

SENATE BILL 159

P2, F2
SB 254/19 – EHE

0lr1154
CF HB 207

By: **Senators Hayes, Carter, Ferguson, McCray, Sydnor, and Washington**

Introduced and read first time: January 13, 2020

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable

Senate action: Adopted

Read second time: February 25, 2020

CHAPTER _____

1 AN ACT concerning

2 **Baltimore City Community College – Procurement Authority**

3 FOR the purpose of exempting Baltimore City Community College from certain provisions
4 of State procurement law; requiring the Board of Trustees of the College, subject to
5 review and approval by the Board of Public Works and the Joint Committee on
6 Administrative, Executive, and Legislative Review, to develop certain policies and
7 procedures governing procurement; requiring the Board of Trustees to develop an
8 information technology plan that meets certain requirements; exempting the College
9 from certain provisions of law relating to the purchase, lease, or rental of information
10 technology or any changes to the purchase, lease, or rental of information technology;
11 exempting the College from certain provisions of law governing telecommunication
12 systems or services; exempting the College from certain provisions of law governing
13 the oversight of public improvement projects by the Department of General Services;
14 requiring the Department, on request of the Board of Public Works, to advise the
15 Board of Public Works on certain contracts for the College that exceed a certain
16 amount under certain circumstances; requiring the Board of Public Works to review
17 and approve certain contracts that exceed a certain amount under certain
18 circumstances; requiring certain procurements by the College to comply with certain
19 policies and procedures; establishing the authority of the State Board of Contract
20 Appeals over certain contract claims by the College before and after a certain date;
21 exempting the College from a certain review of a certain contract for certain
22 expenditures; subjecting a certain contract for certain expenditures to certain
23 approval; altering a certain definition; making stylistic changes; and generally
24 relating to the procurement authority of Baltimore City Community College.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
 2 Article – Education
 3 Section 16–505(c)(1)(x)
 4 Annotated Code of Maryland
 5 (2018 Replacement Volume and 2019 Supplement)

6 BY adding to
 7 Article – Education
 8 Section 16–505.3
 9 Annotated Code of Maryland
 10 (2018 Replacement Volume and 2019 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article – State Finance and Procurement
 13 Section 3A–302, 3A–402, 4–401(d), 4–402(a), 4–406(a), 11–203(e), and 12–202
 14 Annotated Code of Maryland
 15 (2015 Replacement Volume and 2019 Supplement)

16 BY repealing and reenacting, without amendments,
 17 Article – State Finance and Procurement
 18 Section 4–401(a)
 19 Annotated Code of Maryland
 20 (2015 Replacement Volume and 2019 Supplement)

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

23 **Article – Education**

24 16–505.

25 (c) (1) The Board of Trustees shall:

26 (x) Address the information technology and infrastructure needs of
 27 the College, including whether oversight by the Department of Information Technology is
 28 advisable;

29 **16–505.3.**

30 (A) (1) EXCEPT AS PROVIDED IN § 11–203(E) OF THE STATE FINANCE
 31 AND PROCUREMENT ARTICLE, THE COLLEGE IS EXEMPT FROM DIVISION II OF THE
 32 STATE FINANCE AND PROCUREMENT ARTICLE.

33 (2) (I) SUBJECT TO REVIEW AND APPROVAL BY THE BOARD OF
 34 PUBLIC WORKS AND THE JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE,
 35 AND LEGISLATIVE REVIEW OF THE GENERAL ASSEMBLY, THE BOARD OF TRUSTEES

1 SHALL DEVELOP POLICIES AND PROCEDURES GOVERNING PROCUREMENTS BY THE
2 COLLEGE.

3 (II) THE POLICIES AND PROCEDURES DEVELOPED UNDER
4 SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL PROMOTE THE PURPOSES OF STATE
5 PROCUREMENT LAW AS SET FORTH IN § 11-201 OF THE STATE FINANCE AND
6 PROCUREMENT ARTICLE.

7 (B) (1) THE BOARD OF TRUSTEES SHALL DEVELOP AN INFORMATION
8 TECHNOLOGY PLAN FOR THE COLLEGE THAT INCLUDES INFORMATION
9 TECHNOLOGY POLICIES AND STANDARDS, INCLUDING POLICIES AND STANDARDS
10 FOR INFORMATION MANAGEMENT AND TELECOMMUNICATION SYSTEMS.

