
By: Chairman, Appropriations Committee (Departmental - Governor's Council on Management and Productivity: A Public-Private Enterprise) and Delegates Klima and Fry

Introduced and read first time: February 23, 1996

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 State Employees - Procurement - Managed Competition - Government Services

3 FOR the purpose of requiring that State agencies periodically review their operations;
4 imposing certain duties on the Council on Management and Productivity; providing
5 a process by which State employees will be authorized to restructure their
6 operations; providing a process by which State employees may submit a proposal in
7 response to a request for proposal issued by a State agency; defining certain terms;
8 providing for exemptions from the Maryland Public Ethics Law and the State
9 Personnel and Pensions Article; and generally relating to managed competition.

10 BY adding to

11 Article - State Finance and Procurement
12 Section 18-101 through 18-107, inclusive, to be under the new title "Title 18.
13 Managed Competition"
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1995 Supplement)

16 Preamble

17 WHEREAS, The State of Maryland has employed two systems, State employees or
18 private contractors, for the delivery of services to its citizens; and

19 WHEREAS, State employees are dedicated and hardworking; and

20 WHEREAS, The State of Maryland expends approximately one in three dollars
21 from its operating budget for private contractor services; and

22 WHEREAS, Competition in selecting service providers can be a useful tool in
23 achieving improved quality of services and cost efficiencies; and

24 WHEREAS, Many cities and states have benefited from the creation of a process in
25 which government employees compete against the private sector to provide services; and

26 WHEREAS, This process referred to as "managed competition" utilizes
27 performance measurements, auditing, management oversight, incentives, and penalties;
28 and

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1 WHEREAS, When such process frees state employees from certain statutory
2 restrictions, rewards innovation and utilizes an appropriate cost analysis method, a level
3 playing field for comparison of proposal and fair competition is assured; and

4 WHEREAS, The Maryland General Assembly finds that a process to evaluate the
5 delivery of services to the citizens of the State utilizing "managed competition" will
6 improve the quality of services and do so in a more cost efficient manner; now, therefore,

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

9 **Article - State Finance and Procurement**

10 TITLE 18. MANAGED COMPETITION.

11 18-101.

12 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

13 (B) "AGENCY" MEANS AN ENTITY OF THE EXECUTIVE BRANCH OF THE STATE
14 GOVERNMENT THAT IS AUTHORIZED TO ENTER INTO A CONTRACT.

15 (C) "CONTRACTOR" MEANS ANY PERSON OR ENTITY, OTHER THAN A
16 SERVICE UNIT, THAT HAS A CONTRACT WITH AN AGENCY.

17 (D) "COUNCIL" MEANS THE GOVERNOR'S COUNCIL ON MANAGEMENT AND
18 PRODUCTIVITY; A PUBLIC-PRIVATE ENTERPRISE.

19 (E) "GENERAL PROCUREMENT LAW" MEANS DIVISION II OF THE STATE
20 FINANCE AND PROCUREMENT ARTICLE.

21 (F) "MANAGED COMPETITION" MEANS THE PROCUREMENT PROCESS
22 CREATED UNDER § 18-105 OF THIS TITLE BY WHICH STATE EMPLOYEES MAY SUBMIT
23 A PROPOSAL IN RESPONSE TO A REQUEST FOR PROPOSALS FOR SERVICES.

24 (G) "SERVICES" MEANS:

25 (1) THE LABOR, TIME, OR EFFORT OF A STATE EMPLOYEE OR
26 CONTRACTOR; AND

27 (2) ANY PRODUCT OR REPORT NECESSARILY ASSOCIATED WITH THE
28 RENDERING OF A SERVICE.

29 (H) "SERVICE UNIT" MEANS THE GROUP OF STATE EMPLOYEES WHO
30 PERFORM SERVICES FOR WHICH A DETERMINATION HAS BEEN MADE UNDER §
31 18-103 OF THIS TITLE.

