
By: **Senators Conway, Britt, Currie, Exum, Gladden, Hughes, Jones, Kelley, Lawlah, and McFadden**

Introduced and read first time: January 21, 2005

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 18, 2005

CHAPTER _____

1 AN ACT concerning

2 **Procurement Higher Education - Morgan State University - Public**
 3 **Improvement and Engineering Projects Authority**

4 FOR the purpose of authorizing the Maryland Higher Education Commission to
 5 review and comment on the operating and capital budgets of the Board of
 6 Regents of Morgan State University only within a certain context; prohibiting
 7 the Commission from recommending against a certain budget item except under
 8 certain circumstances; authorizing the University to exercise certain corporate
 9 powers, adopt a certain seal, maintain a certain office, enter into certain
 10 contracts, and acquire, hold, lease, use, encumber, transfer, exchange, or dispose
 11 of certain property; authorizing the Board of Regents to establish, invest in,
 12 finance, and operate certain businesses or certain business entities under
 13 certain circumstances; clarifying the status of certain business entities and
 14 certain financial obligations; requiring the Board of Regents to submit a certain
 15 report; exempting certain public improvements made by Morgan State
 16 University from the Capital Improvement Program; repealing a certain
 17 provision regarding the responsibility of the Department of General Services to
 18 advise the University on certain engineering questions or certain public
 19 improvements; specifying that certain procurement of supplies, services, and
 20 construction by the University is subject to the Small Business Preference
 21 Program; making certain technical corrections; altering a certain definition;
 22 repealing a certain reversion; and generally relating to ~~public improvement and~~
 23 ~~engineering projects~~ the Authority of Morgan State University.

24 BY repealing and reenacting, with amendments,

25 Article - Education

26 Section 11-105(i)(4) and 14-104(b)

1 Annotated Code of Maryland
2 (2004 Replacement Volume and 2004 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article - Education
5 Section 14-104(a)
6 Annotated Code of Maryland
7 (2004 Replacement Volume and 2004 Supplement)

8 BY adding to
9 Article - Education
10 Section 14-110
11 Annotated Code of Maryland
12 (2004 Replacement Volume and 2004 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article - State Finance and Procurement
15 Section 4-401(d), ~~4-410~~, 4-410.1, and 14-201
16 Annotated Code of Maryland
17 (2001 Replacement Volume and 2004 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - State Finance and Procurement
20 Section 4-402(a), 4-406(a) and (b), 5-7B-01(d)(1)(v), 7-306(a), and 14-202(a)
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2004 Supplement)

23 BY repealing
24 Article - State Finance and Procurement
25 Section 4-410
26 Annotated Code of Maryland
27 (2001 Replacement Volume and 2004 Supplement)

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

30 **Article - Education**

31 11-105.

32 (i) (4) In submitting recommendations pursuant to paragraph (2)
33 of this subsection, the Commission shall comment on the overall level of funding for
34 higher education in order to achieve the goals established in the State Plan for Higher
35 Education, and may comment regarding funding priorities among segments of higher
36 education and, within public senior higher education, among institutions. In

1 reviewing the various budgets and submitting recommendations thereon, the

2 Commission:

3 (i) May not require, of any segment or institution, a detailed
4 budget presentation that tends to duplicate other presentations required in the
5 budget process;

6 (ii) As to the funding priority of any institution, may comment only
7 on the entity as a whole and not on any separate unit of the institution; and

8 (iii) As to the operating and capital budgets of the Board of Regents
9 of the University System of Maryland AND THE BOARD OF REGENTS OF MORGAN
10 STATE UNIVERSITY:

11 1. May review and comment only within the broad context of
12 the State Plan for Higher Education; and

13 2. May not recommend against a budget item approved by
14 the Board of Regents unless the item is clearly inconsistent with the State Plan for
15 Higher Education.

16 14-104.

17 (a) In addition to any other powers granted and duties imposed by this
18 subtitle, and subject to the provisions of Title 11 of this article and any other
19 restrictions imposed by law by specific reference to the University or by any trust
20 agreement involving a pledge of property or money, the Board of Regents:

21 (1) Is responsible for the management of Morgan State University and
22 has all the powers, rights, and privileges that go with that responsibility, including
23 the powers and duties set forth in this section;

24 (2) May not be superseded in its authority by any other State agency or
25 office in managing the affairs of Morgan State University; and

26 (3) Shall have all the powers of a Maryland corporation which are not
27 limited by law by specific reference to the University.