11 (2) THE INFORMATION TECHNOLOGY PLAN DEVELOPED UNDER
12 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE FUNCTIONALLY COMPATIBLE WITH
13 THE STATEWIDE INFORMATION TECHNOLOGY MASTER PLAN ESTABLISHED UNDER
14 TITLE 3A, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND
15 MEET THE REQUIREMENTS OF § 16-505(C)(1)(X) OF THIS SUBTITLE.

16 Article – State Finance and Procurement

17 3A-302.

18 (a) This subtitle does not apply to changes relating to or the purchase, lease, or
19 rental of information technology by:

20 (1) public institutions of higher education solely for academic or research
21 purposes;

22 (2) the Maryland Port Administration;

23 (3) the University System of Maryland;

24 (4) St. Mary's College of Maryland;

25 (5) Morgan State University; [or]

26 (6) the Maryland Stadium Authority; OR

27 (7) BALTIMORE CITY COMMUNITY COLLEGE.

28 (b) Except as provided in subsection (a) of this section, this subtitle applies to any
29 project of a unit of the Executive Branch of State government that involves an agreement
30 with a public institution of higher education for a portion of the development of the project,
31 whether the work on the development is done directly or indirectly by the public institution

1 of higher education.

2 (c) Notwithstanding any other provision of law, except as provided in subsection
3 (a) of this section and §§ 3A–307(a)(2), 3A–308, and 3A–309 of this subtitle, this subtitle
4 applies to all units of the Executive Branch of State government including public
5 institutions of higher education other than Morgan State University, the University
6 System of Maryland, [and] St. Mary’s College of Maryland, **AND BALTIMORE CITY**
7 **COMMUNITY COLLEGE.**

8 3A–402.

9 (a) The provisions of this subtitle do not apply to a telecommunication system or
10 service that is owned or operated by the University System of Maryland, Morgan State
11 University, **BALTIMORE CITY COMMUNITY COLLEGE**, or a unit of the Legislative or
12 Judicial Branch.

13 (b) The provisions of this subtitle do not preempt the authority of the Maryland
14 Public Broadcasting Commission to own, operate, or manage telecommunication
15 equipment, systems, or services.

16 4–401.

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

18 (d) “Public improvement” includes any construction, maintenance, or repair of
19 any building, structure, or other public work:

20 (1) owned or constructed by the State or any unit of the State government,
21 including the University System of Maryland, St. Mary’s College of Maryland, [and]
22 Morgan State University, **AND BALTIMORE CITY COMMUNITY COLLEGE**; or

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

24 4–402.

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

27 (1) the Department of Transportation or a unit in that Department;

28 (2) any housing authority created under Division II of the Housing and
29 Community Development Article;

30 (3) the Maryland–National Capital Park and Planning Commission;

31 (4) the Washington Suburban Sanitary Commission;

1 (5) the Baltimore County Metropolitan District;

2 (6) a county, municipal corporation, or unit of a county or municipal
3 corporation;

4 (7) the University System of Maryland;

5 (8) Morgan State University; [or]

6 (9) St. Mary's College of Maryland; OR

7 **(10) BALTIMORE CITY COMMUNITY COLLEGE.**

8 4-406.

9 (a) (1) The Department shall advise the Board of Public Works and any unit
10 of the State government in connection with any engineering question or matter concerning
11 a public improvement.

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

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

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

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

18 (4) At the request of the Board of Public Works, the Department shall
19 advise the Board of Public Works on any contract that:

20 **(I) exceeds \$500,000 if the contract involves an engineering question**
21 **or a matter concerning a public improvement undertaken by the University System of**
22 **Maryland, Morgan State University, or St. Mary's College of Maryland; OR**

23 **(II) EXCEEDS \$300,000 IF THE CONTRACT INVOLVES AN**
24 **ENGINEERING QUESTION OR A MATTER CONCERNING A PUBLIC IMPROVEMENT**
25 **UNDERTAKEN BY BALTIMORE CITY COMMUNITY COLLEGE.**

26 11-203.

27 (e) (1) In this subsection, "University" means the University System of
28 Maryland, Morgan State University, or St. Mary's College of Maryland.

