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**TOPIC:** Review of Chapter 450 Economic Development (House Bill 442/Senate Bill 239) —  
Next Steps

**COMMITTEE:** Effectiveness and Efficiency

**DATE OF COMMITTEE MEETING:** October 17, 2012

**SUMMARY:** During the 2012 Legislative Session, HB442/SB239 was passed and signed into law. The legislation establishes the Maryland Innovation Initiative in the Maryland Technology Development Corporation providing a fund that is a “certain special, non-lapsing fund.” The legislation further requires the Board of Regents to undertake certain high impact economic development activities and to adopt certain policies and procedures related to certain high impact economic development activities.

This item is intended to be a review and discussion of these activities as well as a discussion of future possibilities as they relate to the work of the Committee on Effectiveness and Efficiency and the Board’s Policy on the Role of the University System of Maryland as a Public Corporation.

**ALTERNATIVE(S):** This item is presented for information and discussion purposes.

**FISCAL IMPACT:** This item is presented for information and discussion purposes.

**CHANCELLOR’S RECOMMENDATION:** This item is presented for information and discussion purposes.

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COMMITTEE RECOMMENDATION:

DATE:

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BOARD ACTION:

DATE:

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

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## Chapter 450

(House Bill 442)

AN ACT concerning

### **Economic Development – Maryland Technology Development Corporation – Maryland Innovation Initiative**

FOR the purpose of establishing the Maryland Innovation Initiative in the Maryland Technology Development Corporation; establishing the membership, qualifications, and the requirements for participation in the Initiative; establishing the purpose of the Initiative; establishing the Maryland Innovation Initiative Fund; providing that the Fund is a certain special, nonlapsing fund; requiring the State Treasurer to hold the Fund separately and to invest the money in the Fund; requiring the Comptroller to account for the Fund; providing for the funding of the Initiative and requiring funds to be used only for certain financial assistance and administrative expenses; authorizing the Initiative to award grants to certain entities under certain circumstances; authorizing the members of the Initiative to establish a certain committee with a certain membership and certain duties; requiring the Board of Regents of the University System of Maryland and the Board of Regents of Morgan State University to undertake certain high impact economic development activities; requiring the ~~Board~~ Boards of Regents to adopt certain policies and procedures related to certain high impact economic development activities; authorizing a University System of Maryland institution and Morgan State University to establish, invest in, finance, or operate a certain entity that supports high impact economic development activity and authorizing certain employees to participate in the entity; requiring the Corporation and the ~~Board~~ Boards of Regents to provide certain reports that include certain information; providing that a certain requirement that interest and other income be credited to the General Fund does not apply to the Fund; altering the amount and the types of contracts required for a certain Board of Public Works review; defining certain terms; making stylistic changes; and generally relating to economic development, the commercialization of technology in the State, and the Maryland Innovation Initiative.

BY adding to

Article – Economic Development

Section 10-454 through ~~10-459~~ 10-460 to be under the new part “Part V.

Maryland Innovation Initiative”

Annotated Code of Maryland

(2008 Volume and 2011 Supplement)

BY adding to

Article – Education  
 Section 12–104.1 and 14–104.1  
 Annotated Code of Maryland  
 (2008 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,  
 Article – Education  
 Section 12–113 and 14–110  
 Annotated Code of Maryland  
 (2008 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,  
Article – State Finance and Procurement  
Section 6–226(a)(1) and (2)(i)  
Annotated Code of Maryland  
(2008 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,  
 Article – State Finance and Procurement  
 Section 6–226(a)(2)(ii)62. and 63. and 11–203(e)  
 Annotated Code of Maryland  
 (2009 Replacement Volume and 2011 Supplement)

BY adding to  
Article – State Finance and Procurement  
Section 6–226(a)(2)(ii)64.  
Annotated Code of Maryland  
(2008 Replacement Volume and 2011 Supplement)

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

**Article – Economic Development**

**10–452. RESERVED.**

**10–453. RESERVED.**

**PART V. MARYLAND INNOVATION INITIATIVE.**

**10–454.**

**(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) “COMMERCIALIZATION” MEANS THE PROCESS OF INTRODUCING A NEW PRODUCT OR TECHNOLOGY INTO THE MARKET.

(C) “CORPORATION” MEANS THE MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION.

(D) “FUND” MEANS THE MARYLAND INNOVATION INITIATIVE FUND ESTABLISHED UNDER § 10-457 OF THIS PART.

~~(D)~~ (E) “INITIATIVE” MEANS THE MARYLAND INNOVATION INITIATIVE ESTABLISHED UNDER § ~~10-456~~ 10-455 OF THIS PART.

~~(E)~~ (F) “PARTICIPATING MEMBERS” MEANS THE REPRESENTATIVES ~~ESTABLISHED UNDER~~ DESCRIBED IN § 10-455(B) OF THIS PART.