32 (I) "TARGETED SERVICE" MEANS A SERVICE FOR WHICH THE
33 DETERMINATION PROVIDED UNDER § 18-103 OF THIS TITLE HAS BEEN MADE.
34 TARGETED SERVICE INCLUDES SERVICES PROVIDED BY CONTRACTORS.

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1 18-102.

2 (A) EACH AGENCY SHALL REVIEW PERIODICALLY EACH SERVICE
3 DELIVERED BY THAT AGENCY TO DETERMINE WHETHER SUCH SERVICE SHOULD BE
4 PROCURED UNDER MANAGED COMPETITION.

5 (B) THE COUNCIL SHALL:

6 (1) REVIEW PERIODICALLY THE MANAGED COMPETITION
7 PROCUREMENTS CONDUCTED BY AGENCIES;

8 (2) FACILITATE AND ENCOURAGE THE MANAGED COMPETITION
9 PROCESS;

10 (3) PROVIDE TECHNICAL ASSISTANCE REGARDING MANAGED
11 COMPETITION TO HEADS OF AGENCIES;

12 (4) ASSURE THAT THE MANAGED COMPETITION PROCESS IS
13 IMPLEMENTED FAIRLY; AND

14 (5) MAKE RECOMMENDATIONS REGARDING MANAGED COMPETITION
15 TO THE GOVERNOR.

16 18-103.

17 A SERVICE MAY BE PROCURED THROUGH MANAGED COMPETITION IF THE
18 HEAD OF THE AGENCY DETERMINES THAT:

19 (1) OBJECTIVE PERFORMANCE MEASUREMENTS CAN BE ESTABLISHED;

20 (2) THE SERVICE IS OR COULD BE PROVIDED BY THE PRIVATE SECTOR;

21 (3) COSTS OR INCREASES IN THE COSTS FOR THE SERVICE COULD BE
22 REDUCED; AND

23 (4) COMPETITION FOR THE SERVICE IS IN THE BEST INTEREST OF THE
24 STATE.

25 18-104.

26 (A) AFTER AN AGENCY MAKES A DETERMINATION UNDER § 18-103 OF THIS
27 TITLE FOR A SERVICE PROVIDED BY A SERVICE UNIT, THE AGENCY SHALL PROVIDE
28 WRITTEN NOTICE OF THE DETERMINATION TO THE SERVICE UNIT THAT PROVIDES
29 THE TARGETED SERVICE.

30 (B) THE NOTICE TO THE SERVICE UNIT SHALL:

31 (1) SPECIFY THE EMPLOYEES COMPRISING THE SERVICE UNIT;

32 (2) ADVISE THE SERVICE UNIT THAT IT MAY SUBMIT A PLAN THAT
33 REDUCES COSTS OR INCREASES IN THE COSTS WHILE MAINTAINING THE QUALITY
34 OF THE TARGETED SERVICE; AND

35 (3) SPECIFY THE DATE FOR SUBMISSION OF THE PLAN. THE SUBMISSION
36 DATE SHALL BE NO LATER THAN 5 MONTHS AFTER THE DATE OF THE NOTICE.

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1 (C) FOR PURPOSES OF DEVELOPING A PLAN UNDER SUBSECTION (B), OF THIS
2 SECTION, THE FOLLOWING CONDITIONS SHALL APPLY:

3 (1) THE AGENCY SHALL PROVIDE THE SERVICE UNIT WITH
4 REASONABLE TECHNICAL ASSISTANCE TO DEVELOP THE PLAN;

5 (2) TO THE EXTENT WAIVED IN THE PLAN, THE EMPLOYEES OF THE
6 SERVICE UNIT SHALL BE EXEMPT FROM THE PROVISIONS OF THE STATE PERSONNEL
7 AND PENSIONS ARTICLE;

8 (3) THE PLAN SHALL PROVIDE FOR PERFORMANCE MEASUREMENTS
9 AND BUDGET REQUIREMENTS;

