

## CHAPTER 427

(House Bill 710)

AN ACT concerning

### Maryland–National Capital Park and Planning Commission – Service Contracts

MC/PG 117-07

FOR the purpose of ~~prohibiting the Maryland–National Capital Park and Planning Commission from soliciting a certain service contract unless the Executive Director of the Commission provides certain certification, the Commission submits a certain plan, and bargains in good faith with a certain certified representative~~ providing that before the Maryland–National Capital Park and Planning Commission may solicit a certain service contract, the Secretary–Treasurer of the Commission must provide certain certification; prohibiting the Secretary–Treasurer from making a certain certification unless the Commission has taken certain actions; requiring the Commission to compare certain costs under certain circumstances; requiring the Commission to provide certain notice and maintain a certain plan under certain circumstances; authorizing the certified representative of an adversely affected Commission employee to submit a proposal in response to a certain solicitation; specifying that noncompliance with the provisions of the Act may not invalidate certain contract awards or proposed contract awards; authorizing a certified representative to file ~~an action in a certain court~~ a certain appeal on behalf of a Commission employee if the Commission fails to comply with certain provisions of this Act; authorizing an administrative hearing officer to award an employee certain damages under certain circumstances; providing that a certain award of damages shall be the sole and exclusive remedy for certain violations; providing for the application of this Act; providing for a certain remedy; defining certain terms; and generally relating to Maryland–National Capital Park and Planning Commission service contracts.

BY adding to

Article 28 – Maryland–National Capital Park and Planning Commission  
 Section 2–112.2  
 Annotated Code of Maryland  
 (2003 Replacement Volume and 2006 Supplement)

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

**Article 28 – Maryland–National Capital Park and Planning Commission**

**2–112.2.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “ADVERSELY AFFECT” MEANS:

~~(I) A LOSS OF EXISTING COMMISSION EMPLOYMENT;~~

~~(II) A LOSS OF BARGAINING UNIT WORK;~~

~~(III) A REDUCTION IN PAY GRADE; OR~~

~~(IV) A REDUCTION IN PAY OR BENEFITS.~~

1. THE ELIMINATION OF MORE THAN TWO EMPLOYEE POSITIONS ASSIGNED TO PERFORM BARGAINING UNIT WORK IF THE POSITIONS ARE AUTHORIZED, FULLY FUNDED, AND EITHER VACANT FOR LESS THAN 90 CALENDAR DAYS OR OCCUPIED AT THE TIME THE COMMISSION SOLICITS A SERVICE CONTRACT;

2. A PERMANENT AND INVOLUNTARY REDUCTION BELOW THE NUMBER OF HOURS FOR REGULAR FULL–TIME EMPLOYMENT FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR FULL–TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT;

3. A PERMANENT AND INVOLUNTARY REDUCTION IN THE PAY GRADE FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR FULL–TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT; OR

4. A PERMANENT AND INVOLUNTARY REDUCTION IN THE BASE PAY OR FRINGE BENEFITS OTHERWISE APPLICABLE TO A JOB CLASSIFICATION COVERING MORE THAN FIVE EMPLOYEES CURRENTLY

ASSIGNED ON A FULL-TIME BASIS TO PERFORM BARGAINING UNIT WORK WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT.

(II) "ADVERSELY AFFECT" DOES NOT INCLUDE ANY ACTION BY THE COMMISSION TAKEN IN ACCORDANCE WITH:

1. A BONA FIDE DISCIPLINARY PROCEEDING;
2. A COLLECTIVE BARGAINING AGREEMENT THEN APPLICABLE IN ACCORDANCE WITH § 2-112.1 OF THIS SUBTITLE; OR
3. A REALLOCATION OR REASSIGNMENT TO OTHER BARGAINING UNIT WORK OR OTHER DUTIES THAT DOES NOT RESULT IN A CHANGE IN JOB CLASSIFICATION OR GRADE.

(3) "BARGAINING UNIT WORK" MEANS WORK DUTIES ASSIGNED OR ALLOCATED TO ANY POSITION OCCUPIED WITHIN THE PRECEDING 90 CALENDAR DAYS BY AN EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE.

(4) "CERTIFIED REPRESENTATIVE" MEANS AN EMPLOYEE ORGANIZATION CERTIFIED AS THE COLLECTIVE BARGAINING REPRESENTATIVE OF COMMISSION EMPLOYEES IN ACCORDANCE WITH § 2-112.1(C) OF THIS SUBTITLE.

~~(4) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE COMMISSION.~~

(5) "SECRETARY-TREASURER" MEANS THE SECRETARY-TREASURER OF THE COMMISSION.

~~(5)~~ (6) "SERVICE CONTRACT" MEANS A PROCUREMENT CONTRACT FOR SERVICES THAT WILL BE PROVIDED TO THE COMMISSION.