~~(F)~~ (G) “QUALIFYING UNIVERSITY” MEANS A PUBLIC OR PRIVATE UNIVERSITY THAT MEETS THE REQUIREMENTS SET FORTH UNDER § 10-455(C) OF THIS PART.

~~(G)~~ (H) “TECHNOLOGY TRANSFER” MEANS THE PROCESS OF CONVERTING SCIENTIFIC AND TECHNOLOGICAL ADVANCES INTO MARKETABLE GOODS AND SERVICES.

~~(H)~~ (I) “UNIVERSITY” MEANS A NOT-FOR-PROFIT, RESEARCH UNIVERSITY LOCATED IN MARYLAND.

10-455.

(A) THERE IS A MARYLAND INNOVATION INITIATIVE.

(B) THE INITIATIVE CONSISTS OF THE FOLLOWING PARTICIPATING MEMBERS:

(1) ONE OFFICIAL OF STATE GOVERNMENT NOT AFFILIATED WITH MARYLAND HIGHER EDUCATION, OR THE OFFICIAL’S DESIGNEE, APPOINTED BY THE GOVERNOR;

(2) TWO INDIVIDUALS FROM THE PRIVATE SECTOR NOT AFFILIATED WITH MARYLAND HIGHER EDUCATION WITH EXPERIENCE IN COMMERCIALIZING TECHNOLOGY IN THE STATE, ONE APPOINTED BY THE PRESIDENT OF THE SENATE, AND ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF DELEGATES; AND

**(3) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE FOLLOWING MEMBERS APPOINTED BY THE RESPECTIVE UNIVERSITIES:**

**(I) ONE REPRESENTATIVE OF THE JOHNS HOPKINS UNIVERSITY;**

**(II) ONE REPRESENTATIVE OF MORGAN STATE UNIVERSITY;**

**(III) ONE REPRESENTATIVE OF UNIVERSITY OF MARYLAND, BALTIMORE;**

**(IV) ONE REPRESENTATIVE OF UNIVERSITY OF MARYLAND, BALTIMORE COUNTY; AND**

**(V) ONE REPRESENTATIVE OF UNIVERSITY OF MARYLAND, COLLEGE PARK.**

**(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ONLY THE UNIVERSITIES LISTED UNDER SUBSECTION (B)(3) OF THIS SECTION MAY QUALIFY FOR PARTICIPATION IN THE INITIATIVE.**

**(2) TO QUALIFY FOR PARTICIPATION IN THE INITIATIVE, A UNIVERSITY SHALL PROVIDE ~~AT LEAST \$250,000~~, AS SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION, A CONTRIBUTION ANNUALLY TO THE INITIATIVE TO CARRY OUT THE PURPOSES SET FORTH UNDER THIS PART.**

**(3) (I) TO QUALIFY FOR PARTICIPATION IN THE INITIATIVE, THE FOLLOWING UNIVERSITIES SHALL PAY AN ANNUAL CONTRIBUTION OF AT LEAST \$200,000:**

- 1. JOHNS HOPKINS UNIVERSITY;**
- 2. UNIVERSITY OF MARYLAND, BALTIMORE; AND**
- 3. UNIVERSITY OF MARYLAND, COLLEGE PARK.**

**(II) TO QUALIFY FOR PARTICIPATION IN THE INITIATIVE, THE FOLLOWING UNIVERSITIES SHALL PAY AN ANNUAL CONTRIBUTION OF AT LEAST \$100,000:**

- 1. MORGAN STATE UNIVERSITY; AND**

2. UNIVERSITY OF MARYLAND BALTIMORE COUNTY.

(4) A UNIVERSITY LISTED UNDER SUBSECTION (B)(3) OF THIS SECTION MAY ELECT TO WITHDRAW AS A PARTICIPATING MEMBER FOR FUTURE YEARS ON PROVIDING 60 DAYS' WRITTEN NOTICE TO THE CHAIR OR EXECUTIVE DIRECTOR OF THE INITIATIVE.

(D) THE PARTICIPATING MEMBERS OF THE INITIATIVE SHALL SELECT A CHAIR FROM AMONG THEIR MEMBERS.

(E) A PARTICIPATING MEMBER OF THE INITIATIVE:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE INITIATIVE; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET OR UNDER THE APPLICABLE TRAVEL REGULATIONS OF A UNIVERSITY IF THE UNIVERSITY REIMBURSES THE PARTICIPATING MEMBER.

(F) THE INITIATIVE MAY EMPLOY A STAFF, INCLUDING AN EXECUTIVE DIRECTOR.

10-456.

