

ENROLLED BILL

-- Health and Government Operations/Education, Health, and Environmental Affairs --

Introduced by **Delegates Morhaim, Benson, Oaks, and Weldon Weldon, Hurson, Hammen, Boteler, Boutin, Bromwell, Costa, Donoghue, Elliott, Frank, Goldwater, Hubbard, Kach, Kullen, Mandel, McDonough, Murray, Nathan-Pulliam, Pendergrass, Rudolph, and V. Turner**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Exemptions - Policies and Procedures –~~Internal Oversight~~**

3 FOR the purpose of requiring certain units to have certain written policies and
4 procedures for certain procurements exempt from certain provisions of the
5 procurement law; providing for certain exceptions; establishing certain
6 requirements for certain written policies and procedures; requiring certain units
7 to submit certain written policies and procedures to the Board of Public Works
8 or certain boards, commissions, councils, or authorities for review at the
9 beginning of each fiscal year; ~~requiring certain units to submit a certain report~~
10 ~~to the Department of Budget and Management at a certain time each year;~~
11 ~~establishing certain requirements for certain reports;~~ specifying the form for
12 certain reports; requiring certain units with certain exemptions to comply with
13 certain provisions of law; declaring the intent of the General Assembly; and
14 generally relating to policies, ~~procedures, and internal oversight~~ and procedures

1 regarding units with certain exemptions from the procurement law.

2 BY repealing and reenacting, with amendments,
 3 Article - State Finance and Procurement
 4 Section 11-203(b)(1), (c), (d), and (f)
 5 Annotated Code of Maryland
 6 (2001 Replacement Volume and 2004 Supplement)

7 BY repealing and reenacting, without amendments,
 8 Article - State Finance and Procurement
 9 Section 11-203(e)(1) through (5)
 10 Annotated Code of Maryland
 11 (2001 Replacement Volume and 2004 Supplement)

12 BY adding to
 13 Article - State Finance and Procurement
 14 Section ~~11-203(e)(8); and 12-401 and 12-402~~ to be under the new subtitle
 15 "Subtitle 4. ~~Policies, Procedures, and Internal Oversight for Exemptions~~
 16 Policies and Procedures for Exempt Units"
 17 Annotated Code of Maryland
 18 (2001 Replacement Volume and 2004 Supplement)

19 ~~BY repealing and reenacting, with amendments,~~
 20 ~~Article - Education~~
 21 ~~Section 14-109(a)(1)~~
 22 ~~Annotated Code of Maryland~~
 23 ~~(2004 Replacement Volume and 2004 Supplement)~~

24 BY repealing and reenacting, with amendments,
 25 Article - Financial Institutions
 26 Section ~~13-718(2) and 13-1027~~
 27 Annotated Code of Maryland
 28 (2003 Replacement Volume and 2004 Supplement)

29 BY repealing and reenacting, with amendments,
 30 Article - Natural Resources
 31 Section 3-103(g)(2)
 32 Annotated Code of Maryland
 33 (2000 Replacement Volume and 2004 Supplement)

34 BY repealing and reenacting, with amendments,
 35 Article 83A - Department of Business and Economic Development
 36 Section 5-214(b), 5-2A-08, 5-308, and 5-503(d)
 37 Annotated Code of Maryland

1 (2003 Replacement Volume and 2004 Supplement)

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

4 **Article - State Finance and Procurement**

5 11-203.

6 (b) (1) The following provisions of this Division II apply to each procurement
7 enumerated in subsection (a) of this section:

8 (i) § 11-205 of this subtitle ("Fraud in procurement");

9 (ii) § 12-204 of this article ("Board approval for designated
10 contracts");

11 (iii) Title 12, Subtitle 2 of this article ("Supervision of Capital
12 Expenditures and Real Property Leases");

13 (iv) § 13-219 of this article ("Required clauses - Nondiscrimination
14 clause");

15 (v) § 13-221 of this article ("Disclosures to Secretary of State");

16 (vi) TITLE 12, SUBTITLE 4 OF THIS ARTICLE ("POLICIES,
17 PROCEDURES, AND INTERNAL OVERSIGHT FOR EXEMPTIONS POLICIES AND
18 PROCEDURES FOR EXEMPT UNITS"));

19 (VII) Title 16 of this article ("Debarment of Contractors"); and

20 [(vii)] (VIII) Title 17 of this article ("Special Provisions - State and
21 Local Subdivisions").