29 (2) Except as otherwise provided in this subsection, this Division II does

1 not apply to the University System of Maryland, Morgan State University, [or] St. Mary's
2 College of Maryland, **OR BALTIMORE CITY COMMUNITY COLLEGE.**

3 (3) (i) A procurement by a University **OR BALTIMORE CITY**
4 **COMMUNITY COLLEGE** shall comply with the policies and procedures developed by the
5 University **OR BALTIMORE CITY COMMUNITY COLLEGE** and approved by the Board of
6 Public Works and the Administrative, Executive, and Legislative Review Committee of the
7 General Assembly in accordance with:

8 1. § 12–112 of the Education Article for the University
9 System of [Maryland,] **MARYLAND;**

10 2. § 14–109 of the Education Article for Morgan State
11 University[, or];

12 3. § 14–405(f) of the Education Article for St. Mary's College
13 of Maryland; **OR**

14 4. **§ 16–505.3 OF THE EDUCATION ARTICLE FOR**
15 **BALTIMORE CITY COMMUNITY COLLEGE.**

16 (ii) 1. The review and approval of the Board of Public Works
17 shall be required for the following types of contracts with a value that exceeds \$1,000,000
18 **FOR A UNIVERSITY OR \$300,000 FOR BALTIMORE CITY COMMUNITY COLLEGE:**

19 A. capital improvements; and

20 B. services.

21 2. In its review of a contract for services or capital
22 improvements with a value that exceeds \$1,000,000 **FOR A UNIVERSITY OR \$300,000**
23 **FOR BALTIMORE CITY COMMUNITY COLLEGE**, the Board of Public Works may request
24 the comments of the appropriate agencies, including the Department of Budget and
25 Management and the Department of General Services.

26 (4) [A University's] **THE** policies **OF A UNIVERSITY OR BALTIMORE**
27 **CITY COMMUNITY COLLEGE** shall:

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

30 (ii) promote the purposes of the regulations adopted by the
31 Department of General Services governing the procurement of architectural and
32 engineering services;

1 (iii) promote the purposes of § 13–402 of the State Personnel and
2 Pensions Article; and

3 (iv) to the maximum extent practicable, be similar to § 13–218.1 of
4 this article.

5 (5) (i) Except as provided in paragraph (7) of this subsection, the
6 following provisions of Division II of this article apply to a University **AND TO BALTIMORE**
7 **CITY COMMUNITY COLLEGE**:

8 1. § 11–205 of this subtitle (“Collusion”);

9 2. § 11–205.1 of this subtitle (“Falsification, concealment,
10 etc., of material facts”);

11 3. § 13–219 of this article (“Required
12 clauses – Nondiscrimination clause”);

13 4. § 13–225 of this article (“Retainage”);

14 5. Title 14, Subtitle 3 of this article (“Minority Business
15 Participation”);

16 6. Title 15, Subtitle 1 of this article (“Procurement Contract
17 Administration”);

18 7. § 15–226 of this article (“Policy established; timing of
19 payments; notice upon nonpayment; disputes; appeals”); and

20 8. Title 16 of this article (“Suspension and Debarment of
21 Contractors”).

22 (ii) If a procurement violates the provisions of this subsection or
23 policies adopted in accordance with this subsection, the procurement contract is void or
24 voidable in accordance with the provisions of § 11–204 of this subtitle.

25 (6) (i) The State Board of Contract Appeals shall have authority over
26 contract claims related to procurement contracts awarded by:

27 1. the University System of Maryland before July 1, 1999;
28 [and]

29 2. Morgan State University before July 1, 2004; **AND**

30 3. **BALTIMORE CITY COMMUNITY COLLEGE BEFORE**
31 **JULY 1, 2020.**

1 (ii) At the election of the Board of Regents of the University System
 2 of Maryland and subject to the approval of the Board of Public Works, the State Board of
 3 Contract Appeals shall have authority over contract claims related to procurement
 4 contracts awarded by the University after June 30, 1999.

5 (iii) At the election of the Board of Regents of Morgan State
 6 University and subject to the approval of the Board of Public Works, the State Board of
 7 Contract Appeals shall have authority over contract claims related to procurement
 8 contracts awarded by the University after June 30, 2004.

9 (iv) At the election of the Board of Trustees of St. Mary's College of
 10 Maryland and subject to the approval of the Board of Public Works, the State Board of
 11 Contract Appeals shall have authority over contract claims related to procurement
 12 contracts awarded by St. Mary's College of Maryland after June 30, 2006.

