

SENATE BILL 849

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2004 Regular Session  
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By: **Senator Conway**

Introduced and read first time: February 20, 2004

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 23, 2004

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2004

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CHAPTER \_\_\_\_\_

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 the Comptroller, the Treasurer, and the General Assembly; requiring the  
9 University System of Maryland Board of Regents to report to the Comptroller  
10 and the Treasurer, by a certain date, on certain investment policies and  
11 procedures adopted by the Board; and generally relating to the procurement by  
12 the University System of Maryland of certain services relating to the investment  
13 and management of certain gifts and assets.

14 BY repealing and reenacting, with amendments,  
15 Article - Education  
16 Section 12-104(e)  
17 Annotated Code of Maryland  
18 (2001 Replacement Volume and 2003 Supplement)

19 BY repealing and reenacting, without amendments,  
20 Article - Estates and Trusts  
21 Section 15-406  
22 Annotated Code of Maryland  
23 (2001 Replacement Volume and 2003 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - State Finance and Procurement  
3 Section 11-203(e)  
4 Annotated Code of Maryland  
5 (2001 Replacement Volume and 2003 Supplement)

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

8 **Article - Education**

9 12-104.

10 (e) (1) The Board may:

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

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

14 (2) ON OR BEFORE NOVEMBER 1 EACH YEAR, THE BOARD SHALL SUBMIT  
15 TO THE GOVERNOR, THE COMPTROLLER, THE TREASURER, AND, IN ACCORDANCE  
16 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, AN  
17 ANNUAL INVESTMENT PERFORMANCE REPORT COMPARING THE VARIOUS  
18 COMPONENTS OF THE UNIVERSITY'S GIFT AND ENDOWMENT INVESTMENT  
19 PORTFOLIO TO APPROPRIATE BENCHMARKS.

20 **Article - Estates and Trusts**

21 15-406.

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

30 **Article - State Finance and Procurement**

31 11-203.

32 (e) (1) (i) In this subsection the following words have the meanings  
33 indicated.

34 (ii) "Board of Regents" means the Board of Regents of the  
35 University System of Maryland.

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

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

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

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

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

15 (4) The University's policies shall:

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

18 (ii) promote the purposes of the regulations adopted by the  
19 Department of General Services governing the procurement of architectural and  
20 engineering services.

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

23 1. § 11-205 of this subtitle ("Fraud in procurement");

24 2. § 11-205.1 of this subtitle ("Falsification of material  
25 facts");

26 3. § 13-219 of this article ("Required clauses -  
27 Nondiscrimination clause");

28 4. § 13-225 of this article ("Retainage");

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

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

33 7. § 15-226 of this article ("Prompt payment of  
34 subcontractors"); and

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

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

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

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

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

12 (i) procurement by the University from:

- 13 1. another unit;
- 14 2. a political subdivision of the State;
- 15 3. an agency of a political subdivision of the State;
- 16 4. a government, including the government of another state,  
 17 of the United States, or of another country;
- 18 5. an agency or political subdivision of a government; or
- 19 6. a bistate, multistate, bicounty, or multicounty  
 20 governmental agency; [or]

21 (ii) procurement by the University in support of enterprise  
 22 activities for the purpose of:

- 23 1. direct resale;
- 24 2. remanufacture and subsequent resale; or
- 25 3. procurement by the University for overseas programs; OR

26 (III) PROCUREMENT BY THE UNIVERSITY FOR:

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

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

1     SECTION 2. AND BE IT FURTHER ENACTED, That the Board of Regents of  
2 the University System of Maryland shall report to the Comptroller and the Treasurer  
3 by September 1, 2004, on the management and investment policies and procedures  
4 the Board has adopted to implement the provisions of this Act regarding the  
5 management of gift and endowment assets received by the University in accordance  
6 with § 12-104(e) of the Education Article.

7     ~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take  
8 effect July 1, 2004.