22 (c) Except as provided in TITLE 12, SUBTITLE 4 AND Title 14, Subtitle 3 of this
23 article, this Division II does not apply to the Maryland Stadium Authority.

24 (d) Except as provided in TITLE 12, SUBTITLE 4 AND Title 14, Subtitle 3 of this
25 article, this Division II does not apply to the Board of Trustees of the State
26 Retirement and Pension System for:

27 (1) services of managers to invest the assets of the State Retirement and
28 Pension System, including real and personal property;

29 (2) expenditures to manage, maintain, and enhance the value of the
30 assets of the State Retirement and Pension System in accordance with investment
31 guidelines adopted by the Board of Trustees;

32 (3) services related to the administration of the optional retirement
33 program under Title 30 of the State Personnel and Pensions Article; and

1 (4) services related to the administration of the Postretirement Health
2 Benefits Trust Fund.

3 ~~(e)~~ (8) ~~A UNIVERSITY IS SUBJECT TO TITLE 12, SUBTITLE 4 OF THIS~~
4 ~~ARTICLE.~~

5 (e) (1) In this subsection, "University" means the University System of
6 Maryland or Morgan State University.

7 (2) Except as otherwise provided in this subsection, this Division II does
8 not apply to the University System of Maryland or Morgan State University.

9 (3) (i) A procurement by a University shall comply with the policies
10 and procedures developed by the University and approved by the Board of Public
11 Works and the Administrative, Executive, and Legislative Review Committee of the
12 General Assembly in accordance with § 12-112 of the Education Article for the
13 University System of Maryland or § 14-109 of the Education Article for Morgan State
14 University.

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

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

22 (4) A University's policies shall:

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

25 (ii) promote the purposes of the regulations adopted by the
26 Department of General Services governing the procurement of architectural and
27 engineering services.

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

30 1. § 11-205 of this subtitle ("Fraud in procurement");

31 2. § 11-205.1 of this subtitle ("Falsification of material
32 facts");

33 3. § 13-219 of this article ("Required clauses -
34 Nondiscrimination clause");

35 4. § 13-225 of this article ("Retainage");

1 5. Title 14, Subtitle 3 of this article ("Minority Business

2 Participation");

3 6. Title 15, Subtitle 1 of this article ("Procurement Contract

4 Administration");

5 7. § 15-226 of this article ("Prompt payment of

6 subcontractors"); and

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

8 (ii) If a procurement violates the provisions of this subsection or

9 policies adopted in accordance with this subsection, the procurement contract is void or

10 voidable in accordance with the provisions of § 11-204 of this subtitle.

11 (f) Except as provided in TITLE 12, SUBTITLE 4 AND Title 14, Subtitle 3 of this
12 article, this Division II does not apply to the College Savings Plans of Maryland for:

13 (1) services of managers to invest the assets of the Maryland Prepaid
14 College Trust in accordance with the comprehensive investment plan adopted by the
15 College Savings Plans of Maryland Board under § 18-1906 of the Education Article;
16 and

17 (2) expenditures to manage, maintain, and enhance the value of the
18 assets of the Maryland Prepaid College Trust in accordance with the comprehensive
19 investment plan adopted by the College Savings Plans of Maryland Board under §
20 18-1906 of the Education Article.

21 SUBTITLE 4. ~~POLICIES, PROCEDURES, AND INTERNAL OVERSIGHT FOR EXEMPTIONS~~
22 POLICIES AND PROCEDURES FOR EXEMPT UNITS.

23 12-401.

24 (A)~~(1)~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EACH
25 UNIT WITH AN EXEMPTION FROM ANY PROVISION OF DIVISION II OF THIS ARTICLE
26 SHALL HAVE WRITTEN POLICIES AND PROCEDURES FOR THE EXEMPTED UNIT'S
27 PROCUREMENTS.

28 (2) THIS SECTION DOES NOT APPLY TO:

29 (I) § 11-203(A)(1)(III) OF THIS ARTICLE; ~~OR~~

30 (II) § 11-203(A)(2) OF THIS ARTICLE; OR

31 (III) § 11-203(E) OF THIS ARTICLE.

