

# SENATE BILL 807

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By: **Senator Madaleno**

Introduced and read first time: February 5, 2016

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Ethics and Procurement Requirements**

3 FOR the purpose of providing that a system of higher education may, in accordance with  
4 certain guidelines, allow educational institutions in the system to enter into certain  
5 lease agreements and receive lease payments from certain business entities engaged  
6 in research and development activity with faculty and staff at the institution;  
7 requiring that certain procedures concerning research and development developed  
8 by educational institutions allow faculty or staff at the institution to have an interest  
9 in, be employed by, or have a relationship with certain entities; requiring that certain  
10 policies and procedures adopted by educational institutions include reasonable  
11 accommodation for faculty and staff at the institution to engage in certain classified  
12 and proprietary consultation or research; requiring that, with regard to certain  
13 faculty or staff of an educational institution claiming an exemption from certain  
14 conflicts of interest for certain intellectual property, the intellectual property may be  
15 deemed the property of the entity for which the exemption is claimed; authorizing  
16 the Chancellor of the University System of Maryland or the president of an  
17 educational institution to grant a certain exemption; and generally relating to higher  
18 education ethics and procurement requirements.

19 BY repealing and reenacting, with amendments,  
20 Article – Education  
21 Section 19–102(a)  
22 Annotated Code of Maryland  
23 (2014 Replacement Volume and 2015 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article – General Provisions  
26 Section 5–525  
27 Annotated Code of Maryland  
28 (2014 Volume and 2015 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Education**

4 19–102.

5 (a) In order to provide auxiliary and academic facilities a system may:

6 (1) Acquire, construct, reconstruct, equip, maintain, repair, renovate, and  
7 operate auxiliary and academic facilities at any of its campuses or locations, now existing  
8 or hereafter acquired;

9 (2) (i) Issue bonds for the purpose of financing or refinancing all or any  
10 part of the costs of any 1 or more projects of a system, including any project previously  
11 financed by a system or any predecessor; or

12 (ii) Issue bonds for the purpose of acquiring any auxiliary facility or  
13 academic facility previously financed through a capital lease with a system or any  
14 predecessor;

15 (3) Establish 1 or more trust funds for the deposit of the proceeds of the  
16 bonds of any issue and retain the interest revenue or other investment income thereon to  
17 be applied to the costs of any project, but shall maintain separate accounts within any such  
18 trust funds for auxiliary facilities and for academic facilities;

19 (4) Fix, revise, charge, and collect auxiliary facilities fees and academic fees  
20 and pledge all or any part of such auxiliary facilities fees and academic fees as security for  
21 bonds issued for auxiliary and academic facilities by a system;

22 (5) Establish 1 or more trust funds for the deposit of any auxiliary facilities  
23 fees and academic fees which may be imposed pursuant to this title, and retain the interest  
24 revenue or other investment income thereon, for the purpose of acquiring, constructing,  
25 reconstructing, renovating, equipping, maintaining, repairing, and operating auxiliary and  
26 academic facilities;

27 (6) Acquire, hold, and dispose of real and personal property in the exercise  
28 of its powers and the performance of its duties under this title;

29 (7) Enter into all contracts and agreements necessary or incidental to the  
30 performance of its duties and the execution of its powers under this title, and employ  
31 consulting engineers, architects, attorneys, construction and financial experts, and other  
32 employees and agents as may be necessary, and fix their compensation;

33 (8) Receive and accept from the United States of America or any agency  
34 thereof grants and loans for the purpose of financing or refinancing all or any part of the  
35 costs of any 1 or more projects, and receive and accept aid or contributions from any sources

1 of money, property, labor, or other things of value, to be held, used, and applied for the  
2 purposes for which such grants and contributions were made; [and]

3 **(9) IN ACCORDANCE WITH GUIDELINES ESTABLISHED BY A SYSTEM,**  
4 **AUTHORIZE EDUCATIONAL INSTITUTIONS IN THE SYSTEM TO ENTER INTO LEASE**  
5 **AGREEMENTS WITH AND RECEIVE LEASE PAYMENTS FROM ANY BUSINESS ENTITY**  
6 **ENGAGED IN RESEARCH AND DEVELOPMENT ACTIVITY WITH FACULTY AND STAFF AT**  
7 **THE INSTITUTION WITH AN INTEREST IN, EMPLOYMENT WITH, OR A RELATIONSHIP**  
8 **WITH THE ENTITY; AND**

9 **[(9)](10)** Do all acts and things necessary or convenient to carry out the  
10 powers expressly granted by the provisions of this title.

