

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 109

(Delegate Morhaim, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Exemptions - Policies and Procedures

This bill requires specified units of State government to maintain written policies and procedures for procurements exempt from State procurement law. The bill requires these policies to include specified information and be submitted to the Board of Public Works for approval each year.

Fiscal Summary

State Effect: Affected agencies may have to shift existing resources to meet the new procurement policies and procedures.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires that State agencies and entities with exemptions from the State procurement laws maintain internal written policies and procedures for exempt procurements. The policies and procedures must include the following information:

- types of procurement exempted from procurement laws;
- method of procurement to be used;
- advertising requirements for each type of exempt procurement;

- procurement goals, including Minority Business Enterprise (MBE) participation for exempt procurements; and
- the approval process for exempt procurements.

These policies and procedures must be submitted to the Board of Public Works for annual review. An entity governed by its own board, commission, council, or authority must submit policies and procedures to its respective board, commission, council, or authority.

Finally, the bill does not apply to the University System of Maryland or Morgan State University.

Current Law: Division II of the State Finance and Procurement Article addresses the General Procurement Laws. Section 11-203(a)(1) of this article exempts certain State agencies and entities from Division II and its associated requirements. Other exemptions exist in the enabling articles of certain State agencies and entities. Additionally, § 11-203(a)(2) exempts intergovernmental contracts, *i.e.*, procurements between State units and:

- other State units;
- political subdivisions of the State;
- other governments (state, federal, or foreign);
- agency or political subdivision of a government; and
- a multijurisdiction agency (*e.g.*, bicontry or bistrate).

These procurements are exempt from Division II, regardless of whether the purchasing agency has a larger exemption (see **Exhibit 1**).

Despite the exemptions, the units included in § 11-203(a)(1) and (2) are required to conform to certain Division II provisions including: (1) fraud in procurement; (2) Board of Public Works approval for designated contracts; (3) supervision of capital expenditures and real property leases; (4) required clauses – nondiscrimination clause; (5) disclosures to Secretary of State; (6) debarment of contractors; and (7) special provisions – State and local subdivisions.

Additionally, under § 11-203(b)(2), procurements by § 11-203(a) exempt units must be made under procedures that promote the general purposes listed in § 11-201. These purposes include:

- providing for increased confidence in State procurement;

- ensuring fair and equitable treatment of all persons who deal with the State procurement system;
- providing safeguards for maintaining a State procurement system of quality and integrity;
- fostering effective broad-based competition in the State through support of the free enterprise system;
- promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials;
- providing increased economy in the State procurement system;
- getting the maximum benefit from the purchasing power of the State;
- simplifying, clarifying, and modernizing the law that governs State procurement;
- allowing the continued development of procurement regulations, policies, and practices in the State; and
- promoting development of uniform State procurement procedures to the extent possible.

Division II also addresses rules governing source selection, procurement preferences, contract administration and dispute resolution, suspension and debarment of contractors, and State and local subdivisions.

Exhibit 1 shows the State units that are exempt from Division II of the procurement laws:

Exhibit 1
Exemptions from Division II of the Procurement Law

<u>Agency</u>	<u>Statutory Exemption</u>	<u>Enabling Legislation for Exemption</u>
Maryland State Arts Council	SFP, § 11-203(a)(1)(ii)	Chapter 292 of 1984
Maryland Health and Higher Educational Facilities Authority	SFP, § 11-203(a)(1)(iii)	Chapter 840 of 1986
Maryland Public Broadcasting Commission	SFP, § 11-203(a)(1)(vii)	Chapter 840 of 1986
Maryland Historical Trust	SFP, § 11-203(a)(1)(xi)	Chapter 840 of 1986
Maryland State Planning Council on Development Disabilities	SFP, § 11-203(a)(1)(ix)	Chapter 292 of 1984

<u>Agency</u>	<u>Statutory Exemption</u>	<u>Enabling Legislation for Exemption</u>
University of Maryland (University College)	SFP, § 11-203(a)(1)(xii)	Chapter 555 of 1983
University System of Maryland Rural Maryland Council (Form for Rural Maryland)	SFP, § 11-203(e) SFP, § 11-203(a)(1)(xv)	Chapter 515 of 1999 Chapter 119 of 1995
Blind Industries and Services of Maryland	SFP, § 11-203(a)(1)(i)	Chapter 608 of 1982
Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Business and Economic Development	SFP, § 11-203(a)(1)(v)	Chapter 840 of 1986
Maryland Food Center Authority	SFP, § 11-203(a)(1)(vi)	Chapters 650 and 675 of 1983
Maryland Automobile Insurance Fund	SFP, § 11-203(a)(1)(x)	Chapter 840 of 1986
St. Mary's College of Maryland	SFP, § 11-203(a)(1)(xiii)	Chapter 209 of 1992
Department of Business and Economic Development	SFP, § 11-203(a)(1)(xiv)	Chapter 555 of 1993
Maryland State Lottery Agency	SFP, § 11-203(a)(1)(xvi)	Chapter 548 of 1997
Maryland Stadium Authority	SFP, § 11-203(c)	Chapter 123 of 1987
Maryland Health Insurance Plan (within the Maryland Insurance Administration)	SFP, § 11-203(a)(1)(xvii)	Chapter 153 of 2002
Maryland Energy Administration	SFP, § 11-203(a)(1)(xviii)	Chapter 412 of 2003
Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene	SFP, § 11-203(a)(1)(xix)	Chapter 471 of 2003
State Retirement and Pension System	SFP, § 11-203(d)	Chapter 860 of 1986 Chapter 544 of 1994 Chapter 520 of 1999
Maryland Environmental Service	NR, § 3-103(g)(2)	Chapter 196 of 1993 (replacement) [Chapter 840 of 1986 (repealed)]
Maryland Economic Development Corporation	Article 83A, § 5-214	Chapter 498 of 1984

<u>Agency</u>	<u>Statutory Exemption</u>	<u>Enabling Legislation for Exemption</u>
Maryland Technology Development Corporation	Article 83A, § 5-2A-08	Chapter 661 of 1998
Maryland Venture Capital Trust	Article 83A, § 5-308(2)	Chapter 222 of 1990
Enterprise Fund Canal Place Authority	Article 83A, § 5-503(d) FI, § 13-1027(2)	Chapter 305 of 2000 Chapter 544 of 1993
Morgan State University	ED, § 14-109(a)(1) SFP, § 11-203(e)(1)	Chapter 485 of 2004 Chapter 273 of 2004
College Savings Plan of Maryland	SFP, § 11-203(e)(7)(f)	Chapter 208 of 2004

Source: Department of Legislative Services

Background: *Review of Maryland Procurement Law Exemptions* noted that of the 28 executive units identified as exempt from Division II of the Procurement Law, 10 had formal written procurement policies and procedures and 10 maintained informal principles or guidelines for procurement activities.

State Expenditures: Exempt agencies, including the State Lottery Agency, State Retirement Agency, Department of Business and Economic Development, Maryland Stadium Authority, and the Maryland Public Broadcasting Commission have all indicated that the requirements of the bill could be met with existing resources.

The Board of Public Works, responsible for annual review of procurement policies and procedures, notes that the review process will require significant staff resources. However, because of the specialized nature of the subject matter, the board will complete the review process with the existing staff.

Small Business Effect: Minimal impact. As State procurement processes become more transparent and uniform across agencies, bidding processes will become more competitive. This will allow more contractors to become involved in the procurement process, as opposed to only contractors with a knowledge of and history with the procuring agency.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2005

ncs/hlb Revised - House Third Reader - March 22, 2005

Revised - Enrolled Bill - May 5, 2005

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