
By: **Delegate Bohanan**

Introduced and read first time: January 30, 2006

Assigned to: Health and Government Operations and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - St. Mary's College of Maryland - Public Works Authority**

3 FOR the purpose of exempting St. Mary's College of Maryland from certain provisions
4 of law governing the oversight of public improvement projects by the
5 Department of General Services; requiring the Department of General Services
6 to advise the Board of Public Works on certain contracts for St. Mary's College of
7 Maryland that exceed a certain dollar amount under certain circumstances;
8 requiring certain procurements for St. Mary's College of Maryland to comply
9 with certain policies and procedures; requiring certain procurements of St.
10 Mary's College of Maryland to be subject to review and approval by the Board of
11 Public Works; providing that a public improvement of St. Mary's College of
12 Maryland includes any public improvement of the Historic St. Mary's City
13 Commission; and generally relating to the Public Works Authority of St. Mary's
14 College of Maryland under the State procurement law.

15 BY repealing and reenacting, with amendments,
16 Article - State Finance and Procurement
17 Section 4-402, 4-406, and 11-203
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2005 Supplement)

20 BY repealing
21 Article - State Finance and Procurement
22 Section 4-410.1
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2005 Supplement)

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

Article - State Finance and Procurement

2 4-402.

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

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

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

7 (iii) the Maryland-National Capital Park and Planning
8 Commission;

9 (iv) the Washington Suburban Sanitary Commission;

10 (v) the Baltimore County Metropolitan District;

11 (vi) a county, municipal corporation, or unit of a county or municipal
12 corporation; [or]

13 (vii) the University System of Maryland; OR

14 (VIII) ST. MARY'S COLLEGE OF MARYLAND.

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

18 (3) FOR PURPOSES OF THIS SUBTITLE, A PUBLIC IMPROVEMENT OF ST.
19 MARY'S COLLEGE OF MARYLAND INCLUDES ANY PUBLIC IMPROVEMENT OF THE
20 HISTORIC ST. MARY'S CITY COMMISSION.

21 (b) The Board of Public Works may exempt specific projects of a unit of the
22 State government from the provisions of this subtitle.

23 (c) The Board of Public Works shall adopt regulations in accordance with Title
24 10, Subtitle 1 of the State Government Article establishing procedures for the
25 exemption of specific projects of units of State government under subsection (b) of this
26 section.

27 4-406.

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

32 (2) The Department shall supervise any engineering question or matter
33 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 ST. MARY'S
12 COLLEGE OF MARYLAND.

13 (b) Except as provided in §§ 4-410 [and 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 (c) The Department shall supervise each appraisal related to a public
20 improvement.

21 (d) (1) The Department shall collect and maintain a complete and accurate
22 file of drawings and plats of the location of all public improvements.

23 (2) The Department shall collect and maintain records of construction
24 costs and progress on each public improvement.

25 (3) The Department shall adequately store and protect any original
26 drawing, plat, record, or specification.

27 (e) The Department shall examine and approve or disapprove each plan and
28 specification prepared in connection with the preparation or execution of a contract
29 for a public improvement.

30 (f) (1) The Department shall inspect and approve or disapprove any
31 material, equipment, and methods used in making public improvements and shall
32 inspect each public improvement during the course of construction or repair.

33 (2) The duty of the Department under this subsection does not relieve an
34 architect or engineer of any supervisory responsibility for which the architect or
35 engineer is employed.

1 (g) (1) The provisions of subsections (a), (b), (e), and (f) of this section do not
2 apply to State correctional facilities as defined in § 11-101 of this article.

3 (2) In accordance with §§ 10-102 through 10-105 of the Correctional
4 Services Article, the Department of Public Safety and Correctional Services shall
5 perform the duties specified in subsections (a), (b), (e), and (f) of this section for State
6 correctional facilities.

7 [4-410.1.

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

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

14 (2) Any contract under this subsection is subject to approval by the
15 Board of Public Works.]

16 11-203.

17 (a) Except as provided in subsection (b) of this section, this Division II does
18 not apply to:

19 (1) procurement by:

20 (i) the Blind Industries and Services of Maryland;

21 (ii) the Maryland State Arts Council, for the support of the arts;

22 (iii) the Maryland Health and Higher Educational Facilities
23 Authority, if no State money is to be spent on a procurement contract;

24 (iv) the Maryland Higher Education Supplemental Loan Authority,
25 if no State money is to be spent on a procurement contract;

26 (v) the Maryland Industrial Training Program or the Partnership
27 for Workforce Quality Program in the Department of Business and Economic
28 Development, for training services or programs for new or expanding businesses or
29 industries or businesses or industries in transition;

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

32 (vii) the Maryland Public Broadcasting Commission:

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

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

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

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

10 [(xix)] (XVIII) the Maryland Developmental Disabilities
11 Administration of the Department of Health and Mental Hygiene for family and
12 individual support services, and individual family care services, as those terms are
13 defined by the Department of Health and Mental Hygiene in regulation;

14 (2) procurement by a unit from:

15 (i) another unit;

16 (ii) a political subdivision of the State;

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

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

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

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

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

24 (i) direct resale; or

25 (ii) remanufacture and subsequent resale.

