Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 439 (Senator Lam)(By Request - Joint Audit and Evaluation Committee)

Finance and Education, Energy, and the Environment | Appropriations

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Higher Education - High Impact Economic Development Activities - Alterations

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This bill alters the definition of "high impact economic development activity" to exclude cost savings from reducing University System of Maryland (USM) or Morgan State University (MSU) employees. Additionally, the USM Board of Regents and the MSU Board of Regents must include the following in their annual reports on high impact economic development activities: (1) the amount of State, USM, or MSU funds used on each high impact economic development activity during the preceding year; (2) the net benefit of each activity; and (3) whether the boards believe that each activity is in the best interest of the State. Related to USM, the bill also repeals the authorization for public higher education officials or employees to hold positions in entities supporting these activities, subjects such entities associated to State procurement law, and requires Legislative Auditor oversight of their expenditures during audits. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: USM, MSU, and the Office Legislative Audits (OLA) can meet the bill's administrative and reporting requirements with existing budgeted resources. Overall, USM and MSU finances are not materially affected; however, funds may be reallocated. Codifying audit requirements aligns with current practice, so no additional impact is anticipated. The changes to State procurement law are not anticipated to affect USM finances directly, as the entities are not State agencies or institutions. The application of existing penalty provisions to violations of the bill is not anticipated to materially affect State finances or operations. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Higher Education Procurement

USM, MSU, and St. Mary's College of Maryland (SMCM) are exempt from most provisions of State procurement law. However, service contracts by USM, MSU, and SMCM with a value that exceeds $1.0 million require approval from the Board of Public Works (BPW). The procurements by these entities that are exempt from procurement law must nonetheless be made under procedures that promote the purposes underlying State procurement law.

University System of Maryland and Morgan State University Management

The USM Board of Regents is responsible for the management of USM, with the power to conduct or maintain any institutions, schools, or departments in the university system. The USM board appoints a chancellor who serves as the chief executive officer of the university system and the chief of staff for the board. The MSU Board of Regents is responsible for the management of MSU. The MSU board appoints the president of MSU. The USM and MSU boards may establish, invest in, finance, and operate business entities when the board finds that doing so would further one or more goals of USM or MSU. A business entity established, invested in, financed, or operated by the board is not considered a State agency, instrumentality of the State, or a unit of the Executive Branch. In addition, the business entity's financial obligations and liabilities are not a debt or obligation of the State, USM, or MSU. The boards must submit an annual report to the Governor and the General Assembly on (1) the business entities established in the prior year; (2) funds invested in and financing provided to the entities; (3) ownership interests in the entities; and (4) the current status of the entities. The boards may apply for, accept, and spend any gift or grant from the federal government, any foundation, or any other person.

High Impact Economic Development Activity

"High impact economic development activity" means an initiative, transaction, or other undertaking by USM or one of its constituent institutions, or MSU, to create or facilitate (1) 20 or more new jobs in the State; (2) the award or completion of at least $1.0 million in externally funded research or other projects; (3) the establishment or relocation of one or more new companies doing business in the State; (4) the production of at least $1.0 million of annual gross revenue; (5) the licensing and potential commercialization of a promising new technology or product; or (6) an academic program to meet workforce demand in a documented labor shortage field.

USM and MSU must undertake high impact economic development activities that support job creation and workforce development, technology transfer, commercialization and entrepreneurship, and increased sponsored research funding. A USM institution as well as MSU may establish, invest in, finance, or operate a corporation, foundation, consortium, or other entity that is intended to support high impact economic development activity. Subject to certain restrictions related to USM only, an official or employee of a public institution of higher education may be a director, official, or employee of an entity intended to support high impact economic development activity.

State procurement law (State Finance and Procurement, Division II) generally does not apply to transactions between an entity established, financed, or operated as a high impact economic development entity, and the USM institution or consortium which established, financed, or operated it. The USM and MSU boards of regents are responsible for developing policies and procedures which require recognition of an entity by the appropriate board, an annual independent audit of the entity, and adequate ethical and business practice standards.

The USM and MSU boards of regents are responsible for developing policies and procedures governing the establishment of high impact economic development entities within the scope of § 5-310 or § 10-305 of the State Finance and Procurement Article, which govern the sale or transfer of personal or real property; for high impact economic development entities, these will also apply to intellectual property. Further, the boards are responsible for administering the review and comment process required by §§ 5-310 and 10-305 by including in that process specified legislative committees and units of State government.

On or before October 1 of each year, the boards must report to BPW, the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Economic Matters Committee on the preceding fiscal year's high impact development activities.

Audit Requirements

The Legislative Auditor must audit all expenditures and accounts of USM as specified.

Generally, State agencies, except the Legislative Branch, are required to undergo a fiscal compliance audit every three to four years, with the interval based on risk, materiality, and prior audit findings. Performance audits and financial statement audits may be conducted if directed by the Joint Audit and Evaluation Committee (JAEC) or required by law. OLA may investigate allegations of fraud, waste, or abuse related to the use of State funds.

OLA auditors have full access to financial records, contract, and confidential information of State agencies and entities receiving State funds. Subcontractors working under State contracts must also provide financial records for audit. Agencies must cooperate and provide requested information. If an audit finds illegal use of State funds, OLA reports it to the Attorney General and JAEC. Criminal violations must be reported to the Attorney General and State's Attorney. The Attorney General must respond in writing with any actions taken.

Failure to comply with OLA's requests or obstructing an audit is a misdemeanor, punishable by fine of up to $1,000.

Small Business Effect: Potential meaningful impact to the extent university-based high impact economic development activity entities are small businesses and receive less university funding. However, any such impact cannot be estimated.

Additional Comments: OLA conducted a fiscal compliance audit of the University of Maryland Global Campus (UMGC), identifying significant concerns related to its financial and operational oversight. Key findings include UMGC's continued reliance on Ventures and its affiliates – classified as high impact economic development activity entities – without competitive procurement, inadequate monitoring of information technology (IT) and advertising contracts, insufficient financial controls over collections, and a failed IT project that cost $25.7 million without delivering a viable system. The audit raises questions about whether these practices align with the best interests of UMGC and the State.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1054 (Delegate Wu, *et al.*) - Appropriations.

Information Source(s): Department of Commerce; University System of Maryland; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2025
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