(B) (1) THIS SECTION APPLIES TO A SERVICE CONTRACT THAT:

(I) ~~WILL~~ IS SOLICITED BY THE COMMISSION AS A MANAGEMENT PLAN INTENDED TO ADVERSELY AFFECT A COMMISSION EMPLOYEE EMPLOYEES REPRESENTED BY A CERTIFIED REPRESENTATIVE; AND

(II) IN THE ESTIMATION OF THE COMMISSION PROCUREMENT OFFICER, WILL EXCEED AN ANNUAL COST OF ~~\$50,000~~ \$75,000 AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(2) THE COMMISSION SHALL ADJUST THE ANNUAL COST ESTIMATION DESCRIBED IN PARAGRAPH (1)(II) OF THIS SUBSECTION TO THE NEAREST \$100 EVERY 2 YEARS, BEGINNING ON OCTOBER 1, 2007, TO REFLECT ANY AGGREGATE INCREASE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS, FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2 YEARS.

(3) THIS SECTION DOES NOT APPLY TO:

~~(I) A CONTRACT IN WHICH THE PRIMARY PURPOSE IS TO OBTAIN GOODS OR CONSTRUCTION SERVICES;~~

~~(II) A SERVICE THAT THE MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY COUNCILS AUTHORIZE OR REQUIRE TO BE PROVIDED BY AN INDEPENDENT CONTRACTOR;~~

~~(III) A SERVICE PROVIDED BY A CONSULTANT; OR~~

~~(IV) A PROFESSIONAL SERVICE, UNLESS THE SERVICE IS PROVIDED BY BARGAINING UNIT EMPLOYEES WHEN THE CONTRACT IS SOLICITED.~~

(I) SOLICITATION OF A SERVICE CONTRACT AS PART OF A MANAGEMENT PLAN OR PROGRAM INTENDED TO AUGMENT BARGAINING UNIT WORK AND NOT FOR A PRESENT OR EVENTUAL PURPOSE OF ADVERSELY AFFECTING COMMISSION EMPLOYEES REPRESENTED BY THE CERTIFIED REPRESENTATIVE;

(II) SOLICITATION OF A SERVICE CONTRACT FOR WHICH THE PRIMARY PURPOSE IS TO OBTAIN GOODS OR CONSTRUCTION SERVICES;

(III) SOLICITATION OF A SERVICE CONTRACT THAT THE COMMISSION'S PURCHASING OFFICIALS REASONABLY BELIEVE AND EXPRESS IN WRITING MAY NEGATIVELY AFFECT THE POTENTIAL FOR PARTICIPATION BY A MINORITY BUSINESS ENTERPRISE ACCORDING TO ANY MINORITY BUSINESS

**ENTERPRISE UTILIZATION PROGRAM AUTHORIZED UNDER § 2-302 OF THIS ARTICLE;**

**(IV) SOLICITATION OF A SERVICE CONTRACT FOR A SERVICE PROVIDED BY A CONSULTANT;**

**(V) SOLICITATION OF A SERVICE CONTRACT FOR A PROFESSIONAL SERVICE, UNLESS THE SCOPE OF SERVICE IS PROVIDED BY BARGAINING UNIT EMPLOYEES WHEN THE CONTRACT IS SOLICITED;**

**(VI) SOLICITATION OF A SERVICE CONTRACT THAT THE COMMISSION REASONABLY BELIEVES IS:**

**1. NECESSARY TO MEET AN EMERGENT OR IMMINENT THREAT TO PUBLIC HEALTH, WELFARE, OR SAFETY;**

**2. REQUIRED TO COMPLY WITH THE REQUIREMENTS OF ANY GRANT RELATED TO THE FUNDING OF THAT CONTRACT; OR**

**3. RELATED TO THE SETTLEMENT OF AN INSURANCE CLAIM;**

**(VII) SOLICITATION OF A SERVICE CONTRACT THAT IS IN THE BEST INTEREST OF AN EMPLOYEE BASED ON A NEED FOR SPECIALIZED SAFETY EXPERIENCE OR EXPERTISE;**

**(VIII) SOLICITATION OF A SERVICE CONTRACT FOR ANY SERVICE PROVIDED BY A PUBLIC ENTITY OR PROVIDED TO THE COMMISSION IN ACCORDANCE WITH A PUBLIC-PRIVATE PARTNERSHIP WITH A PRIVATE ENTITY;**

**(IX) SOLICITATION OF A SERVICE CONTRACT TO BE AWARDED ON A NONCOMPETITIVE BASIS IN ACCORDANCE WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS REGARDING THOSE CONTRACTS;**

**(X) A SERVICE CONTRACT ENTERED INTO PRIOR TO OCTOBER 31, 2007;**

**(XI) THE RENEWAL OR REBIDDING OF A SERVICE CONTRACT ENTERED INTO PRIOR TO OCTOBER 31, 2007, IF THE RENEWAL OR REBIDDING OF THE SERVICE CONTRACT DOES NOT RESULT IN A GREATER ADVERSE EFFECT**