32 (B) WRITTEN POLICIES AND PROCEDURES SHALL INCLUDE:

33 (1) THE TYPES OF PROCUREMENT EXEMPTED FROM DIVISION II OF THIS
34 ARTICLE;

1 (2) ~~THE METHOD~~ METHODS OF PROCUREMENT TO BE USED FOR ~~EACH~~
2 ~~TYPE OF PROCUREMENT~~ PROCUREMENTS PROVIDED UNDER ~~PARAGRAPH ITEM~~(1) OF
3 THIS SUBSECTION;

4 (3) THE ADVERTISING REQUIREMENTS FOR EACH TYPE OF
5 PROCUREMENT PROVIDED UNDER ~~PARAGRAPH ITEM~~(1) OF THIS SUBSECTION;

6 (4) PROCUREMENT GOALS, INCLUDING MINORITY BUSINESS
7 ENTERPRISE PARTICIPATION, FOR EACH TYPE OF PROCUREMENT PROVIDED UNDER
8 ~~PARAGRAPH ITEM~~(1) OF THIS SUBSECTION; AND

9 (5) THE APPROVAL PROCESS FOR EACH TYPE OF PROCUREMENT
10 PROVIDED UNDER ~~PARAGRAPH ITEM~~(1) OF THIS SUBSECTION.

11 (C) (1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AT~~
12 ~~THE BEGINNING OF EACH FISCAL YEAR, EACH UNIT SHALL SUBMIT WRITTEN~~
13 ~~POLICIES AND PROCEDURES TO THE BOARD FOR REVIEW AT THE BEGINNING OF~~
14 ~~EACH FISCAL YEAR AS REQUIRED BY SUBSECTIONS (A) AND (B) OF THIS SECTION.~~

15 (2) ~~UNITS THAT ARE GOVERNED BY THEIR OWN BOARD, COMMISSION,~~
16 ~~COUNCIL, OR AUTHORITY SHALL SUBMIT THEIR POLICIES AND PROCEDURES AS~~
17 ~~REQUIRED BY SUBSECTIONS (A) AND (B) OF THIS SECTION TO THEIR BOARD,~~
18 ~~COMMISSION, COUNCIL, OR AUTHORITY FOR APPROVAL.~~

19 ~~12-402.~~

20 (A) (1) ~~EACH UNIT WITH AN EXEMPTION FROM ANY PROVISION OF DIVISION~~
21 ~~II OF THIS ARTICLE SHALL SUBMIT A REPORT TO THE DEPARTMENT OF BUDGET AND~~
22 ~~MANAGEMENT ON INTERNAL OVERSIGHT FOR PROCUREMENTS WITHIN THE UNIT'S~~
23 ~~EXEMPTION AT A CERTAIN TIME EACH YEAR.~~

24 (2) ~~THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL ADOPT~~
25 ~~REGULATIONS TO CARRY OUT THIS SECTION.~~

26 (B) ~~THE REPORT SHALL INCLUDE:~~

27 (1) ~~THE TOTAL DOLLAR AMOUNT SPENT ON PROCUREMENTS EXEMPTED~~
28 ~~FROM DIVISION II OF THIS ARTICLE;~~

29 (2) ~~THE DOLLAR AMOUNT SPENT ON EACH TYPE OF PROCUREMENT~~
30 ~~SPECIFIED IN A UNIT'S WRITTEN POLICIES AND PROCEDURES AS REQUIRED UNDER §~~
31 ~~12-401(B)(1) OF THIS SUBTITLE;~~

32 (3) ~~THE DOLLAR AMOUNT SPENT USING EACH METHOD OF~~
33 ~~PROCUREMENT SPECIFIED IN A UNIT'S WRITTEN POLICIES AND PROCEDURES AS~~
34 ~~REQUIRED UNDER § 12-401(B)(2) OF THIS SUBTITLE; AND~~

35 (4) ~~TO WHAT EXTENT THE UNIT MET THE PROCUREMENT GOALS~~
36 ~~SPECIFIED IN A UNIT'S POLICIES AND PROCEDURES AS REQUIRED UNDER §~~
37 ~~12-401(B)(4) OF THIS SUBTITLE.~~

1 ~~(C) THE REPORT MAY BE:~~

2 ~~(1) IN THE FORM OF A MANAGING FOR RESULTS PERFORMANCE~~
3 ~~MEASURE AS PROVIDED UNDER § 3-1002 OF THIS ARTICLE; OR~~

4 ~~(2) IN ANOTHER FORM APPROVED BY THE DEPARTMENT OF BUDGET~~
5 ~~AND MANAGEMENT THAT PROVIDES THE INFORMATION REQUIRED BY SUBSECTION~~
6 ~~(B) OF THIS SECTION.~~

7 ~~**Article - Education**~~

8 ~~14-109.~~

9 ~~(a) (1) Except as provided in § 11-203(e) AND TITLE 12, SUBTITLE 4 of the~~
10 ~~State Finance and Procurement Article, the University is exempt from Division II of~~
11 ~~the State Finance and Procurement Article.~~

12 **Article - Financial Institutions**

13 13-718.

