
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

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Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 17, 2005

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; and generally relating to policies, ~~procedures, and~~
 14 ~~internal oversight and procedures~~ regarding units with certain exemptions from
 15 the procurement law.

16 BY repealing and reenacting, with amendments,
 17 Article - State Finance and Procurement
 18 Section 11-203(b)(1), (c), (d), and (f)
 19 Annotated Code of Maryland
 20 (2001 Replacement Volume and 2004 Supplement)

21 BY adding to
 22 Article - State Finance and Procurement

1 Section 11-203(e)(8); and 12-401 ~~and 12-402~~ to be under the new subtitle
 2 "Subtitle 4. ~~Policies, Procedures, and Internal Oversight for Exemptions~~
 3 Policies and Procedures for Exempt Units"
 4 Annotated Code of Maryland
 5 (2001 Replacement Volume and 2004 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article - Education
 8 Section 14-109(a)(1)
 9 Annotated Code of Maryland
 10 (2004 Replacement Volume and 2004 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article - Financial Institutions
 13 Section 13-718(2) and 13-1027
 14 Annotated Code of Maryland
 15 (2003 Replacement Volume and 2004 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article - Natural Resources
 18 Section 3-103(g)(2)
 19 Annotated Code of Maryland
 20 (2000 Replacement Volume and 2004 Supplement)

21 BY repealing and reenacting, with amendments,
 22 Article 83A - Department of Business and Economic Development
 23 Section 5-214(b), 5-2A-08, 5-308, and 5-503(d)
 24 Annotated Code of Maryland
 25 (2003 Replacement Volume and 2004 Supplement)

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

28 **Article - State Finance and Procurement**

29 11-203.

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

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

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

- 1 (iii) Title 12, Subtitle 2 of this article ("Supervision of Capital
2 Expenditures and Real Property Leases");
- 3 (iv) § 13-219 of this article ("Required clauses - Nondiscrimination
4 clause");
- 5 (v) § 13-221 of this article ("Disclosures to Secretary of State");
- 6 (vi) TITLE 12, SUBTITLE 4 OF THIS ARTICLE ("~~POLICIES,
7 PROCEDURES, AND INTERNAL OVERSIGHT FOR EXEMPTIONS~~ POLICIES AND
8 PROCEDURES FOR EXEMPT UNITS");
- 9 (VII) Title 16 of this article ("Debarment of Contractors"); and
- 10 [(vii)] (VIII) Title 17 of this article ("Special Provisions - State and
11 Local Subdivisions").

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

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

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

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

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

24 (4) services related to the administration of the Postretirement Health
25 Benefits Trust Fund.

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

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

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

34 (2) expenditures to manage, maintain, and enhance the value of the
35 assets of the Maryland Prepaid College Trust in accordance with the comprehensive

1 investment plan adopted by the College Savings Plans of Maryland Board under §
2 18-1906 of the Education Article.

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

5 12-401.

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

10 (2) THIS SECTION DOES NOT APPLY TO:

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

12 (II) § 11-203(A)(2) OF THIS ARTICLE.

13 (B) WRITTEN POLICIES AND PROCEDURES SHALL INCLUDE:

14 (1) THE TYPES OF PROCUREMENT EXEMPTED FROM DIVISION II OF THIS
15 ARTICLE;

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

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

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

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

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

30 (2) UNITS THAT ARE GOVERNED BY THEIR OWN BOARD, COMMISSION,
31 COUNCIL, OR AUTHORITY SHALL SUBMIT THEIR POLICIES AND PROCEDURES AS
32 REQUIRED BY SUBSECTIONS (A) AND (B) OF THIS SECTION TO THEIR BOARD,
33 COMMISSION, COUNCIL, OR AUTHORITY FOR APPROVAL.

1 ~~12-402.~~

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

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

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

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

11 (2) ~~THE DOLLAR AMOUNT SPENT ON EACH TYPE OF PROCUREMENT~~
 12 ~~SPECIFIED IN A UNIT'S WRITTEN POLICIES AND PROCEDURES AS REQUIRED UNDER §~~
 13 ~~12-401(B)(1) OF THIS SUBTITLE;~~

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

17 (4) ~~TO WHAT EXTENT THE UNIT MET THE PROCUREMENT GOALS~~
 18 ~~SPECIFIED IN A UNIT'S POLICIES AND PROCEDURES AS REQUIRED UNDER §~~
 19 ~~12-401(B)(4) OF THIS SUBTITLE.~~

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

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

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

26 **Article - Education**

27 14-109.

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

Article - Financial Institutions

1
2 13-718.

3 The Authority is exempt:

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

7 13-1027.

8 The Authority is exempt:

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

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

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

Article - Natural Resources

15
16 3-103.

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

Article 83A - Department of Business and Economic Development

21
22 5-214.

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

26 5-2A-08.

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

29 (1) State and local taxes;

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

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

1 (4) § 10-507 of the State Government Article; and

2 (5) Article 41 of the Code.

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

6 5-308.

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

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

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

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

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

16 5-503.

17 (d) (1) [Division II] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
18 SUBSECTION, DIVISION II of the State Finance and Procurement Article does not
19 apply to the Department for services related to the investment, management,
20 analysis, purchase, or sale of assets of the Department in any transaction authorized
21 under this subtitle, including commissions related to the transfer of shares of stock in
22 a business entity.

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2005.