28 (b) IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS SUBTITLE,
29 THE UNIVERSITY MAY:

30 (1) EXERCISE ALL THE CORPORATE POWERS GRANTED MARYLAND
31 CORPORATIONS UNDER THE MARYLAND GENERAL CORPORATION LAW;

32 (2) ADOPT AND ALTER AN OFFICIAL SEAL;

33 (3) MAINTAIN AN OFFICE AT THE PLACE THE BOARD OF REGENTS MAY
34 DESIGNATE;

35 (4) ENTER INTO CONTRACTS OF ANY KIND, AND EXECUTE ALL
36 INSTRUMENTS NECESSARY OR CONVENIENT WITH RESPECT TO ITS CARRYING OUT

1 THE POWERS IN THIS SUBTITLE TO ACCOMPLISH THE PURPOSES OF THE
2 UNIVERSITY;

3 (5) ACQUIRE, HOLD, LEASE, USE, ENCUMBER, TRANSFER, EXCHANGE, OR
4 DISPOSE OF REAL AND PERSONAL PROPERTY; AND

5 (6) In addition to the powers set forth in Title 19 of this article and
6 subject to the approval of the Board of Public Works, borrow money from any source
7 for any corporate purpose, including working capital for its operations, reserve funds
8 or interest, and mortgage, pledge, or otherwise encumber the property or funds of the
9 University, and contract with or engage the services of any person in connection with
10 any financing, including financial institutions, issuers of credit, or insurers.

11 14-110.

12 (A) CONSISTENT WITH § 15-107 OF THIS ARTICLE AND ANY OTHER
13 APPLICABLE LAW, THE BOARD OF REGENTS MAY ESTABLISH, INVEST IN, FINANCE,
14 AND OPERATE BUSINESSES OR BUSINESS ENTITIES WHEN THE BOARD OF REGENTS
15 FINDS THAT DOING SO WOULD FURTHER ONE OR MORE GOALS OF THE UNIVERSITY
16 AND IS RELATED TO THE MISSION OF THE UNIVERSITY.

17 (B) (1) A BUSINESS ENTITY ESTABLISHED, INVESTED IN, FINANCED, OR
18 OPERATED IN ACCORDANCE WITH THIS SUBSECTION MAY NOT BE CONSIDERED AN
19 AGENCY OR INSTRUMENTALITY OF THE STATE OR A UNIT OF THE EXECUTIVE
20 BRANCH FOR ANY PURPOSE.

21 (2) A FINANCIAL OBLIGATION OR LIABILITY OF A BUSINESS ENTITY
22 ESTABLISHED, INVESTED IN, FINANCED, OR OPERATED IN ACCORDANCE WITH THIS
23 SUBSECTION MAY NOT BE A DEBT OR OBLIGATION OF THE STATE OR THE
24 UNIVERSITY.

25 (C) THE BOARD OF REGENTS SHALL SUBMIT TO THE GOVERNOR AND, IN
26 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL
27 ASSEMBLY, AN ANNUAL REPORT ON:

28 (1) THE BUSINESS ENTITIES ESTABLISHED IN ACCORDANCE WITH THIS
29 SECTION;

30 (2) FUNDS INVESTED IN, AND FINANCING PROVIDED TO, BUSINESS
31 ENTITIES ESTABLISHED IN ACCORDANCE WITH THIS SECTION;

32 (3) OWNERSHIP INTERESTS IN ANY BUSINESS ENTITIES ESTABLISHED
33 IN ACCORDANCE WITH THIS SECTION; AND

34 (4) THE CURRENT STATUS OF THE BUSINESS ENTITIES.

1 **Article - State Finance and Procurement**

2 4-401.

3 (d) "Public improvement" includes any construction, maintenance, or repair of
4 any building, structure, or other public work:5 (1) owned or constructed by the State or any unit of the State
6 government, including the University System of Maryland, St. Mary's College of
7 Maryland, and Morgan State University; or

8 (2) acquired or constructed in whole or in part with State funds.

9 4-402.

10 (a) (1) Except as provided in § 4-409 of this subtitle, this subtitle does not
11 apply to any public improvement made by:

12 (i) the Department of Transportation or a unit in that Department;

13 (ii) any housing authority created under Article 44A of the Code;

14 (iii) the Maryland-National Capital Park and Planning
15 Commission;

16 (iv) the Washington Suburban Sanitary Commission;

17 (v) the Baltimore County Metropolitan District;

18 (vi) a county, municipal corporation, or unit of a county or municipal
19 corporation; or

20 (vii) the University System of Maryland; OR

21 (VIII) MORGAN STATE UNIVERSITY.

22 (2) Except as provided in §§ [4-406, 4-410, and 4-410.1] 4-406 AND
23 4-410.1 of this subtitle or as otherwise provided by law, St. Mary's College of Maryland
24 and Morgan State University are subject to the provisions of this subtitle.

25 4-406.

26 (a) (1) [Except as provided in paragraph (4) of this subsection, the] THE
27 Department shall advise the Board of Public Works and any unit of the State
28 government in connection with any engineering question or matter concerning a
29 public improvement.30 (2) The Department shall supervise any engineering question or matter
31 concerning a public improvement.

1 (3) Any contract, plan, or specification for any public improvement that
2 involves an engineering question:

3 (i) shall be submitted to the Department; and

4 (ii) is subject to the approval of the Department.

5 (4) [With respect to any engineering question or a matter concerning a
6 public improvement, the Department shall advise Morgan State University in
7 accordance with the provisions of § 4-410 of this subtitle.

8 (5)] At the request of the Board of Public Works, the Department shall
9 advise the Board of Public Works on any contract that exceeds \$500,000 if the
10 contract involves an engineering question or a matter concerning a public
11 improvement undertaken by the University System of Maryland OR MORGAN STATE
12 UNIVERSITY.