14 The Authority is exempt:

15 ~~(2) Except as provided in TITLE 12, SUBTITLE 4 AND Title 14, Subtitle 3 of~~
16 ~~the State Finance and Procurement Article, from the provisions of Division II of the~~
17 ~~State Finance and Procurement Article; and~~

18 ~~13-1027.~~

19 The Authority is exempt:

20 (1) From the payment of taxes or assessments of any kind;

21 (2) Except as provided in TITLE 12, SUBTITLE 4 AND Title 14, Subtitle 3 of
22 the State Finance and Procurement Article, from the provisions of Division II of the
23 State Finance and Procurement Article; and

24 (3) From the provisions of Division I of the State Personnel and Pensions
25 Article that govern the State Personnel Management System.

26 **Article - Natural Resources**

27 ~~3-103.~~

28 (g) (2) The Service is exempt from the provisions of Division II of the State
29 Finance and Procurement Article, but is not exempt from Subtitle 3 of Title 14,
30 SUBTITLE 4 OF TITLE 12, Title 16, and Title 17 of the State Finance and Procurement
31 Article.

Article 83A - Department of Business and Economic Development

1 5-214.

2 (b) The Corporation and its officers and employees are subject to the Public
3 Ethics Law [and], the Public Information Act, AND TITLE 12, SUBTITLE 4 OF THE
4 STATE FINANCE AND PROCUREMENT ARTICLE.

5 5-2A-08.

6 (a) [The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
7 Corporation shall be exempt from:

8 (1) State and local taxes;

9 (2) Title 10 and Division II of the State Finance and Procurement Article;

10 (3) The laws governing the State Personnel Management System under
11 Division I of the State Personnel and Pensions Article;

12 (4) § 10-507 of the State Government Article; and

13 (5) Article 41 of the Code.

14 (b) The Corporation, its Board of Directors, and employees are subject to the
15 Public Ethics Law [and], the Public Information Act, AND TITLE 12, SUBTITLE 4 OF
16 THE STATE FINANCE AND PROCUREMENT ARTICLE.

17 5-308.

18 (A) [The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
19 Trust shall be exempt from:

20 (1) Taxation by the State and local government;

21 (2) The General Procurement Law provisions of Division II of the State
22 Finance and Procurement Article; and

23 (3) The provisions of Division I of the State Personnel and Pensions
24 Article that govern the State Personnel Management System.

25 (B) THE TRUST IS SUBJECT TO TITLE 12, SUBTITLE 4 OF THE STATE FINANCE
26 AND PROCUREMENT ARTICLE.

27 5-503.

28 (d) (1) [Division II] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
29 SUBSECTION, DIVISION II of the State Finance and Procurement Article does not
30 apply to the Department for services related to the investment, management,
31 analysis, purchase, or sale of assets of the Department in any transaction authorized
32

1 under this subtitle, including commissions related to the transfer of shares of stock in
2 a business entity.

3 (2) THE DEPARTMENT IS SUBJECT TO TITLE 12, SUBTITLE 4 OF THE
4 STATE FINANCE AND PROCUREMENT ARTICLE FOR SERVICES RELATED TO THE
5 INVESTMENT, MANAGEMENT, ANALYSIS, PURCHASE, OR SALE OF ASSETS OF THE
6 DEPARTMENT IN ANY TRANSACTION AUTHORIZED UNDER THIS SUBTITLE,
7 INCLUDING COMMISSIONS RELATED TO THE TRANSFER OF SHARES OF STOCK IN A
8 BUSINESS ENTITY.

9 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
10 General Assembly that enactment of this Act will ensure that State funds are being
11 expended by units in accordance with appropriate and adequate policies and
12 procedures governing procurement even if the unit has an exemption from the State
13 procurement law. While the University System of Maryland and Morgan State
14 University are already required under § 11-203(e) of the State Finance and
15 Procurement Article to develop policies and procedures governing procurement that are
16 subject to the approval of the Board of Public Works and the Administrative, Executive,
17 and Legislative Review Committee of the General Assembly, it is the intent of the
18 General Assembly that any revision, after the effective date of this Act, of the
19 Universities' policies and procedures meet, at a minimum, the requirements of §
20 12-401(b) of the State Finance and Procurement Article, as enacted by Section 1 of this
21 Act.

22 SECTION ~~2.~~3. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect October 1, 2005.