~~(A)~~ THE PURPOSE OF THE INITIATIVE IS TO:

(1) PROMOTE THE COMMERCIALIZATION OF RESEARCH CONDUCTED IN UNIVERSITIES IN THE STATE;

(2) ENCOURAGE QUALIFYING UNIVERSITIES TO PARTNER ON COMMERCIALIZATION AND OTHER ACTIVITIES, INCLUDING WITH FEDERAL LABORATORIES LOCATED IN MARYLAND; AND

(3) FACILITATE THE TRANSFER OF TECHNOLOGY FROM UNIVERSITIES TO COMMERCIAL INDUSTRIES, BY:

(I) ASSESSING THE VIABILITY AND VALUE OF THE TECHNOLOGY;

(II) DEFINING AND EXPLOITING POTENTIAL MARKETS FOR THE TECHNOLOGY;

(III) IDENTIFYING FUNDING SOURCES TO SUPPORT THE DEVELOPMENT OF THE TECHNOLOGY; AND

(IV) DEVELOPING COMMERCIALIZATION STRATEGIES.

10-457.

(A) THERE IS A MARYLAND INNOVATION INITIATIVE FUND.

(B) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING FOR THE PURPOSES DESCRIBED IN § 10-456 OF THIS PART.

~~(B)~~ (C) THE CORPORATION SHALL ADMINISTER THE ~~INITIATIVE~~ FUND.

~~(C)~~ ~~THE INITIATIVE MAY BE FUNDED BY:~~

(D) THE FUND CONSISTS OF:

(1) APPROPRIATIONS AS PROVIDED IN THE STATE BUDGET;

(2) CONTRIBUTIONS BY THE QUALIFYING UNIVERSITIES UNDER § 10-455 OF THIS PART;

(3) GRANTS OR FUNDS FROM FEDERAL LABORATORIES LOCATED IN MARYLAND; ~~AND~~

(4) INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF MONEY IN THE FUND; AND

~~(4)~~ (5) ANY OTHER MONEY ACCEPTED FOR THE BENEFIT OF THE INITIATIVE.

~~(D)~~ ~~FUNDS OF THE INITIATIVE MAY BE USED ONLY TO:~~

(E) MONEY IN THE FUND MAY BE USED ONLY TO:

(1) AWARD GRANTS TO PROMOTE THE COMMERCIALIZATION OF RESEARCH IN ACCORDANCE WITH THE TERMS OF THIS PART; AND

(2) PAY THE COSTS NECESSARY TO ADMINISTER THE INITIATIVE.

(F) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

**(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

**(3) THE STATE TREASURER SHALL INVEST THE MONEY IN THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

**(4) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.**

~~10-457.~~ 10-458.

**(A) THE INITIATIVE MAY:**

**(1) PROVIDE GRANT FUNDING TO A QUALIFYING UNIVERSITY, QUALIFYING UNIVERSITY-BASED ENTREPRENEUR, OR OTHER START-UP ENTITY, TO PROMOTE THE COMMERCIALIZATION OF TECHNOLOGY DEVELOPED IN WHOLE OR IN PART BY A QUALIFYING UNIVERSITY;**

**(2) PURSUE ~~GRANT FUNDING~~ GRANTS, OTHER FUNDS, AND IN-KIND CONTRIBUTIONS FOR THE INITIATIVE OR ITS QUALIFYING UNIVERSITIES;**

**(3) DEVELOP AND IMPLEMENT GUIDELINES FOR TECHNOLOGY TRANSFER; AND**

**(4) IDENTIFY PROJECTS AT QUALIFYING UNIVERSITIES THAT MAY BE VIABLE FOR COMMERCIALIZATION.**

**(B) THE GRANT FUNDING IN SUBSECTION (A) ~~MAY~~ SHALL BE AWARDED:**

**(1) TO SUPPORT PRE-COMMERCIAL RESEARCH ON INTELLECTUAL PROPERTY TO INCREASE THE LIKELIHOOD OF COMMERCIALIZING THE INTELLECTUAL PROPERTY;**

**(2) TO DEFRAY COSTS OF EVALUATING THE FEASIBILITY OF A TECHNOLOGY BECOMING COMMERCIALIZED THROUGH A START-UP COMPANY;**

**(3) TO DEFRAY THE DIRECT COSTS OF DEVELOPING EARLY STAGE TECHNOLOGY THROUGH A START-UP ENTITY;**

**(4) TO ASSESS INTELLECTUAL PROPERTY ISSUES, INCLUDING LICENSING AND PATENTS; OR**



(5) FOR ANY OTHER COSTS THAT THE INITIATIVE'S PARTICIPATING MEMBERS DETERMINE ARE APPROPRIATE TO PROMOTE TECHNOLOGY TRANSFER AND COMMERCIALIZATION IN THE STATE.

~~10-458.~~ 10-459.