### 11 **Article – General Provisions**

12 5–525.

13 (a) (1) In this section the following words have the meanings indicated.

14 (2) “Conflict of interest policies” means policies adopted by a governing  
15 board and approved:

16 (i) by the Office of the Attorney General; and

17 (ii) as to conformity with this section, by the Ethics Commission.

18 (3) “Educational institution” means:

19 (i) a public senior higher education institution as defined in §  
20 10–101 of the Education Article;

21 (ii) a center or an institute of the University System of Maryland  
22 that is designated in the conflict of interest policies adopted by the System’s Board of  
23 Regents; or

24 (iii) the University System of Maryland Administration, for which  
25 the Chancellor of the System shall be considered the president for purposes of this section.

26 (4) “Governing board” has the meaning provided in § 10–101 of the  
27 Education Article.

28 (5) “Relationship” includes any:

29 (i) interest;

30 (ii) service;

1 (iii) employment;

2 (iv) gift; or

3 (v) other benefit or relationship.

4 (6) (i) "Research or development" means basic or applied research or  
5 development.

6 (ii) "Research or development" includes:

7 1. the development or marketing of university-owned  
8 technology;

9 2. the acquisition of services of an official or employee by an  
10 entity for research and development purposes; or

11 3. participation in State economic development programs.

12 (b) (1) Each educational institution engaged in research or development shall  
13 develop conflict of interest procedures based on:

14 (i) conflict of interest policies developed by its governing board; and

15 (ii) the purposes of this title specified in § 5-102 of this title.

16 (2) Before they may become effective, the procedures and policies  
17 developed under this subsection shall be approved by:

18 (i) the Office of the Attorney General; and

19 (ii) as to conformity with this section, the Ethics Commission.

20 (c) The procedures adopted by an educational institution under subsection (b) of  
21 this section shall:

22 (1) **(I) ALLOW FACULTY OR STAFF OF THE EDUCATIONAL**  
23 **INSTITUTION TO HAVE AN INTEREST IN, BE EMPLOYED BY, OR HAVE A RELATIONSHIP**  
24 **WITH AN ENTITY FOR WHICH AN EXEMPTION UNDER THIS SECTION IS CLAIMED; BUT**

25 **(II) FOR ANY AMOUNT OF \$5,000 OR MORE,** require disclosure of  
26 any interest in, employment by, or other relationship with an entity for which an exemption  
27 under this section is claimed, on a form filed with the Ethics Commission and maintained  
28 as a public record at the educational institution;

1           (2)     require a review of all disclosures by a designated official, who shall  
2 determine what:

3                   (i)     further information must be disclosed; and

4                   (ii)    restrictions shall be imposed by the educational institution to  
5 manage, reduce, or eliminate any actual or potential conflict of interest;

6           (3)     include guidelines to ensure that interests and employment for which  
7 an exemption under this section is claimed do not:

8                   (i)     improperly give an advantage to entities in which the interests  
9 or employment are maintained;

10                  (ii)    lead to misuse of institution students or employees for the benefit  
11 of entities in which the interests or employment are maintained; or

12                  (iii)   otherwise interfere with the duties and responsibilities of the  
13 exempt official or employee;

14           (4)     require approval by the president of the educational institution of any  
15 interest or employment for which an exemption is claimed under this section; and

16           (5)     require approval by the governing board of the educational institution  
17 if an exemption is claimed by the president of the educational institution.

18           (d)     **(1)**   Policies and procedures adopted under this section may provide for  
19 periodic consultation with the Department of Economic Competitiveness and Commerce  
20 and with federal agencies that have imposed regulatory requirements on federally funded  
21 research, concerning the implementation of this section.

