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

Introduced and read first time: February 1, 2006

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education - Morgan State University - Authority**

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

25 BY repealing and reenacting, with amendments,
 26 Article - Education
 27 Section 11-105(i)(4), 14-101, and 14-104(b) and (p)(6)
 28 Annotated Code of Maryland
 29 (2004 Replacement Volume and 2005 Supplement)

30 BY repealing and reenacting, without amendments,
 31 Article - Education

1 Section 14-104(a)
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2005 Supplement)

4 BY adding to
5 Article - Education
6 Section 14-104(b) and (q) and 14-110
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2005 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - State Finance and Procurement
11 Section 4-401(d), 4-410.1, and 14-201
12 Annotated Code of Maryland
13 (2001 Replacement Volume and 2005 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - State Finance and Procurement
16 Section 4-402(a), 4-406(a) and (b), 5-7B-01(d)(1)(v), 7-306(a), 14-202(a), and
17 14-203
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
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:

27 **Article - Education**

28 11-105.

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

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

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

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

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

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

14 14-101.

15 (A) (1) THERE IS A BODY CORPORATE AND POLITIC KNOWN AS MORGAN
16 STATE UNIVERSITY.

17 (2) THE UNIVERSITY IS AN INSTRUMENTALITY OF THE STATE AND A
18 PUBLIC CORPORATION.

19 (3) THE UNIVERSITY IS AN INDEPENDENT UNIT OF STATE
20 GOVERNMENT.

21 (4) THE EXERCISE BY THE UNIVERSITY OF THE POWERS CONFERRED BY
22 THIS SUBTITLE IS THE PERFORMANCE OF AN ESSENTIAL PUBLIC FUNCTION.

23 [(a)] (B) [There is a] Morgan State University[, which]:

24 (1) Has the responsibility, with other educational institutions, for
25 providing higher education research and graduate study in the Baltimore area;

26 (2) Is the State's public urban university with a mission of instruction,
27 research, and service;

28 (3) Offers baccalaureate and graduate degrees in the arts and sciences;

29 (4) Emphasizes an education addressing urban concerns; and

30 (5) Offers the professional and graduate programs approved by its Board
31 of Regents and the Maryland Higher Education Commission.

32 [(b)] (C) (1) In this subtitle the following words have the meanings
33 indicated.

1 (2) "Board of Regents" means the Board of Regents of Morgan State
2 University.

3 (3) "University" means Morgan State University.

4 14-104.

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

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

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

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

16 (B) IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS SUBTITLE,
17 THE UNIVERSITY MAY:

18 (1) ADOPT AND ALTER AN OFFICIAL SEAL;

19 (2) MAINTAIN AN OFFICE AT THE PLACE THE BOARD OF REGENTS MAY
20 DESIGNATE;

21 (3) ENTER INTO CONTRACTS OF ANY KIND, AND EXECUTE ALL
22 INSTRUMENTS NECESSARY OR CONVENIENT WITH RESPECT TO ITS CARRYING OUT
23 THE POWERS IN THIS SUBTITLE TO ACCOMPLISH THE PURPOSES OF THE
24 UNIVERSITY; AND

25 (4) IN ACCORDANCE WITH SUBSECTION (P)(6) OF THIS SECTION,
26 ACQUIRE, HOLD, LEASE, USE, ENCUMBER, TRANSFER, EXCHANGE, OR DISPOSE OF
27 REAL AND PERSONAL PROPERTY.

28 [(b)] (C) In addition to the powers set forth in Title 19 of this article and
29 subject to the approval of the Board of Public Works, the University may borrow
30 money from any source for any corporate purpose, including working capital for its
31 operations, reserve funds or interest, and mortgage, pledge, or otherwise encumber
32 the property or funds of the University, and contract with or engage the services of
33 any person in connection with any financing, including financial institutions, issuers
34 of credit, or insurers.

35 (p) (6) (i) Subject to the approval of the Board of Public Works, the
36 [Board] BOARD OF REGENTS may acquire, lease, encumber, sell, or otherwise dispose
37 of real property held by the State for the use of the University.

1 (ii) The [Board] BOARD OF REGENTS may acquire, lease,
2 encumber, sell, or otherwise dispose of personal property.

3 (iii) All property of the University is the property of the State.

4 (Q) EXCEPT AS PROVIDED IN SUBSECTION (J)(1) OF THIS SECTION, THE BOARD
5 OF REGENTS MAY DELEGATE ANY PART OF ITS AUTHORITY OVER THE AFFAIRS OF
6 THE UNIVERSITY TO THE PRESIDENT.