(A) ONLY QUALIFYING UNIVERSITIES, AS PROVIDED UNDER § 10-455 OF THIS PART, MAY SUBMIT PROPOSALS FOR GRANT FUNDING FROM THE INITIATIVE.

~~(A)~~ (B) THE PARTICIPATING MEMBERS OF THE INITIATIVE MAY ESTABLISH A COMMITTEE COMPOSED OF EXPERTS IN THE AREAS OF RESEARCH CONSIDERED FOR COMMERCIALIZATION.

~~(B)~~ (C) THE INITIATIVE MAY ESTABLISH THE COMMITTEE UNDER SERVICE CONTRACTS WITH INDEPENDENT REVIEWERS.

~~(C)~~ (D) THE COMMITTEE SHALL:

(1) REVIEW, EVALUATE, AND RATE PROPOSALS FOR FUNDING FROM THE INITIATIVE, BASED ON:

(I) THE VIABILITY OF COMMERCIALIZING THE TECHNOLOGY; AND

(II) THE RELATIVE COSTS ASSOCIATED WITH COMMERCIALIZING THE TECHNOLOGY; AND

(2) MAKE RECOMMENDATIONS TO THE PARTICIPATING MEMBERS OF THE INITIATIVE FOR THE AWARD AND DISBURSEMENT OF GRANTS FROM THE INITIATIVE.

~~(D)~~ (E) A MEMBER OF THE COMMITTEE IS NOT ELIGIBLE TO RECEIVE FUNDING FROM THE INITIATIVE.

~~10-459.~~ 10-460.

THE CORPORATION SHALL INCLUDE, AS PART OF ITS ANNUAL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY UNDER § 10-415 OF THIS SUBTITLE, A DETAILED DESCRIPTION OF:

(1) THE NUMBER OF TECHNOLOGY TRANSFER TRANSACTIONS OR PROJECTS FOR WHICH THE INITIATIVE PROVIDED FUNDING;

**(2) THE AMOUNT AND SOURCE OF FUNDS THE INITIATIVE IDENTIFIED TO ASSIST IN THE DEVELOPMENT OF TECHNOLOGIES;**

**(3) THE QUALIFYING UNIVERSITIES OR ENTITIES FOR WHICH FUNDING WAS AWARDED;**

**(4) THE COMMERCIAL VALUE OF TECHNOLOGY THAT WAS TRANSFERRED TO THE COMMERCIAL INDUSTRY; AND**

**(5) ANY RECOMMENDATIONS FOR IMPROVING THE OVERALL EFFECTIVENESS OF TECHNOLOGY TRANSFER THROUGH THE INITIATIVE.**

**Article – Education**

**12-104.1.**

**(A) IN THIS SECTION, “HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY” MEANS AN INITIATIVE, TRANSACTION, OR OTHER UNDERTAKING BY THE UNIVERSITY SYSTEM OF MARYLAND OR ONE OF ITS CONSTITUENT INSTITUTIONS TO CREATE OR FACILITATE:**

**(1) 20 OR MORE NEW JOBS IN THE STATE OF MARYLAND;**

**(2) THE AWARD OR COMPLETION OF AT LEAST \$1,000,000 IN EXTERNALLY FUNDED RESEARCH OR OTHER PROJECTS;**

**(3) THE ESTABLISHMENT OR RELOCATION OF ONE OR MORE NEW COMPANIES TO BE REGISTERED OR INCORPORATED IN THE STATE AND DOING BUSINESS IN THE STATE;**

**(4) THE PRODUCTION OF AT LEAST \$1,000,000 OF ANNUAL GROSS REVENUE;**

**(5) THE LICENSING AND POTENTIAL COMMERCIALIZATION OF A PROMISING NEW TECHNOLOGY OR OTHER PRODUCT; OR**

**(6) AN ACADEMIC PROGRAM TO MEET WORKFORCE DEMAND IN A DOCUMENTED LABOR SHORTAGE FIELD.**

**(B) TO PROMOTE THE ECONOMIC INTERESTS OF THE STATE AS MANDATED IN §§ 10-205(A) AND 15-107 OF THIS ARTICLE, THE UNIVERSITY SYSTEM OF MARYLAND SHALL UTILIZE ITS POWERS AS A PUBLIC CORPORATION ESTABLISHED IN § 12-104 OF THIS SUBTITLE TO UNDERTAKE HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITIES THAT SUPPORT:**

- (1) JOB CREATION AND WORKFORCE DEVELOPMENT;**
- (2) TECHNOLOGY TRANSFER, COMMERCIALIZATION, AND ENTREPRENEURSHIP; AND**
- (3) INCREASED SPONSORED RESEARCH FUNDING AND OTHER REVENUES.**