10 (4) THE PLAN SHALL PROVIDE FOR ANNUAL AUDITS OF BOTH BUDGET
11 AND PERFORMANCE MEASUREMENTS;

12 (5) THE PLAN SHALL SPECIFY A TERM OF SERVICE NOT TO EXCEED 3
13 YEARS FROM THE DATE OF ITS APPROVAL BY THE HEAD OF THE AGENCY;

14 (6) THE PLAN MAY PROVIDE INCENTIVES FOR EXCEEDING PLAN
15 GOALS; AND

16 (7) NEITHER THE PLAN NOR ITS IMPLEMENTATION MAY DISCRIMINATE
17 AMONG EMPLOYEES ON THE BASIS OF RACE, SEX, RELIGIOUS BELIEFS, NATIONAL
18 ORIGIN, OR PHYSICAL OR MENTAL DISABILITY.

19 (D) NOTWITHSTANDING SUBSECTION (C)(2), OF THIS SECTION, ANY
20 EMPLOYEE WHO IS PART OF THE SERVICE UNIT BUT WHO IS NOT INCLUDED IN THE
21 PLAN SHALL BE SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND
22 PENSIONS ARTICLE.

23 (E) THE PLAN SHALL BE SUBMITTED TO THE HEAD OF THE AGENCY.

24 (F) THE HEAD OF THE AGENCY MAY CONDUCT DISCUSSIONS WITH THE
25 SERVICE UNIT REGARDING THE PLAN AND SHALL APPROVE OR REJECT THE PLAN.

26 (G) IF THE SERVICE UNIT FAILS TO COMPLY WITH THE PLAN OR FAILS TO
27 SUBMIT A PLAN OR IF THE HEAD OF THE AGENCY REJECTS THE PLAN:

28 (1) THE TARGETED SERVICE SHALL BE SUBJECT TO MANAGED
29 COMPETITION; AND

30 (2) THE EMPLOYEES OF THE SERVICE UNIT SHALL BE SUBJECT TO THE
31 PROVISIONS OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

32 (H) UPON THE EXPIRATION OF THE TERM OF THE PLAN, THE TARGETED
33 SERVICE SHALL AGAIN BE SUBJECT TO REVIEW UNDER § 18-103 OF THIS TITLE.

34 (I) THE PLAN SHALL BE SUBJECT TO INSPECTION UNDER THE PUBLIC
35 INFORMATION ACT ONLY IF THE PLAN IS ACCEPTED.

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1 18-105.

2 (A) THE AGENCY SHALL ISSUE A REQUEST FOR PROPOSAL UNDER THIS
3 SECTION FOR THE TARGETED SERVICE IN ACCORDANCE WITH THE GENERAL
4 PROCUREMENT LAW NOT LATER THAN 6 MONTHS AFTER:

5 (1) THE SERVICE UNIT FAILS TO SUBMIT A PLAN IN ACCORDANCE WITH
6 § 18-104 OF THIS TITLE;

7 (2) THE PLAN SUBMITTED BY THE SERVICE UNIT IS REJECTED BY THE
8 HEAD OF THE AGENCY; OR

9 (3) THE SERVICE UNIT FAILS TO COMPLY WITH AN APPROVED PLAN.

10 (B) IN ADDITION TO THE REQUIREMENTS OF THE GENERAL PROCUREMENT
11 LAW, THE REQUEST FOR PROPOSAL SHALL:

12 (1) SPECIFY OBJECTIVE PERFORMANCE MEASURES FOR THE
13 CONTRACT THAT RESULTS FROM THE PROCUREMENT;

14 (2) REQUIRE ANNUAL AUDITS OF PERFORMANCE MEASURES AND
15 BUDGET;

16 (3) PERMIT INCENTIVES AND PENALTIES FOR COMPLIANCE WITH
17 PERFORMANCE MEASURES; AND

18 (4) INCLUDE AN APPROPRIATE COST ANALYSIS METHOD THAT
19 ENABLES THE STATE TO COMPARE THE PRICE PROPOSALS ON AN EQUAL BASIS.

