

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 159

(Senator Hayes, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Baltimore City Community College - Procurement Authority

This bill generally exempts Baltimore City Community College (BCCC) from most provisions of State procurement law and from State oversight of its capital improvement program and information technology (IT) policies, standards, and procurement. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: BCCC may require additional personnel over time to carry out the substantially greater responsibilities with regard to procurement, capital improvement, and major IT projects that it assumes under the bill, as discussed below. BCCC expenditures for capital construction may decrease somewhat by virtue of being exempt from the State's prevailing wage requirements for public works projects. No effect on revenues.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Subject to the review and approval of the Board of Public Works (BPW) and the Joint Committee on Administrative, Executive, and Legislative Review, the BCCC board of trustees must develop policies and procedures governing procurement by the college. The policies and procedures must promote the purposes of State procurement law. The board of trustees must also develop an IT plan that includes IT policies and standards that are functionally compatible with the statewide IT master plan and BCCC's strategic plan.

BCCC's capital improvement and service contracts valued at more than \$300,000 are still subject to review and approval by BPW, and any BCCC contracts for engineering services or public improvements that are valued at more than \$300,000 must, at the request of BPW, be reviewed by the Department of General Services (DGS). Specified provisions in State procurement law that also apply to other State higher education institutions also apply to BCCC, most notably provisions governing the State's Minority Business Enterprise program.

The Maryland State Board of Contract Appeals' authority over contract claims related to BCCC contracts terminates on July 1, 2020, but the BCCC board of trustees can elect to restore its authority, subject to approval by BPW.

Current Law:

Procurement Exemptions

State law exempts the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) from the same provisions of procurement law that BCCC is exempt from under the bill, with some variations. Most notably, service and capital improvement contracts for those institutions require BPW review and approval only if their value exceeds \$1.0 million, rather than \$300,000 for BCCC under the bill. For most other Executive Branch agencies, BPW approval is required for *any* contract valued at more than \$200,000 (except for road and bridge projects).

Consistent with the bill's provisions for BCCC, the following provisions in procurement law still apply to USM, MSU, and SMCM:

- anti-collusion provisions;
- prohibitions against falsification and concealment of material facts;
- a required nondiscrimination contract clause;
- retainage requirements;
- minority business enterprise participation;
- procurement contract administration requirements;
- timing of payment and dispute resolution provisions; and
- suspension and debarment of contractors.

USM, MSU, and SMCM are exempt from the State's prevailing wage requirements for public works projects; the bill also makes BCCC exempt from prevailing wage requirements.

Capital Project Oversight

DGS supervises any engineering question or matter concerning a public improvement. Any contract, plan, or specification for a public improvement must be submitted to and approved by DGS. However, some State agencies, including USM, MSU, and SMCM, are exempt from general oversight by DGS. For those institutions, DGS must, at BPW's request, provide advice on any contract that exceeds \$500,000 if the contract involves an engineering question.

Information Technology Oversight

The Department of Information Technology (DoIT) manages and oversees the purchase, lease, and rental of IT by Executive Branch agencies. Agencies must develop their own IT policies, standards, and plans that must be consistent with the State's IT master plan developed by DoIT. Most Executive Branch agencies must also remit money received from (1) the sale, lease, or exchange of communication sites or frequencies for IT purposes and (2) an IT agreement involving resource sharing to the Major Information Technology Development Project Fund (MITDPF). However, USM, MSU, and SMCM, in addition to a small number of other agencies, are exempt from DoIT's oversight of IT procurement and planning and from participation in MITDPF; Chapter 751 of 2019 exempted BCCC from having to remit resource sharing revenue to MITDPF but retained DoIT oversight of its IT procurements.

State Expenditures: BCCC assumes substantially greater responsibilities for its procurement and capital improvement projects under the bill. Currently, DGS manages BCCC procurements valued at more than \$50,000; BCCC previously reported that it had several dozen active contracts that exceeded \$50,000 in value during fiscal 2018. DGS also provides project management, design review, contract management, and other related services for capital improvement projects because DGS maintains a full staff of experts in these fields. Under the bill, BCCC assumes responsibility for most of those tasks. BCCC advises that the autonomy granted by the bill creates operational efficiencies for the college and that it can assume the new responsibilities with existing resources. The Department of Legislative Services believes that BCCC may ultimately require additional procurement and technical staff to carry out these responsibilities, but a reliable estimate is not feasible.

Additional Information

Prior Introductions: SB 254 of 2019, a similar bill, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Designated Cross File: HB 207 (Delegate Wells, *et al.*) - Health and Government Operations.

Information Source(s): Department of Information Technology; Governor's Office of Small, Minority, and Women Business Affairs; State Board of Contract Appeals; Baltimore City Community College; Department of Budget and Management; Department of General Services; Board of Public Works; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510