**(C) IN ORDER FOR AN ACTIVITY TO QUALIFY AS A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY:**

**(1) THE PRESIDENT OF A CONSTITUENT INSTITUTION, OR THE PRESIDENT'S DESIGNEE, SHALL FORWARD A REQUEST TO THE CHANCELLOR FOR CERTIFICATION THAT THE ACTIVITY MEETS THE CRITERIA DEFINED IN SUBSECTION (A) OF THIS SECTION; AND**

**(2) THE CHANCELLOR, OR THE CHANCELLOR'S DESIGNEE, SHALL NOTIFY THE BOARD OF REGENTS AND THE BOARD OF PUBLIC WORKS OF ANY CERTIFIED ACTIVITY FOR REVIEW.**

**(D) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR ANY HIGH IMPACT ECONOMIC ACTIVITY WITHIN THE SCOPE OF § 5-310 OR § 10-305 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE BOARD OF REGENTS SHALL BE FULLY RESPONSIBLE FOR ADMINISTERING THE REVIEW AND COMMENT PROCESS PRESCRIBED IN THOSE SECTIONS.**

**(2) IN ADMINISTERING THE REVIEW AND COMMENT PROCESS PRESCRIBED IN §§ 5-310 AND 10-305 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE BOARD OF REGENTS SHALL ~~NOTIFY AND SUBMIT TO REVIEW BY~~ INCLUDE IN THAT PROCESS THE APPROPRIATE LEGISLATIVE COMMITTEES AND UNITS OF STATE GOVERNMENT, WHICH MAY INCLUDE:**

- (I) COMMITTEES OF THE GENERAL ASSEMBLY;**
- (II) THE BOARD OF PUBLIC WORKS;**
- (III) THE MARYLAND HISTORIC TRUST;**
- (IV) THE DEPARTMENT OF PLANNING;**
- (V) THE DEPARTMENT OF THE ENVIRONMENT; AND**
- (VI) THE DEPARTMENT OF NATURAL RESOURCES.**

**(3) THE BOARD OF REGENTS SHALL ADOPT POLICIES AND PROCEDURES TO ENSURE THAT THE NOTICE AND OPPORTUNITY FOR REVIEW ARE CONDUCTED IN A MANNER THAT PROVIDES A REASONABLE PERIOD TO COMPLETE WHILE NOT IMPAIRING THE INSTITUTION'S CAPACITY FOR THE EXPEDITIOUS AND SUCCESSFUL PURSUIT OF A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY.**

**(E) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD OF REGENTS SHALL REPORT TO THE BOARD OF PUBLIC WORKS, AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE SENATE FINANCE COMMITTEE, THE HOUSE ECONOMIC MATTERS COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, AND THE HOUSE APPROPRIATIONS COMMITTEE ON THE HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITIES UNDERTAKEN UNDER THIS SECTION DURING THE PRECEDING FISCAL YEAR.**

12-113.

(a) Consistent with § 15-107 of this article and any other applicable law, the Board of Regents may establish, invest in, finance, and operate businesses or business entities when the Board finds that doing so would further one or more goals of the University and is related to the mission of the University.

(b) (1) A business entity established, invested in, financed, or operated in accordance with this [subsection] SECTION may not be considered an agency or instrumentality of the State or a unit of the Executive Branch for any purpose.

(2) A financial obligation or liability of a business entity established, invested in, financed, or operated in accordance with this [subsection] SECTION may not be a debt or obligation of the State or University.

**(C) (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, AN INSTITUTION MAY ESTABLISH, INVEST IN, FINANCE, OR OPERATE A CORPORATION, FOUNDATION, CONSORTIUM, OR OTHER ENTITY THAT IS INTENDED TO SUPPORT A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY, AS DEFINED IN § 12-104.1 OF THIS ~~ARTICLE~~ SUBTITLE.**

**(2) NOTWITHSTANDING THE PROVISIONS OF §§ 15-501 THROUGH 15-504 OF THE STATE GOVERNMENT ARTICLE AND SUBJECT TO § 15-523 OF THE STATE GOVERNMENT ARTICLE, AN OFFICIAL OR EMPLOYEE OF A PUBLIC INSTITUTION OF HIGHER EDUCATION MAY BE A DIRECTOR, OFFICIAL, OR EMPLOYEE OF AN ENTITY INTENDED TO SUPPORT A HIGH IMPACT**

**ECONOMIC DEVELOPMENT ACTIVITY, IF THE INDIVIDUAL'S PARTICIPATION ADVANCES THE INTERESTS OF THE INSTITUTION.**

**(3) DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE DOES NOT APPLY TO TRANSACTIONS BETWEEN AN ENTITY ESTABLISHED, FINANCED, OR OPERATED UNDER THIS SUBSECTION AND THE INSTITUTION OR CONSORTIUM OF INSTITUTIONS THAT ESTABLISHED, FINANCED, OR OPERATED THE ENTITY.**