20 (C) FOR PURPOSES OF THE REQUEST FOR PROPOSALS ISSUED UNDER THIS
21 SECTION, THE SERVICE UNIT MAY SUBMIT A PROPOSAL. SUCH PROPOSAL SHALL BE
22 SUBJECT TO THE FOLLOWING CONDITIONS:

23 (1) THE AGENCY SHALL PROVIDE THE SERVICE UNIT WITH
24 REASONABLE TECHNICAL ASSISTANCE TO DEVELOP A PROPOSAL;

25 (2) TO THE EXTENT WAIVED IN THE SERVICE UNIT'S PROPOSAL, THE
26 EMPLOYEES OF THE SERVICE UNIT SHALL BE EXEMPT FROM THE PROVISIONS OF
27 THE STATE PERSONNEL AND PENSIONS ARTICLE; AND

28 (3) AN EMPLOYEE WHO IS A MEMBER OF THE SERVICE UNIT BUT WHO
29 IS NOT INCLUDED IN THE PROPOSAL SHALL BE SUBJECT TO THE PROVISIONS OF THE
30 STATE PERSONNEL AND PENSIONS ARTICLE.

31 (D) TO THE EXTENT NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS
32 TITLE, AS DETERMINED BY THE HEAD OF THE AGENCY, TITLE 14 OF THIS ARTICLE
33 DOES NOT APPLY TO A MANAGED COMPETITION PROCUREMENT.

34 (E) IF THE SERVICE UNIT IS AWARDED THE CONTRACT FOR THE TARGETED
35 SERVICE, SUBJECT TO SUBSECTION (C)(2) OF THIS SECTION, THE EMPLOYEES OF THE
36 SERVICE UNIT SHALL CONTINUE AS STATE EMPLOYEES.

37 (F) IF THE SERVICE UNIT IS NOT AWARDED THE CONTRACT FOR THE
38 TARGETED SERVICE, THE EMPLOYEES OF THE SERVICE UNIT SHALL BE:

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1 (1) EXEMPT FROM THE PROVISIONS OF § 15-504 OF THE STATE
2 GOVERNMENT ARTICLE; AND

3 (2) SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND
4 PENSIONS ARTICLE.

5 (G) THE PROPOSAL OF A SERVICE UNIT SUBMITTED UNDER THIS SECTION
6 SHALL BE SUBJECT TO INSPECTION UNDER THE PUBLIC INFORMATION ACT ONLY IF
7 THE PROPOSAL OF A CONTRACTOR WOULD BE SUBJECT TO INSPECTION.

8 18-106.

9 (A) A DETERMINATION UNDER § 18-103 OF THIS TITLE MAY BE MADE FOR A
10 SERVICE PROVIDED BY A CONTRACTOR ONLY IF THERE IS A SERVICE UNIT THAT
11 PROVIDES SERVICES SIMILAR TO THOSE PROVIDED BY THE CONTRACTOR.

12 (B) UPON A DETERMINATION UNDER § 18-103 OF THIS TITLE, FOR A SERVICE
13 PROVIDED BY A CONTRACTOR, THE AGENCY SHALL PROVIDE WRITTEN NOTICE TO
14 THE CONTRACTOR THAT A MANAGED COMPETITION UNDER § 18-105 OF THIS TITLE
15 SHALL BE INITIATED.

16 18-107.

17 (A) THIS TITLE IS NOT A PART OF THE GENERAL PROCUREMENT LAW.

18 (B) THIS TITLE SHALL NOT BE CONSTRUED TO REQUIRE AN AGENCY TO
19 CONDUCT A MANAGED COMPETITION.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 1996.