

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL NO. 444  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in lines 2, 16, 18, and 24, in each instance, after “University” insert “and St. Mary’s College of Maryland”; in line 18, strike “the” and substitute “Morgan State”; in line 19, after “improvements;” insert “requiring the Department of General Services to advise the Board of Public Works on certain contracts for Morgan State University and St. Mary’s College of Maryland that exceed a certain dollar amount under certain circumstances; requiring certain procurements for St. Mary’s College of Maryland to comply with certain policies and procedures; requiring certain procurements of St. Mary’s College of Maryland to be subject to review and approval by the Board of Public Works; specifying St. Mary’s College as a primary procurement unit;”; in line 20, strike the first “the” and substitute “Morgan State”; and in line 27, strike “(b) and”.

On page 2, in line 6, strike “(b)” and substitute “(a-1)”; in line 11, strike “, 4-410.1,”; in line 16, after “7-306(a),” insert “11-101(l),”; after line 19, insert:

“BY repealing and reenacting, with amendments,

Article - State Finance and Procurement

Section 11-203

Annotated Code of Maryland

(2001 Replacement Volume and 2005 Supplement)

(As enacted by Chapter 402 of the Acts of the General Assembly of 2003 and Chapter 515 of the Acts of the General Assembly of 2004);

and in line 22, after “4-410” insert “and 4-410.1”.

AMENDMENT NO. 2

On page 4, in line 16, strike “(B)” and substitute “(A-1)”; and strike in their entirety lines 28 through 34, inclusive.

(Over)

On page 5, in line 4, after “(Q)” insert “(1)”; and after line 6, insert:

“(2) THE BOARD OF REGENTS MAY MODIFY OR RESCIND AT ANY TIME IN WHOLE OR IN PART ANY DELEGATION OF AUTHORITY GRANTED BY IT TO THE PRESIDENT.”.

AMENDMENT NO. 3

On page 6, in line 6, strike “(1)”; and in lines 8, 9, 10, 12, 13, 14, 16, and 17, strike “(i)”, “(ii)”, “(iii)”, “(iv)”, “(v)”, “(vi)”, “(vii)”, and “(VIII)”, respectively, and substitute “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, “(6)”, “(7)”, and “(8)”, respectively; in line 16, strike “OR”; and in line 17, after “UNIVERSITY” insert “; OR

(9) ST. MARY’S COLLEGE OF MARYLAND”;

and strike in their entirety lines 18 through 20, inclusive.

On page 7, in line 7, strike “OR” and substitute a comma; in line 8, after “UNIVERSITY” insert “, OR ST. MARY’S COLLEGE OF MARYLAND”; and strike in its entirety line 9 and substitute “(b) THE”.

AMENDMENT NO. 4

On page 8 in line 31, before “4-410.1” insert an opening bracket.

On page 9, in line 2, after “Works.” insert a closing bracket; in line 8, after “article;” insert “AND”; strike beginning with “public” in line 9 down through “3.” in line 11; and after line 16, insert:

“11-101.

(1) “Primary procurement units” means:

(1) the State Treasurer;

(2) the Department of Budget and Management;

(3) the Department of General Services;

- (4) the Department of Transportation;
- (5) the University System of Maryland;
- (6) the Maryland Port Commission;
- (7) the Department of Public Safety and Correctional Services; [and]
- (8) the Morgan State University; AND
- (9) THE ST. MARY'S COLLEGE OF MARYLAND.

11-203.

- (a) Except as provided in subsection (b) of this section, this Division II does not apply to:
  - (1) procurement by:
    - (i) the Blind Industries and Services of Maryland;
    - (ii) the Maryland State Arts Council, for the support of the arts;
    - (iii) the Maryland Health and Higher Educational Facilities Authority, if no State money is to be spent on a procurement contract;
    - (iv) the Maryland Higher Education Supplemental Loan Authority, if no State money is to be spent on a procurement contract;
    - (v) the Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Business and Economic Development, for training services or programs for new or expanding businesses or industries or businesses or industries in transition;

(Over)

(vi) the Maryland Food Center Authority, to the extent the Authority is exempt under Title 13, Subtitle 1 of Article 41 of the Code;

(vii) the Maryland Public Broadcasting Commission:

1. for services of artists for educational and cultural television productions; or

2. when planning for or fulfilling the obligations of grants or cooperative agreements that support the educational and cultural activities of the Commission;

(viii) public institutions of higher education, for cultural, entertainment, and intercollegiate athletic procurement contracts;

(ix) the Maryland State Planning Council on Developmental Disabilities, for services to support demonstration, pilot, and training programs;

(x) the Maryland Automobile Insurance Fund;

(xi) the Maryland Historical Trust for:

1. surveying and evaluating architecturally, archeologically, historically, or culturally significant properties; and

2. other than as to architectural services, preparing historic preservation planning documents and educational material;

(xii) the University of Maryland, for University College Overseas Programs, if the University adopts regulations that:

1. establish policies and procedures governing procurement for University College Overseas Programs; and

2. promote the purposes stated in § 11-201(a) of this subtitle;

(xiii) [St. Mary's College of Maryland;

(xiv) the Department of Business and Economic Development, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of Maryland and the tourism industry where there will be a private sector contribution to the project if not less than 50% of the total cost of the project, if the project is reviewed by the Attorney General and approved by the Secretary of Business and Economic Development or the Secretary's designee;

[(xv)] (XIV) the Rural Maryland Council;