**(4) (I) THE BOARD OF REGENTS SHALL ADOPT POLICIES AND PROCEDURES GOVERNING THE ESTABLISHMENT OF HIGH IMPACT ECONOMIC DEVELOPMENT ENTITIES TO ENSURE THAT THE INSTITUTION'S PARTICIPATION IN THE ENTITY FURTHERS THE INTERESTS OF THE INSTITUTION, THE UNIVERSITY SYSTEM OF MARYLAND, AND THE STATE.**

**(II) THE POLICIES AND PROCEDURES UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE REQUIREMENTS FOR:**

**1. RECOGNITION OF THE ENTITY BY THE BOARD OF REGENTS;**

**2. AN ANNUAL AUDIT OF THE ENTITY BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT; AND**

**3. ADEQUATE SAFEGUARDS WITH REGARD TO CONFLICTS OF INTEREST, PROPER CONTRACTING PRACTICES, AND OTHER FUNDAMENTAL ETHICAL AND BUSINESS PRACTICE STANDARDS.**

**[(c)] (D)** The Board of Regents shall submit to the Governor, and in accordance with § 2-1246 of the State Government Article, the General Assembly, an annual report on:

(1) The business entities established in accordance with this section;

(2) Funds invested in, and financing provided to, business entities established in accordance with this section;

(3) Ownership interests in any business entities established in accordance with this section; and

(4) The current status of the business entities.

**14-104.1.**

(A) IN THIS SECTION, "HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY" MEANS AN INITIATIVE, TRANSACTION, OR OTHER UNDERTAKING BY MORGAN STATE UNIVERSITY TO CREATE OR FACILITATE:

(1) 20 OR MORE NEW JOBS IN THE STATE;

(2) THE AWARD OR COMPLETION OF AT LEAST \$1,000,000 IN EXTERNALLY FUNDED RESEARCH OR OTHER PROJECTS;

(3) THE ESTABLISHMENT OR RELOCATION OF ONE OR MORE NEW COMPANIES TO BE REGISTERED OR INCORPORATED IN THE STATE AND DOING BUSINESS IN THE STATE;

(4) THE PRODUCTION OF AT LEAST \$1,000,000 OF ANNUAL GROSS REVENUE;

(5) THE LICENSING AND POTENTIAL COMMERCIALIZATION OF A PROMISING NEW TECHNOLOGY OR OTHER PRODUCT; OR

(6) AN ACADEMIC PROGRAM TO MEET WORKFORCE DEMAND IN A DOCUMENTED LABOR SHORTAGE FIELD.

(B) TO PROMOTE THE ECONOMIC INTERESTS OF THE STATE AS MANDATED IN §§ 10-205(A) AND 15-107 OF THIS ARTICLE, THE MORGAN STATE UNIVERSITY SHALL UTILIZE ITS POWERS AS A PUBLIC CORPORATION ESTABLISHED IN § 14-104 OF THIS SUBTITLE TO UNDERTAKE HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITIES THAT SUPPORT:

(1) JOB CREATION AND WORKFORCE DEVELOPMENT;

(2) TECHNOLOGY TRANSFER, COMMERCIALIZATION, AND ENTREPRENEURSHIP; AND

(3) INCREASED SPONSORED RESEARCH FUNDING AND OTHER REVENUES.

(C) IN ORDER FOR AN ACTIVITY TO QUALIFY AS A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY:

(1) THE PRESIDENT OR THE PRESIDENT'S DESIGNEE, SHALL CERTIFY THAT THE ACTIVITY MEETS THE CRITERIA DEFINED IN SUBSECTION (A) OF THIS SECTION; AND

**(2) THE PRESIDENT OR THE PRESIDENT'S DESIGNEE, SHALL NOTIFY THE BOARD OF REGENTS AND THE BOARD OF PUBLIC WORKS OF ANY CERTIFIED ACTIVITY FOR REVIEW.**

**(D) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR ANY HIGH IMPACT ECONOMIC ACTIVITY WITHIN THE SCOPE OF § 5-310 OR § 10-305 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE BOARD OF REGENTS SHALL BE FULLY RESPONSIBLE FOR ADMINISTERING THE REVIEW AND COMMENT PROCESS PRESCRIBED IN THOSE SECTIONS.**

**(2) IN ADMINISTERING THE REVIEW AND COMMENT PROCESS PRESCRIBED IN §§ 5-310 AND 10-305 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE BOARD OF REGENTS SHALL INCLUDE IN THE PROCESS THE APPROPRIATE LEGISLATIVE COMMITTEES AND UNITS OF STATE GOVERNMENT, WHICH MAY INCLUDE:**

