



TOPIC: Proposed Policy on the Role of the USM as a Public Corporation

COMMITTEE: Effectiveness and Efficiency

DATE OF COMMITTEE MEETING: November 14, 2011

SUMMARY: At its June meeting, the Effectiveness and Efficiency Committee directed USM staff to develop a legislative strategy to improve the USM's effectiveness as a public corporation, especially with respect to supporting the economic development goals set out in the USM 2011 Strategic Plan. The need for such a strategy was identified in the analysis of responses to the Committee's requested survey of USM Vice Presidents for Administration and Finance conducted in 2010. After the June Committee meeting, the USM established an inter-institution workgroup comprised of USM and institution experts in procurement, capital projects, business development entrepreneurship, and human resources. As part of its work, the Workgroup developed a draft policy on the goals and authorities of the USM as a public corporation under current State law, in order to achieve three key purposes:

- 1) To articulate the USM's commitment to marshal its status as a public corporation to advance Maryland's economic growth;
- 2) To systematically set out, in a single core document, the full range statutory tools currently provided by the General Assembly for achieving that goal; and
- 3) To support other phases of a USM public corporation initiative, including the possible pursuit of legislative strategies to enhance the USM's capacity for fostering state economic development and improve its effectiveness and efficiency.

USM staff now seeks the Committee's recommendations regarding the proposed policy.

ALTERNATIVES(S): The Committee could elect to recommend modifications to the proposed policy, or recommend that a policy not be adopted.

FISCAL IMPACT: While the proposed policy is unlikely to have direct fiscal implications, its adoption should support other efforts to improve USM and State economic development opportunities and enhance institution and USM Office efficiency.

CHANCELLOR'S RECOMMENDATION: That the Committee discuss the strategy and make an appropriate recommendation to the Board of Regents.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Joseph F. Vivona (301) 445-1923

11/3/11 DRAFT

Policy on the Role of the University System of Maryland as a Public Corporation

I. PURPOSE

The Board of Regents is committed to using the resources of the University System of Maryland (“USM”) as effectively as possible to advance Maryland’s economic growth and the well-being of its citizens. In 1999, the Maryland General Assembly established the University System of Maryland (“USM”) as a public corporation to enable the USM to serve the State as “an engine that drives economic growth” and a “key to competing successfully in the 21st century.” *Preamble, S.B. 682 (1999)*. The USM’s status as a public corporation is crucial to achieving economic development and other goals related to its mission and the needs of the State. This policy affirms the USM’s commitment to serve the State as a leading force in research, economic growth, and workforce development in Maryland, and sets out its statutory powers as a public corporation as conferred by the General Assembly.

II. PRINCIPLES

A. Statutory Charge. The USM will meet its statutory charge to function as an effective public corporation, so that the USM can meet State expectations that it will:

1. Attract ever-increasing research funding, activity and expertise to enhance Maryland’s stature as a center for the bio-sciences, homeland security and other key knowledge industry fields;
2. Improve the health and wellbeing of Maryland’s citizens, based upon its scientific, medical and public health research;
3. Be a driving force in State economic development as its research enterprise translates into technology transfer, innovation, and entrepreneurship that spurs new business development in Maryland;
4. Meet the sophisticated workforce development needs of the State’s knowledge economy; and
5. Perform all of these functions in an increasingly global community and marketplace.

B. Fundamental Principles. The fundamental statutory principles that establish the USM’s status as a public corporation are:

1. In establishing the USM as a “public corporation,” the General Assembly created a “corporation established for a specific public purpose by government, but with a large degree of financial and operational independence from the government authority that created it.” *American Heritage Dictionary of Business Terms (2010)*. The General Assembly specifically intended that the USM have the “management flexibility necessary to respond to the needs of the student, State and citizens in a changing economy.” *Preamble, S.B. 682 (1999)*.
2. The General Assembly has conferred upon the Board all of the powers granted to a Maryland corporation under State corporation laws, as well as other powers set out in Title 12 of the Education Article. Educ. Section 12-104(b).
3. Under Maryland law, these powers can be limited only by statutes that impose restrictions “by law by specific reference to the University System of Maryland,” or

within the authority of the Maryland Higher Education Commission, or by “trust agreement[s] involving a pledge of property or money.” Educ. Section 12-104(a).

4. In the absence of a clear statutory restriction, the USM “may not be superseded in its authority by any other State agency or office in managing the affairs of the [USM] or of any constituent institutions and centers under the Board’s jurisdiction.” Educ. Section 12-104(d).
5. The USM’s ability to compete and thrive as a public corporation is critical to the State’s economic development and, in particular, in Maryland’s growth as a national and international leader in the knowledge economy.