7 14-110.

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

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

17 (2) A FINANCIAL OBLIGATION OR LIABILITY OF A BUSINESS ENTITY
18 ESTABLISHED, INVESTED IN, FINANCED, OR OPERATED IN ACCORDANCE WITH THIS
19 SUBSECTION MAY NOT BE A DEBT OR OBLIGATION OF THE STATE OR THE
20 UNIVERSITY.

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

24 (1) THE BUSINESS ENTITIES ESTABLISHED IN ACCORDANCE WITH THIS
25 SECTION;

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

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

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

31 **Article - State Finance and Procurement**

32 4-401.

33 (d) "Public improvement" includes any construction, maintenance, or repair of
34 any building, structure, or other public work:

1 (1) owned or constructed by the State or any unit of the State
2 government, including the University System of Maryland, St. Mary's College of
3 Maryland, and Morgan State University; or

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

5 4-402.

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

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

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

10 (iii) the Maryland-National Capital Park and Planning
11 Commission;

12 (iv) the Washington Suburban Sanitary Commission;

13 (v) the Baltimore County Metropolitan District;

14 (vi) a county, municipal corporation, or unit of a county or municipal
15 corporation; [or]

16 (vii) the University System of Maryland; OR

17 (VIII) MORGAN STATE UNIVERSITY.

18 (2) Except as provided in §§ [4-406, 4-410, and 4-410.1] 4-406 AND
19 4-410.1 of this subtitle or as otherwise provided by law, St. Mary's College of Maryland
20 and Morgan State University are subject to the provisions of this subtitle.

21 4-406.

22 (a) (1) [Except as provided in paragraph (4) of this subsection, the] THE
23 Department shall advise the Board of Public Works and any unit of the State
24 government in connection with any engineering question or matter concerning a
25 public improvement.

26 (2) The Department shall supervise any engineering question or matter
27 concerning a public improvement.

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

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

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

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

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

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

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

13 (2) tabulate and record the bids; and

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

15 [4-410.

16 (a) This section applies to any public improvement project of Morgan State
17 University.

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

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

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

22 (2) for architectural and engineering services costing more than
23 \$100,000, the Department shall make a recommendation for the award of a contract;

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

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

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

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

33 (1) for architectural and engineering contracts exceeding \$100,000, the
34 Department must request the Board of Public Works to authorize the transfer of the
35 contract amount to University funds. Any additional funds that may be needed may

1 be transferred by an action of the Board of Public Works upon review by the
2 Department;

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

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

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

10 (5) the Department shall prepare an agenda item for the Board of Public
11 Works authorizing transfer to the University of the funds equal to the contract, plus
12 5% for use as a contingency fund for change orders. If the 5% contingency fund is
13 insufficient to complete the project, the Department shall review the change
14 conditions and make a recommendation to the Board of Public Works concerning the
15 transfer of additional funds;

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

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

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

24 (e) (1) For any public improvement project funded solely from funds other
25 than State general funds or the proceeds of a general obligation bond loan, the
26 University is responsible for procuring public improvement and public
27 improvement-related services, for planning, and for management of all aspects of the
28 project.

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

31 4-410.1.

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

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

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

3 5-7B-01.

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

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

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

9 2. public improvements governed by [§§ 4-410 and 4-410.1]
10 § 4-410.1 of this article; and

11 3. land acquisition governed by §§ 4-411 through 4-416 of
12 this article.

13 7-306.

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

15 (1) Morgan State University; and

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

17 14-201.

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

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

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

23 14-202.

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

26 (1) the Department of General Services;

27 (2) the Department of Transportation;

28 (3) the University System of Maryland; [and]

29 (4) MORGAN STATE UNIVERSITY; AND

1 [(4)] (5) as provided in subsection (b) of this section, the Department of
2 Public Safety and Correctional Services in connection with construction of a State
3 correctional facility under § 12-107 of this article.

4 14-203.

5 (a) By regulation, the Secretary of General Services, the Secretary of
6 Transportation, [and] the Chancellor of the University System of Maryland, AND
7 THE PRESIDENT OF MORGAN STATE UNIVERSITY each shall specify the criteria that a
8 business must meet to qualify as a small business.

9 (b) (1) The criteria for qualification as a small business may vary among
10 industries to reflect their particular characteristics.

11 (2) Regulations adopted under this section shall include, for each class of
12 business, the maximum number of employees a business may have to qualify as a
13 small business.

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