- (I) COMMITTEES OF THE GENERAL ASSEMBLY;**
- (II) THE BOARD OF PUBLIC WORKS;**
- (III) THE MARYLAND HISTORIC TRUST;**
- (IV) THE DEPARTMENT OF PLANNING;**
- (V) THE DEPARTMENT OF THE ENVIRONMENT; AND**
- (VI) THE DEPARTMENT OF NATURAL RESOURCES.**

**(3) THE BOARD OF REGENTS SHALL ADOPT POLICIES AND PROCEDURES TO ENSURE THAT THE NOTICE AND OPPORTUNITY FOR REVIEW ARE CONDUCTED IN A MANNER THAT PROVIDES A REASONABLE PERIOD TO COMPLETE WHILE NOT IMPAIRING THE INSTITUTION'S CAPACITY FOR THE EXPEDITIOUS AND SUCCESSFUL PURSUIT OF A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY.**

**(E) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD OF REGENTS SHALL REPORT TO THE BOARD OF PUBLIC WORKS AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE SENATE FINANCE COMMITTEE, THE HOUSE ECONOMIC MATTERS COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, AND THE HOUSE APPROPRIATIONS COMMITTEE ON THE HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITIES UNDERTAKEN UNDER THIS SECTION DURING THE PRECEDING FISCAL YEAR.**

14-110.

(a) Consistent with § 15-107 of this article and any other applicable law, the Board of Regents may establish, invest in, finance, and operate businesses or business entities when the Board of Regents finds that doing so would further one or more goals of the University and is related to the mission of the University.

(b) (1) A business entity established, invested in, financed, or operated in accordance with this [subsection] SECTION may not be considered an agency or instrumentality of the State or a unit of the Executive Branch for any purpose.

(2) A financial obligation or liability of a business entity established, invested in, financed, or operated in accordance with this [subsection] SECTION may not be a debt or obligation of the State or the University.

**(c) (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE UNIVERSITY MAY ESTABLISH, INVEST IN, FINANCE, OR OPERATE A CORPORATION, FOUNDATION, CONSORTIUM, OR OTHER ENTITY THAT IS INTENDED TO SUPPORT A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY, AS DEFINED IN § 14-104.1 OF THIS SUBTITLE.**

**(2) NOTWITHSTANDING THE PROVISIONS OF §§ 15-501 THROUGH 15-504 OF THE STATE GOVERNMENT ARTICLE AND SUBJECT TO § 15-523 OF THE STATE GOVERNMENT ARTICLE, AN OFFICIAL OR EMPLOYEE OF A PUBLIC INSTITUTION OF HIGHER EDUCATION MAY BE A DIRECTOR, OFFICIAL, OR EMPLOYEE OF AN ENTITY INTENDED TO SUPPORT A HIGH IMPACT ECONOMIC DEVELOPMENT ACTIVITY, IF THE INDIVIDUAL'S PARTICIPATION ADVANCES THE INTERESTS OF THE UNIVERSITY.**

**(3) DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE DOES NOT APPLY TO TRANSACTIONS BETWEEN AN ENTITY ESTABLISHED, FINANCED, OR OPERATED UNDER THIS SUBSECTION AND THE UNIVERSITY THAT ESTABLISHED, FINANCED, OR OPERATED THE ENTITY.**

**(4) (I) THE BOARD OF REGENTS SHALL ADOPT POLICIES AND PROCEDURES GOVERNING THE ESTABLISHMENT OF HIGH IMPACT ECONOMIC DEVELOPMENT ENTITIES TO ENSURE THAT THE UNIVERSITY'S PARTICIPATION IN THE ENTITY FURTHERS THE INTERESTS OF THE UNIVERSITY AND THE STATE.**

**(II) THE POLICIES AND PROCEDURES UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE REQUIREMENTS FOR:**



**1. RECOGNITION OF THE ENTITY BY THE BOARD OF REGENTS;**

**2. AN ANNUAL AUDIT OF THE ENTITY BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT; AND**

**3. ADEQUATE SAFEGUARDS WITH REGARD TO CONFLICTS OF INTEREST, PROPER CONTRACTING PRACTICES, AND OTHER FUNDAMENTAL ETHICAL AND BUSINESS PRACTICE STANDARDS.**

**[(c)] (D)** The Board of Regents shall submit to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly, an annual report on:

(1) The business entities established in accordance with this section;

(2) Funds invested in, and financing provided to, business entities established in accordance with this section;

(3) Ownership interests in any business entities established in accordance with this section; and

(4) The current status of the business entities.

#### **Article – State Finance and Procurement**

6-226.