13 (b) Except as provided in [§§ 4-410 and 4-410.1] § 4-410.1 of this subtitle, the
14 Department shall:

15 (1) represent the Board of Public Works at the opening of bids for a
16 public improvement;

17 (2) tabulate and record the bids; and

18 (3) advise the Board of Public Works on the bids.

19 ~~4-410.~~

20 (a) ~~This section applies to any public improvement project of Morgan State~~
21 ~~University.~~

22 (b) ~~In this section, "University" means Morgan State University.~~

23 (c) ~~For any public improvement project regardless of the source of funds:~~

24 (1) ~~architectural and engineering services shall be procured in~~
25 ~~accordance with Title 13, Subtitle 3 of this article;~~

26 (2) ~~for architectural and engineering services costing more than~~
27 ~~\$100,000, the Department shall make a recommendation for the award of a contract;~~

28 (3) ~~for architectural and engineering services costing less than \$100,000,~~
29 ~~the Department shall make the procurement;~~

30 (4) ~~for all design projects exceeding \$100,000 in contract value, the~~
31 ~~University shall submit periodic status reports to the Department; and~~

32 (5) ~~for all projects exceeding \$500,000 in contract value, the University~~
33 ~~shall submit periodic status reports to the Department.~~

1 (d) For any public improvement project financed in whole or in part with
2 proceeds of a consolidated capital bond loan or with State General Fund
3 appropriations, the following additional procedures shall apply:

4 (1) for architectural and engineering contracts exceeding \$100,000, the
5 Department must request the Board of Public Works to authorize the transfer of the
6 contract amount to University funds. Any additional funds that may be needed may
7 be transferred by an action of the Board of Public Works upon review by the
8 Department;

9 (2) plans, specifications, schematics, design development, contract and
10 bid documents shall be reviewed by the Department concurrent with University
11 review;

12 (3) the Department may have a representative present at bid openings;

13 (4) the University shall analyze construction bids, recommend contractor
14 selections, and notify the Department of its recommended selection and the date the
15 item will be on the Board of Public Works' agenda;

16 (5) the Department shall prepare an agenda item for the Board of Public
17 Works authorizing transfer to the University of the funds equal to the contract, plus
18 5% for use as a contingency fund for change orders. If the 5% contingency fund is
19 insufficient to complete the project, the Department shall review the change
20 conditions and make a recommendation to the Board of Public Works concerning the
21 transfer of additional funds;

22 (6) all program changes not authorized in the original scope of the
23 project shall be approved by the Department of Budget and Management and the
24 Department prior to commitment by the University;

25 (7) at completion of the project, any unused amount of construction
26 contingency funds or planning fund authorization shall be returned to the Board of
27 Public Works by an action agenda item of the University; and

28 (8) the Department shall be part of the final inspection of the project and
29 final acceptance may not occur without the Department's concurrence.

30 (e) (1) For any public improvement project funded solely from funds other
31 than State general funds or the proceeds of a general obligation bond loan, the
32 University is responsible for procuring public improvement and public
33 improvement related services, for planning, and for management of all aspects of the
34 project.

35 (2) Any contract under this subsection is subject to approval by the
36 Board of Public Works.

1 4-410.1.

2 (a) For purposes of this section, "College" means St. Mary's College of
3 Maryland.

4 (b) (1) For any public improvement project funded solely from funds other
5 than State general funds or the proceeds of a general obligation bond loan, the College
6 is responsible for procuring public improvement and public improvement-related
7 services, for planning, and for management of all aspects of the project.

8 (2) Any contract under this subsection is subject to approval by the
9 Board of Public Works.

10 5-7B-01.

11 (d) (1) "Growth-related project" means only the items set forth below:

12 (v) except as provided in paragraph (2) of this subsection,
13 procurement or funding of projects by the Department of General Services for:

14 1. leases of property by the State governed by §§ 4-318
15 through 4-321 of this article;

16 2. public improvements governed by [§§ 4-410 and 4-410.1]
17 § 4-410.1 of this article; and

18 3. land acquisition governed by §§ 4-411 through 4-416 of
19 this article.

20 7-306.

21 (a) This section applies only to [the following:

22 (1) Morgan State University; and

23 (2)] St. Mary's College of Maryland.

24 14-201.

25 (a) In this subtitle the following words have the meanings indicated.

26 (b) "Small business" means a business that meets the qualifications
27 established under § 14-203 of this subtitle.

28 (c) "Small business preference" means a purchase request for which bids are
29 invited from a list of qualified bidders that includes small businesses.

30 14-202.

31 (a) This subtitle applies to procurement of supplies, services, and construction
32 related services by:

- 1 (1) the Department of General Services;
- 2 (2) the Department of Transportation;
- 3 (3) the University System of Maryland; [and]
- 4 (4) MORGAN STATE UNIVERSITY; AND

5 [(4)] (5) as provided in subsection (b) of this section, the Department of
6 Public Safety and Correctional Services in connection with construction of a State
7 correctional facility under § 12-107 of this article.

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