III. THE USM’S CORPORATE POWERS

- A. General Grant of Corporate Powers. Educ. Section 12-104(b)(1) authorizes the Board to exercise all of the corporate powers granted to Maryland corporations under Maryland corporation law, *Ann. Code Md. Corp & Ass’n Art., §2-103*, unless constrained by other federal or state laws.
- B. Specific Corporate Powers. The Board’s powers, as granted by Maryland corporation law, Section 2-103, subject to the limitations expressly provided by State statute, include the powers to:
 1. Transact business, carry on operations and exercise its powers worldwide.
 2. Enter into contracts of any kind, execute instruments, incur liabilities and borrow money from any source for any corporate purpose;
 3. Sell, lease or otherwise dispose of any or all personal or real property assets;
 4. Issue bonds, notes and other obligations and secure them by mortgages or deeds of trust;
 5. Acquire, own, use, improve and deal in any interest in real or personal property, wherever located;
 6. Acquire, own, hold, and dispose of stock and other interests in and obligations of other corporations, associations, partnerships and individuals;
 7. Invest its surplus funds and lend money to carry on operations or fulfill the purposes of its charter;
 8. Promote, partner, join or manage any partnership, joint venture, trust or other enterprise;
 9. Make gifts or contributions for the use of the United States, the State of Maryland or other State and political subdivisions thereof, and other organizations serving a governmental, educational or other public purpose;
 10. Elect officers and establish bylaws;
 11. Appoint employees and other agents and determine their duties, compensation and benefits;
 12. “Do every other act not inconsistent with law” to promote and attain the corporation’s purposes.

- C. Delegation of Authority. Maryland law permits the Board to delegate any of its corporate and other authorities to the Chancellor, Presidents or other bodies that the Board may create. 12-104(k).

IV. MAJOR STATUTORY PARAMETERS.

Consistent with the above statutory principles and the corporate authorities, the General Assembly has granted the Board specific statutory powers and limitations on those powers. The major legislative parameters related to the USM's function as a public corporation are as follows:

- A. Acquisition and Ownership of Real Property. The Board may acquire, own, use, and dispose of real property, subject to the following requirements:
 - 1. Title to land acquired by the USM shall be in the State for the use of the USM.
 - 2. USM property is the property of the State.
 - 3. Acquisition and exchange of real property and interests therein must be approved by the Board of Public Works. Educ. 12-104 (g) and (h) and 12-105(b).
- B. Management of Personnel. The Presidents have the authority to appoint, compensate, promote and terminate faculty and staff personnel, subject to policies established by the Board and the State's collective bargaining law. The USM is otherwise independent of requirements that govern the State Personnel System. Educ. 12-111 and 12-112.
- C. Procurement. The USM is exempt from Division II Of the State Finance and Procurement Article governing procurement of goods and services by state agencies, except that:
 - 1. The Board must adopt procurement policies that are approved by the Board of Public Works.
 - 2. Contracts for goods and services that exceed certain amounts must be approved by the Board of Public Works.
 - 3. Certain discrete provisions of Division II enumerated by the General Assembly continue to apply to the USM. Educ. Section 12-105 and St. Fin. and Proc. Section 11-203(e).

V. USM ACCOUNTABILITY.

In the exercise of its corporate powers, the USM is fully accountable to the legislative and executive branches of State government through statutory requirements that include:

- A. Regular Reporting Requirements. The USM must provide periodic reports regarding a full range of aspects of its academic, fiscal and administrative operations to various state government authorities, including, as appropriate, the Governor, the General Assembly, the Board of Public Works, the Maryland Higher Education Commission, and other state agencies and entities.

- B. Information upon Request. Under Educ. 12-105 (c), the USM must provide information on any phase of operation requested by the Board of Public Works or a member of the General Assembly.
- C. Audit. The USM and its institutions are subject to audit by the Legislative Auditor. 12-105(f)

VI. COMMITMENT TO CONTINUOUS IMPROVEMENT.

The Board is committed to the continuous improvement of its effectiveness as an engine of State economic growth, including:

- A. The enhancement and protection of the USM's function as a public corporation;
 - B. Strong accountability to the State and the public; and
 - C. Improved efficiency in the management of the USM to better meet this goal.
- VII. IMPLEMENTATION.
- The Chancellor and the Presidents are responsible for the implementation of this policy.