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

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

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

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

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

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

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

6 (vii) Title 16 of this article ("Debarment of Contractors"); and

7 (viii) Title 17 of this article ("Special Provisions - State and Local
8 Subdivisions").

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

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

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

18 2. the procurement is made for 3rd party clients described in
19 § 13-106 of this article.

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

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

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

28 (d) 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 Board of Trustees of the State
30 Retirement and Pension System for:

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

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

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

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

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

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, OR ST.
9 MARY'S COLLEGE OF MARYLAND.

10 (3) (i) A procurement by a University shall comply with the policies
11 and procedures developed by the University and approved by the Board of Public
12 Works and the Administrative, Executive, and Legislative Review Committee of the
13 General Assembly in accordance with § 12-112 of the Education Article for the
14 University System of Maryland [or], § 14-109 of the Education Article for Morgan
15 State University, OR § 14-105(F) OF THE EDUCATION ARTICLE FOR ST. MARY'S
16 COLLEGE OF MARYLAND.

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

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

24 (4) A University's policies shall:

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

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

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

32 1. § 11-205 of this subtitle ("Fraud in procurement");

33 2. § 11-205.1 of this subtitle ("Falsification of material
34 facts");

35 3. § 13-219 of this article ("Required clauses -
36 Nondiscrimination clause");

- 1 4. § 13-225 of this article ("Retainage");
- 2 5. Title 14, Subtitle 3 of this article ("Minority Business
- 3 Participation");
- 4 6. Title 15, Subtitle 1 of this article ("Procurement Contract
- 5 Administration");
- 6 7. § 15-226 of this article ("Prompt payment of
- 7 subcontractors"); and
- 8 8. Title 16 of this article ("Debarment of Contractors").

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

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

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

12 (6) (i) The State Board of Contract Appeals shall have authority over

13 contract claims related to procurement contracts awarded by:

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

17 (ii) At the election of the Board of Regents of the University System

18 of Maryland and subject to the approval of the Board of Public Works, the State Board

19 of Contract Appeals shall have authority over contract claims related to procurement

20 contracts awarded by the University after June 30, 1999.

21 (iii) At the election of the Board of Regents of Morgan State

22 University and subject to the approval of the Board of Public Works, the State Board

23 of Contract Appeals shall have authority over contract claims related to procurement

24 contracts awarded by the University after June 30, 2004.

25 (IV) AT THE ELECTION OF THE BOARD OF TRUSTEES OF ST. MARY'S

26 COLLEGE OF MARYLAND AND SUBJECT TO THE APPROVAL OF THE BOARD OF PUBLIC

27 WORKS, THE STATE BOARD OF CONTRACT APPEALS SHALL HAVE AUTHORITY OVER

28 CONTRACT CLAIMS RELATED TO PROCUREMENT CONTRACTS AWARDED BY ST.

29 MARY'S COLLEGE OF MARYLAND AFTER JUNE 30, 2006.

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

- 31 (i) procurement by a University from:
- 32 1. another unit;
- 33 2. a political subdivision of the State;
- 34 3. an agency of a political subdivision of the State;

1 4. a government, including the government of another state,
2 of the United States, or of another country;

3 5. an agency or political subdivision of a government; or

4 6. a bistate, multistate, bicounty, or multicounty
5 governmental agency;

6 (ii) procurement by a University in support of enterprise activities
7 for the purpose of:

8 1. direct resale;

9 2. remanufacture and subsequent resale; or

10 3. procurement by the University for overseas programs; or

11 (iii) procurement by the University System of Maryland for:

12 1. services of managers to invest, in accordance with the
13 management and investment policies adopted by the Board of Regents of the
14 University System of Maryland, gift and endowment assets received by the
15 University System of Maryland in accordance with § 12-104(e) of the Education
16 Article; or

17 2. expenditures to manage, maintain, and enhance, in
18 accordance with the management and investment policies adopted by the Board of
19 Regents of the University System of Maryland, the value of gift and endowment
20 assets received by the University System of Maryland in accordance with § 12-104(e)
21 of the Education Article.

22 (f) 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 College Savings Plans of Maryland for:

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

28 (2) expenditures to manage, maintain, and enhance the value of the
29 assets of the Maryland Prepaid College Trust in accordance with the comprehensive
30 investment plan adopted by the College Savings Plans of Maryland Board under §
31 18-1906 of the Education Article.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 July 1, 2006.