[(xvi)] (XV) the Maryland State Lottery Agency, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of the Maryland State Lottery and its products, if the cooperative marketing project:

1. provides a substantive promotional or marketing value that the lottery determines acceptable in exchange for advertising or other promotional activities provided by the lottery;

2. does not involve the advertising or other promotion of alcohol or tobacco products; and

3. is reviewed by the Attorney General and approved by the Maryland Lottery Director or the Director's designee;

[(xvii)] (XVI) the Maryland Health Insurance Plan established under Title 14, Subtitle 5 of the Insurance Article;

[(xviii)] (XVII) the Maryland Energy Administration, when negotiating or entering into grants or cooperative agreements with private entities to meet federal specifications or solicitation requirements related to energy conservation, energy efficiency, or renewable energy projects that benefit the State; and

[(xix)] (XVIII) the Maryland Developmental Disabilities Administration of

the Department of Health and Mental Hygiene for family and individual support services, and individual family care services, as those terms are defined by the Department of Health and Mental Hygiene in regulation;

(2) procurement by a unit from:

(i) another unit;

(ii) a political subdivision of the State;

(iii) an agency of a political subdivision of the State;

(iv) a government, including the government of another state, of the United States, or of another country;

(v) an agency or political subdivision of a government; or

(vi) a bistate, multistate, bicounty, or multicounty governmental agency; or

(3) procurement in support of enterprise activities for the purpose of:

(i) direct resale; or

(ii) remanufacture and subsequent resale.

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

(i) § 11-205 of this subtitle (“Fraud in procurement”);

(ii) § 12-204 of this article (“Board approval for designated contracts”);

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

(iv) § 13-219 of this article (“Required clauses - Nondiscrimination

clause”);

(v) § 13-221 of this article (“Disclosures to Secretary of State”);

(vi) Title 12, Subtitle 4 of this article (“Policies and Procedures for Exempt Units”);

(vii) Title 16 of this article (“Debarment of Contractors”); and

(viii) Title 17 of this article (“Special Provisions - State and Local Subdivisions”).

(2) A procurement by an entity listed in subsection (a)(1)(i) through [(xv)] (XIV) and [(xix)] (XVIII) of this section shall be made under procedures that promote the purposes stated in § 11-201(a) of this subtitle.

(3) (i) A unit that procures human, social, or educational services from an entity enumerated in subsection (a)(2) of this section shall publish in eMaryland Marketplace notice of a procurement contract or an extension or renewal of a procurement contract if:

1. the procurement contract, extension, or renewal costs more than \$25,000; and

2. the procurement is made for 3rd party clients described in § 13-106 of this article.

(ii) The notice required under this paragraph shall be published not more than 30 days after the execution and approval of the procurement contract or the extension or renewal of the procurement contract.

(4) The purchase of advisory services from the General Selection Board or the Transportation Selection Board under § 13-305 of this article shall be governed by the Maryland Architectural and Engineering Services Act.

(Over)

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

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

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

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

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

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

(e) (1) In this subsection, "University" means the University System of Maryland [or], Morgan State University, OR ST. MARY'S COLLEGE OF MARYLAND.

(2) Except as otherwise provided in this subsection, this Division II does not apply to the University System of Maryland [or], Morgan State University, OR ST. MARY'S COLLEGE OF MARYLAND.

(3) (i) A procurement by a University shall comply with the policies and procedures developed by the University and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the General Assembly in accordance with § 12-112 of the Education Article for the University System of Maryland or § 14-109 of the Education Article for Morgan State University, OR § 14-405(F) OF THE EDUCATION ARTICLE FOR ST. MARY'S COLLEGE OF MARYLAND.

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

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

(4) A University's policies shall:

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

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

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

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

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

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

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

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

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

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

(Over)

and

8. Title 16 of this article (“Debarment of Contractors”).

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

(6) (i) The State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by:

1. the University System of Maryland before July 1, 1999; and
2. Morgan State University before July 1, 2004.

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

(iii) At the election of the Board of Regents of Morgan State University and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by the University after June 30, 2004.

(IV) AT THE ELECTION OF THE BOARD OF TRUSTEES OF ST. MARY’S COLLEGE OF MARYLAND AND SUBJECT TO THE APPROVAL OF THE BOARD OF PUBLIC WORKS, THE STATE BOARD OF CONTRACT APPEALS SHALL HAVE AUTHORITY OVER CONTRACT CLAIMS RELATED TO PROCUREMENT CONTRACTS AWARDED BY ST. MARY’S COLLEGE OF MARYLAND AFTER JUNE 30, 2006.

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

- (i) procurement by a University from:

1. another unit;
  2. a political subdivision of the State;
  3. an agency of a political subdivision of the State;
  4. a government, including the government of another state, of the United States, or of another country;
  5. an agency or political subdivision of a government; or
  6. a bistate, multistate, bicounty, or multicounty governmental agency;
- (ii) procurement by a University in support of enterprise activities for the purpose of:
1. direct resale;
  2. remanufacture and subsequent resale; or
  3. procurement by the University for overseas programs; or
- (iii) procurement by the University System of Maryland for:
1. services of managers to invest, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, gift and endowment assets received by the University System of Maryland in accordance with § 12-104(e) of the Education Article; or
  2. expenditures to manage, maintain, and enhance, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, the value of gift and endowment assets received by the University System of Maryland in accordance with § 12-104(e) of the Education Article.

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

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

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