**(a) (1) Except as otherwise specifically provided by law or by regulation of the Treasurer, the Treasurer shall credit to the General Fund any interest on or other income from State money that the Treasurer invests.**

**(2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.**

**(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:**

**62. Veterans Trust Fund; [and]**

**63. Transportation Trust Fund; AND**

**64. MARYLAND INNOVATION INITIATIVE FUND.**

11-203.

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

(2) Except as otherwise provided in this subsection, this Division II does not apply to the University System of Maryland, Morgan State University, or St. Mary's College of Maryland.

(3) (i) A procurement by a University shall comply with the policies and procedures developed by the University and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the General Assembly in accordance with § 12-112 of the Education Article for the University System of Maryland, § 14-109 of the Education Article for Morgan State University, or § 14-405(f) of the Education Article for St. Mary's College of Maryland.

(ii) 1. [Any contract for services or capital improvements with a value that exceeds \$500,000 shall require the] **THE** review and approval of the Board of Public Works **SHALL BE REQUIRED FOR THE FOLLOWING TYPES OF CONTRACTS WITH A VALUE THAT EXCEEDS \$1,000,000:**

**A. CAPITAL IMPROVEMENTS;**

**B. SERVICES; AND**

**C. ~~PURCHASES FUNDED WITH THE PROCEEDS OF A GENERAL OBLIGATION LOAN UNDER § 8-301 OF THIS ARTICLE; AND~~**

**D. DISPOSITIONS OF PERSONAL PROPERTY SUBJECT TO § 10-305 OF THIS ARTICLE, EXCEPT FOR DISPOSITIONS OF PERSONAL PROPERTY THAT WAS PURCHASED WITH THE PROCEEDS OF A GENERAL OBLIGATION LOAN.**

2. In its review of a contract for services or capital improvements with a value that exceeds [~~\$500,000~~] **\$1,000,000**, the Board of Public Works may request the comments of the appropriate agencies, including the Department of Budget and Management and the Department of General Services.

(4) A University's policies shall:

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

(ii) promote the purposes of the regulations adopted by the Department of General Services governing the procurement of architectural and engineering services.

(5) (i) Except as provided in paragraph (7) of this subsection, the following provisions of Division II of this article apply to a University:

1. § 11–205 of this subtitle (“Collusion”);
2. § 11–205.1 of this subtitle (“Falsification, concealment, etc., of material facts”);
3. § 13–219 of this article (“Required clauses – Nondiscrimination clause”);
4. § 13–225 of this article (“Retainage”);
5. Title 14, Subtitle 3 of this article (“Minority Business Participation”);
6. Title 15, Subtitle 1 of this article (“Procurement Contract Administration”);
7. § 15–226 of this article (“Policy established; timing of payments; notice upon nonpayment; disputes; appeals”); and
8. Title 16 of this article (“Suspension and Debarment of Contractors”).

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

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

1. the University System of Maryland before July 1, 1999; and
2. Morgan State University before July 1, 2004.

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

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

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

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

(i) procurement by a University from:

1. another unit;
2. a political subdivision of the State;
3. an agency of a political subdivision of the State;
4. a government, including the government of another state, of the United States, or of another country;
5. an agency or political subdivision of a government; or
6. a bistate, multistate, bicounty, or multicounty governmental agency;

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

1. direct resale;
2. remanufacture and subsequent resale; or
3. procurement by the University for overseas programs;

or

(iii) procurement by the University System of Maryland for:

1. services of managers to invest, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, gift and endowment assets received by the University System of Maryland in accordance with § 12-104(e) of the Education Article; or

2. expenditures to manage, maintain, and enhance, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, the value of gift and endowment assets received by the University System of Maryland in accordance with § 12-104(e) of the Education Article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

**Approved by the Governor, May 22, 2012.**

## **I-7.01 - POLICY ON THE ROLE OF THE UNIVERSITY SYSTEM OF MARYLAND AS A PUBLIC CORPORATION**

(Approved by the Board of Regents, December 2, 2011)

### **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 21<sup>st</sup> 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. 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. 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.

- C. In establishing the USM as a public corporation, the General Assembly conferred upon the Board the powers of a Maryland corporation, as well as other statutory powers, which can be limited only by statutes that impose restrictions specifically on the USM.
- D. As it performs its functions as a public corporation, the USM is accountable to the executive and legislative branches of government through reporting and audit measures established by the General Assembly.

III. 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.

IV. IMPLEMENTATION

The Chancellor and the Presidents are responsible for the implementation of this policy.

APPENDIX TO THE POLICY ON THE ROLE OF THE  
UNIVERSITY SYSTEM OF MARYLAND AS A PUBLIC CORPORATION:  
KEY MARYLAND STATUTORY PROVISIONS

I. STATUTORY FOUNDATION

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)*.

- A. 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).
- B. 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).
- C. 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).

II. 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).

### III. 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).

#### IV. 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).