22                   **(2)    THE POLICIES AND PROCEDURES SHALL INCLUDE REASONABLE**  
23 **ACCOMMODATION FOR FACULTY AND STAFF AT AN EDUCATIONAL INSTITUTION TO**  
24 **ENGAGE IN CLASSIFIED AND PROPRIETARY CONSULTATION ON RESEARCH WITH A**  
25 **FEDERAL AGENCY OR BUSINESS ENTITY.**

26           (e)     (1)     Except as provided in subsection (f) of this section, a present or former  
27 official or employee at an educational institution may have a relationship, otherwise  
28 prohibited by this subtitle, with an entity engaged in research or development, or with an  
29 entity having a direct interest in the outcome of research or development, only if:

30                   (i)     the educational institution has adopted policies and procedures  
31 in accordance with this section; and

32                   (ii)    the official or employee has complied with the policies and  
33 procedures.

1           (2) If the provisions of this subsection are not met, the official or employee  
2 is not exempt from any relevant provisions of this subtitle.

3           **(3) WITH REGARD TO FACULTY OR STAFF MEMBERS OF THE**  
4 **EDUCATIONAL INSTITUTION WHO HAVE ANY INTEREST IN, EMPLOYMENT BY, OR**  
5 **OTHER RELATIONSHIP WITH AN ENTITY FOR WHICH AN EXEMPTION UNDER THIS**  
6 **SECTION IS CLAIMED FOR ANY INTELLECTUAL PROPERTY CREATED BY THE**  
7 **FACULTY OR STAFF MEMBERS OF THE EDUCATIONAL INSTITUTION:**

8           **(I) THE INTELLECTUAL PROPERTY MAY BE DEEMED THE**  
9 **PROPERTY OF THE ENTITY FOR WHICH AN EXEMPTION IS CLAIMED; AND**

10           **(II) THE CHANCELLOR OF THE UNIVERSITY SYSTEM OF**  
11 **MARYLAND OR THE PRESIDENT OF THE EDUCATIONAL INSTITUTION MAY GRANT**  
12 **THE EXEMPTION.**

13           (f) (1) This section does not exempt an official or employee at an educational  
14 institution from the provisions of § 5–505 of this subtitle.

15           (2) An official or employee at an educational institution may not:

16           (i) represent a party for contingent compensation in any matter  
17 before the institution's governing board or before the Board of Public Works; or

18           (ii) intentionally misuse the individual's State position for the  
19 individual's personal gain or for the gain of another person.

20           (g) Each governing board shall report quarterly to the Governor, the Legislative  
21 Policy Committee of the General Assembly, and the Ethics Commission:

22           (1) the number of approvals granted under subsection (c) of this section;  
23 and

24           (2) how the conflict of interest policies and procedures adopted under this  
25 section have been implemented in the preceding year.

26           (h) (1) This subsection applies to an official who is:

27           (i) a chancellor, vice chancellor, president, or vice president at a  
28 public senior higher educational institution in the State; or

29           (ii) an individual who holds a similar position at a public senior  
30 higher educational institution in the State.

31           (2) An official subject to this subsection may not receive an exemption  
32 under this section unless the governing board of the educational institution finds that:

1 (i) participation by, and the financial interest or employment of, the  
2 official is necessary to the success of the research or development activity; and

3 (ii) the conflict of interest can be managed consistent with the  
4 purposes of this section and other relevant provisions of this title.

5 (3) Notwithstanding subsection (g) of this section, the governing board of  
6 an educational institution promptly shall notify the Ethics Commission in writing of any  
7 exemption that is granted under this section to an official subject to this subsection.

8 (4) (i) If the Ethics Commission disagrees with an exemption that is  
9 granted by the governing board of an educational institution to an official who is subject to  
10 this subsection, within 30 days after receipt of the notice under paragraph (3) of this  
11 subsection, the Ethics Commission shall notify the governing board of the reason for its  
12 disagreement.

13 (ii) On receipt of the notice from the Ethics Commission under  
14 subparagraph (i) of this paragraph, the governing board of the educational institution shall  
15 reexamine the matter.

16 (i) This section may be cited as the Public–Private Partnership Act.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2016.