SB 444

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 444 (Senator Conway, *et al.*)
Education, Health, and Environmental Affairs Appropriations

Higher Education - Morgan State University and St. Mary's College of Maryland - Authority

This bill exempts Morgan State University (MSU) and St. Mary's College of Maryland (SMCM) from certain requirements for public improvement projects and makes other changes to procurement and other provisions of law regarding MSU and SMCM. In general, the bill gives MSU and SMCM parity with the University System of Maryland (USM) with respect to most exemptions from State procurement law.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: In general, the bill would increase the autonomy of MSU and SMCM with respect to procurement of public improvement projects. SMCM expenditures could increase by approximately $70,400 beginning in FY 2009 for one new position in its capital procurement office. Future year expenditures reflect inflation and employee turnover. The bill would not have a significant fiscal effect on MSU.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	$0	$0	$0	$0	$0
Higher Ed Exp.	0	0	70,400	74,400	78,600
Net Effect	$0	$0	($70,400)	($74,400)	($78,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill exempts public improvement projects by MSU and SMCM from oversight by the Department of General Services (DGS) and the Board of Public Works (BPW). It also exempts MSU from certain elements of the statewide Capital Improvement Program (CIP) process and DGS management of MSU capital contract selection and management. BPW may request DGS input on MSU and SMCM engineering or capital public improvement projects valued over $500,000. The bill also removes public improvement projects by MSU and SMCM from the list of statutorily designated "growth-related projects" that are restricted to statutorily designated "priority funding areas."

The bill clarifies that St. Mary's College is exempt from State procurement laws and requires the college to establish its own procurement policies and procedures in accordance with State law and subject to the approval of BPW and the General Assembly's Administrative, Executive, and Legislative Review Committee. After June 30, 2006, the St. Mary's College Board of Trustees may vote to give the State Board of Contract Appeals authority over contract claims related to its procurement contracts, subject to approval by BPW.

The bill makes MSU procurements subject to the Small Business Preference Program and requires MSU to specify the criteria that a business must meet to qualify as a small business.

With respect to the institutional status of MSU, the bill provides that MSU is a public corporate body and an independent unit of State government that performs an essential public function. The bill expands the powers of MSU to include the acquisition of property, the borrowing of money for any corporate purpose, and the ability to sue or be sued. With the exception of appointing the MSU president, the Board of Regents is authorized to delegate any part of its authority over the affairs of the university to the president.

The bill also provides that the Maryland Higher Education Commission (MHEC) may only review and comment on the operating and capital budgets of MSU within the broad context of the State Plan for Higher Education. MHEC may not recommend against a budget item approved by the MSU Board of Regents unless the item is clearly inconsistent with the State Plan for Higher Education.

The bill provides that the Board of Regents of MSU may establish, invest in, finance, and operate businesses or business entities when it furthers goals of the university. MSU must submit an annual report on these entities, funds invested, and ownership interests to the Governor and the General Assembly. MSU can retain at year end all appropriated general funds rather than having the funds revert to the State.

Current Law: St. Mary's College is generally exempt from State procurement laws except for public improvement projects funded with State general funds or general obligation bond proceeds.

USM and MSU are generally exempt from State procurement laws, except for MSU public improvement projects. However, their procurement process must, to the extent practicable, function in accordance with State procurement laws and regulations.

Capital Improvement Funding and Procurement Process

DGS manages projects included in the State's CIP, except for projects from the following exempt agencies:

- Maryland Department of Transportation;
- any housing authority created under Article 44A;
- Maryland-National Capital Park and Planning Commission;
- Washington Suburban Sanitary Commission;
- Baltimore County Metropolitan District;
- a county, municipal corporation, or unit of a municipal corporation; and
- University System of Maryland.

MSU is grouped with the remaining State agencies under DGS control for capital public improvements. DGS creates the program plan for each MSU project and submits the plan to the Department of Budget and Management (DBM) for inclusion in CIP. If the project is included in CIP, DGS creates a cost estimate worksheet and DBM then submits the project as part of the annual Maryland Consolidated Capital Bond Loan to the General Assembly. If the project is approved by the General Assembly, then DGS bids out the Architectural and Engineering (A/E) contract. Should the A/E contract exceed $100,000, then the contract must be approved by BPW before any funds may be transferred to DGS, or the appropriate requesting agency.

SMCM has independent authority to procure capital improvement services if they are funded solely from funds other than State general funds or general obligation bond proceeds. BPW must approve all public improvement projects for the college, regardless of funding source. BPW has delegated public improvement procurement authority to St. Mary's College for capital contracts for $200,000 or less (if non-State funded). DGS is responsible for providing oversight for any State-funded project for the college.

State Economic Growth, Resource Protection, and Planning Policy

The State Economic Growth, Resource Protection, and Planning Policy dictates that:

- development shall be concentrated in suitable areas;
- sensitive areas shall be protected;
- in rural areas, growth shall be directed to existing population centers and resource areas shall be protected;
- stewardship of the Chesapeake Bay and the land shall be a universal ethic;
- conservation of resources, including a reduction in resource consumption, shall be practiced;
- to encourage the achievement of the preceding five items, economic growth shall be encouraged and regulatory mechanisms shall be streamlined;
- adequate public facilities and infrastructure are available or planned in areas where growth is to occur; and
- funding mechanisms shall be addressed to achieve this policy.

Statute further states that with few exceptions, State public works, transportation, or major capital improvement projects funded through State or federal funds will not be funded if the project is not consistent with the above policy.

The policy further defines certain capital expenditures as growth-related projects, and certain geographic areas as priority-funding areas. With few exceptions, growth-related projects may not be funded if the projects are not located in priority-funding areas. MSU public improvements are designated as growth-related projects.

The Small Business Preference Program provides that a certified small business is entitled to be awarded a contract procured by competitive sealed bidding if its bid does not exceed a lower bid from a nonsmall business by more than 5%. This applies to procurements by DGS, the Maryland Department of Transportation, USM, and the Department of Public Safety and Correctional Services for construction of correctional facilities.

Background: MSU was granted a general exemption from the general procurement laws by Chapter 273 of 2004. Chapter 273 initially included the concepts of this bill, but those provisions were not included in the final version of the bill. DGS thus retains authority over MSU's capital improvement process.

The bill aligns MSU autonomy and procurement laws with those of USM, which was granted many of these powers in Chapter 515 of 1999, commonly referred to as the Larson bill.

State Effect: SMCM expenditures could increase by $70,400 in fiscal 2009, which reflects the cost of adding one new position in its procurement office to handle the increased capital project management. It includes salaries, fringe benefits, and ongoing operating expenses.

Salary and Fringe Benefits	$68,400
Workstation	2,000
Total FY 2009 Expenditures	**$70,400**

State expenditures for capital projects could decrease if the college's management of State-funded capital projects results in more timely project development and completion.

MSU could implement the bill with existing personnel and resources.

Additional Information

Prior Introductions: As amended, SB 179 of 2005 was similar to this bill. The Senate passed the bill, but the House Appropriations Committee gave it an unfavorable report.

Cross File: None.

Information Source(s): Department of General Services, Morgan State University, Maryland Higher Education Commission, Department of Legislative Services

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