13 (v) **AT THE ELECTION OF THE BOARD OF TRUSTEES OF**
 14 **BALTIMORE CITY COMMUNITY COLLEGE AND SUBJECT TO THE APPROVAL OF THE**
 15 **BOARD OF PUBLIC WORKS, THE STATE BOARD OF CONTRACT APPEALS SHALL**
 16 **HAVE AUTHORITY OVER CONTRACT CLAIMS RELATED TO PROCUREMENT**
 17 **CONTRACTS AWARDED BY BALTIMORE CITY COMMUNITY COLLEGE AFTER JUNE 30,**
 18 **2020.**

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

20 (i) procurement by a University **OR BALTIMORE CITY**
 21 **COMMUNITY COLLEGE** from:

- 22 1. another unit;
- 23 2. a political subdivision of the State;
- 24 3. an agency of a political subdivision of the State;
- 25 4. a government, including the government of another state,
 26 of the United States, or of another country;
- 27 5. an agency or political subdivision of a government; or
- 28 6. a bistate, multistate, bicounty, or multicounty
 29 governmental agency;

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

- 32 1. direct resale;

- 1 2. remanufacture and subsequent resale; or
- 2 3. procurement by the University for overseas programs; or
- 3 (iii) procurement by the University System of Maryland for:
- 4 1. services of managers to invest, in accordance with the
- 5 management and investment policies adopted by the Board of Regents of the University
- 6 System of Maryland, gift and endowment assets received by the University System of
- 7 Maryland in accordance with § 12–104(e) of the Education Article; or
- 8 2. expenditures to manage, maintain, and enhance, in
- 9 accordance with the management and investment policies adopted by the Board of Regents
- 10 of the University System of Maryland, the value of gift and endowment assets received by
- 11 the University System of Maryland in accordance with § 12–104(e) of the Education Article.

12 12–202.

13 (a) This section does not apply to capital expenditures:

14 (1) for public school construction under Title 5, Subtitle 3 of the Education

15 Article; or

16 (2) by the Department of Transportation or the Maryland Transportation

17 Authority, in connection with State roads, bridges, or highways.

18 (b) Before execution, a contract for a capital expenditure other than in connection

19 with a State correctional facility, St. Mary’s College of Maryland, Morgan State University,

20 **BALTIMORE CITY COMMUNITY COLLEGE**, or the University System of Maryland shall

21 be:

22 (1) reviewed by the Secretary of General Services; and

23 (2) except as provided in § 12–203 of this subtitle and § 13–108 of this

24 article, after that review, approved by the Board.

25 (c) Before execution, a contract for a capital expenditure in connection with a

26 State correctional facility shall be:

27 (1) reviewed by the Secretary of Public Safety and Correctional Services;

28 and

29 (2) except as provided in § 12–203 of this subtitle, after that review,

30 approved by the Board.

31 (d) Before execution, a contract for a capital expenditure in connection with the

1 University System of Maryland shall be:

- 2 (1) subject to the provisions of Title 4, Subtitle 4 of this article;
- 3 (2) approved by the Board of Regents of the University System of
4 Maryland; and
- 5 (3) approved by the Board of Public Works.

6 (e) Before execution, a contract for a capital expenditure in connection with St.
7 Mary's College of Maryland shall be:

- 8 (1) subject to the provisions of Title 4, Subtitle 4 of this article;
- 9 (2) approved by the Board of Trustees of St. Mary's College of Maryland;
10 and
- 11 (3) approved by the Board of Public Works.

12 (f) Before execution, a contract for a capital expenditure in connection with
13 Morgan State University shall be:

- 14 (1) subject to the provisions of Title 4, Subtitle 4 of this article;
- 15 (2) approved by the Board of Regents of Morgan State University; and
- 16 (3) approved by the Board of Public Works.

17 **(G) BEFORE EXECUTION, A CONTRACT FOR A CAPITAL EXPENDITURE IN**
18 **CONNECTION WITH BALTIMORE CITY COMMUNITY COLLEGE SHALL BE:**

- 19 **(1) SUBJECT TO THE PROVISIONS OF TITLE 4, SUBTITLE 4 OF THIS**
20 **ARTICLE;**
- 21 **(2) APPROVED BY THE BOARD OF TRUSTEES OF BALTIMORE CITY**
22 **COMMUNITY COLLEGE; AND**
- 23 **(3) APPROVED BY THE BOARD OF PUBLIC WORKS.**

24 **[(g)] (H)** The Board shall supervise the expenditure of any money that the
25 General Assembly appropriates for:

- 26 (1) buildings;
- 27 (2) equipment;

1 (3) new construction; or

2 (4) any other capital expenditure.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
4 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.