and generally relating to the procurement by the  
9 University System of Maryland of certain services relating to the investment  
10 and management of certain gifts and assets.

11 BY repealing and reenacting, with amendments,  
12 Article - Education  
13 Section 12-104(e)  
14 Annotated Code of Maryland  
15 (2001 Replacement Volume and 2003 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article - Estates and Trusts  
18 Section 15-406  
19 Annotated Code of Maryland  
20 (2001 Replacement Volume and 2003 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - State Finance and Procurement  
23 Section 11-203(e)  
24 Annotated Code of Maryland  
25 (2001 Replacement Volume and 2003 Supplement)

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

1 **Article - Education**

2 12-104.

3 (e) (1) The Board may:

4 [(1)] (I) Apply for, accept, and spend any gift or grant from the federal  
5 government, any foundation, or any other person; and

6 [(2)] (II) Maintain and manage gift and endowment funds.

7 (2) ON OR BEFORE NOVEMBER 1 EACH YEAR, THE BOARD SHALL SUBMIT  
8 TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE  
9 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, AN ANNUAL INVESTMENT  
10 PERFORMANCE REPORT COMPARING THE VARIOUS COMPONENTS OF THE  
11 UNIVERSITY'S GIFT AND ENDOWMENT INVESTMENT PORTFOLIO TO APPROPRIATE  
12 BENCHMARKS.

13 **Article - Estates and Trusts**

14 15-406.

15 In the administration of the powers to appropriate appreciation, to make and  
16 retain investments, and to delegate investment management of institutional funds,  
17 members of a governing board shall exercise ordinary business care and prudence  
18 under the facts and circumstances prevailing at the time of the action or decision. In  
19 so doing they shall consider long and short term needs of the institution in carrying  
20 out its educational, religious, charitable, or other eleemosynary purposes, its present  
21 and anticipated financial requirements, expected total return on its investments,  
22 price level trends, and general economic conditions.

23 **Article - State Finance and Procurement**

24 11-203.

25 (e) (1) (i) In this subsection the following words have the meanings  
26 indicated.

27 (ii) "Board of Regents" means the Board of Regents of the  
28 University System of Maryland.

29 (iii) "University" means the University System of Maryland.

30 (2) Except as otherwise provided in this subsection, this Division II does  
31 not apply to the University System of Maryland.

32 (3) (i) A procurement by the University shall comply with the policies  
33 and procedures developed by the University and approved by the Board of Public  
34 Works and the Administrative, Executive, and Legislative Review Committee of the  
35 General Assembly in accordance with § 12-112 of the Education Article.

1 (ii) 1. Any contract for services or capital improvements with a  
2 value that exceeds \$500,000 shall require the review and approval of the Board of  
3 Public Works.

4 2. In its review of a contract for services or capital  
5 improvements with a value that exceeds \$500,000 the Board of Public Works may  
6 request the comments of the appropriate agencies, including the Department of  
7 Budget and Management and the Department of General Services.

8 (4) The University's policies shall:

9 (i) to the maximum extent practicable, require the purchasing of  
10 supplies and services in accordance with Title 14, Subtitle 1 of this article; and

11 (ii) promote the purposes of the regulations adopted by the  
12 Department of General Services governing the procurement of architectural and  
13 engineering services.

14 (5) (i) Except as provided in paragraph (7) of this subsection, the  
15 following provisions of Division II of this article apply to the University:

16 1. § 11-205 of this subtitle ("Fraud in procurement");

17 2. § 11-205.1 of this subtitle ("Falsification of material  
18 facts");

19 3. § 13-219 of this article ("Required clauses -  
20 Nondiscrimination clause");

21 4. § 13-225 of this article ("Retainage");

22 5. Title 14, Subtitle 3 of this article ("Minority Business  
23 Participation");

24 6. Title 15, Subtitle 1 of this article ("Procurement Contract  
25 Administration");

26 7. § 15-226 of this article ("Prompt payment of  
27 subcontractors"); and

28 8. Title 16 of this article ("Debarment of Contractors").

29 (ii) If a procurement violates the provisions of this subsection or  
30 policies adopted in accordance with this subsection, the procurement contract is void  
31 or voidable in accordance with the provisions of § 11-204 of this subtitle.

32 (6) (i) The State Board of Contract Appeals shall have authority over  
33 contract claims related to procurement contracts awarded by the University before  
34 July 1, 1999.

1 (ii) At the election of the Board of Regents and subject to the  
2 approval of the Board of Public Works, the State Board of Contract Appeals shall have  
3 authority over contract claims related to procurement contracts awarded by the  
4 University after June 30, 1999.

5 (7) Paragraphs (3), (4), and (5) of this subsection do not apply to:

6 (i) procurement by the University from:

- 7 1. another unit;
- 8 2. a political subdivision of the State;
- 9 3. an agency of a political subdivision of the State;
- 10 4. a government, including the government of another state,  
11 of the United States, or of another country;
- 12 5. an agency or political subdivision of a government; or
- 13 6. a bistate, multistate, bicounty, or multicounty  
14 governmental agency; [or]

15 (ii) procurement by the University in support of enterprise  
16 activities for the purpose of:

- 17 1. direct resale;
- 18 2. remanufacture and subsequent resale; or
- 19 3. procurement by the University for overseas programs; OR

20 (III) PROCUREMENT BY THE UNIVERSITY FOR:

21 1. SERVICES OF MANAGERS TO INVEST, IN ACCORDANCE  
22 WITH THE MANAGEMENT AND INVESTMENT POLICIES ADOPTED BY THE BOARD OF  
23 REGENTS, GIFT AND ENDOWMENT ASSETS RECEIVED BY THE UNIVERSITY IN  
24 ACCORDANCE WITH § 12-104(E) OF THE EDUCATION ARTICLE; OR

25 2. EXPENDITURES TO MANAGE, MAINTAIN, AND ENHANCE,  
26 IN ACCORDANCE WITH THE MANAGEMENT AND INVESTMENT POLICIES ADOPTED BY  
27 THE BOARD OF REGENTS, THE VALUE OF GIFT AND ENDOWMENT ASSETS RECEIVED  
28 BY THE UNIVERSITY IN ACCORDANCE WITH § 12-104(E) OF THE EDUCATION ARTICLE.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
30 effect July 1, 2004.