**ON BARGAINING UNIT EMPLOYEES THAN EXISTED PRIOR TO ITS RENEWAL OR REBIDDING;**

**(XII) SOLICITATION OF A SERVICE CONTRACT FOR A CAPITAL IMPROVEMENT PROJECT OR ASSET MANAGEMENT PROJECT;**

**(XIII) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR PARTICULAR SERVICE CONTRACT THAT THE COMMISSION REASONABLY BELIEVES SHOULD BE PERFORMED BY AN INDEPENDENT CONTRACTOR TO ELIMINATE A CONFLICT OF INTEREST OTHERWISE APPARENT IF THE SERVICES ARE PERFORMED BY A BARGAINING UNIT EMPLOYEE;**

**(XIV) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR PARTICULAR SERVICE CONTRACT WHEN THE NEED FOR THE SERVICE OR ACTIVITY IS SUCH THAT THE TIME NECESSARY FOR THE ANALYSIS REQUIRED UNDER SUBSECTION (D) OF THIS SECTION WOULD:**

- 1. RESULT IN DAMAGE TO COMMISSION PROPERTY;**
- 2. RESULT IN INJURY TO INDIVIDUALS; OR**
- 3. SUBSTANTIALLY HINDER THE OBJECTIVE OF CONSTRUCTING OR MAINTAINING SAFE, SANITARY, AND DECENT PROPERTIES AND FACILITIES; OR**

**(XV) A SERVICE CONTRACT THAT EITHER THE MONTGOMERY COUNTY COUNCIL OR THE PRINCE GEORGE'S COUNTY COUNCIL AUTHORIZES OR REQUIRES BE PROVIDED BY AN INDEPENDENT CONTRACTOR.**

**(4) THIS SECTION DOES NOT APPLY TO OR LIMIT THE AUTHORITY OF THE COMMISSION TO ABOLISH A BARGAINING UNIT POSITION OR CONDUCT A REDUCTION IN FORCE.**

~~**(c) THE COMMISSION MAY NOT SOLICIT A SERVICE CONTRACT UNDER THIS SUBTITLE UNLESS THE EXECUTIVE DIRECTOR HAS CERTIFIED THAT THE SERVICE CONTRACT COMPLIES WITH SUBSECTIONS (D) AND (E) OF THIS SECTION.**~~

(C) BEFORE THE COMMISSION SOLICITS ANY SERVICE CONTRACT UNDER THIS SECTION, THE SECRETARY-TREASURER MUST CERTIFY THAT THE COMMISSION HAS COMPLIED WITH SUBSECTIONS (D) AND (E) OF THIS SECTION.

(D) (1) ~~THE EXECUTIVE DIRECTOR~~ SECRETARY-TREASURER MAY NOT CERTIFY THAT THE COMMISSION ~~MAY SOLICIT A SERVICE CONTRACT~~ HAS COMPLIED WITH THE REQUIREMENTS OF THIS SECTION UNLESS THE COMMISSION:

(I) HAS TAKEN STEPS TO CONSIDER ALTERNATIVES TO THE SERVICE CONTRACT, INCLUDING REORGANIZATION, REEVALUATION OF SERVICE, AND REEVALUATION OF PERFORMANCE;

(II) HAS CONSULTED WITH THE CERTIFIED REPRESENTATIVE OF ANY COMMISSION EMPLOYEES WHO WILL BE ADVERSELY AFFECTED IF THE COMMISSION ENTERS INTO THE SERVICE CONTRACT; AND

(III) HAS DEMONSTRATED, BASED ON A COST COMPARISON ANALYSIS AND GOOD FAITH ESTIMATES, THAT THE COMMISSION WILL SAVE, OVER THE TERM OF THE SERVICE CONTRACT, 25% OR MORE OF THE VALUE OF THE SERVICE CONTRACT BY ENTERING INTO A SERVICE CONTRACT, AT LEAST AN AMOUNT EQUAL TO THE LESSER OF \$200,000 OR 20% OF THE ESTIMATED NET PRESENT VALUE OF THE COST OF THE SERVICE CONTRACT.

(2) THE COMMISSION SHALL ESTIMATE AND COMPARE AT LEAST THE FOLLOWING IN THE COST COMPARISON ANALYSIS:

(I) DIRECT COSTS, INCLUDING FRINGE BENEFITS AND THE ASSUMPTION THAT THE CONTRACTOR WILL PAY EMPLOYEES WHO PERFORM WORK UNDER THE SERVICE CONTRACT AT RATES COMPARABLE TO RATES IN ANY EXISTING COLLECTIVE BARGAINING AGREEMENT THE LESSER OF THE LABOR RATE ESTABLISHED AS THE COUNTY LIVING WAGE RATE FOR MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY;

(II) INDIRECT OVERHEAD COSTS, INCLUDING THE PROPORTIONAL SHARE OF EXISTING ADMINISTRATIVE SALARIES AND BENEFITS, RENT, EQUIPMENT COSTS, UTILITIES, AND MATERIALS PROPERLY ALLOCABLE TO THE BARGAINING UNIT WORK OR SERVICE CONTRACT ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND

~~(III) ANY CONTINUING OR TRANSITIONAL COSTS THAT WOULD BE DIRECTLY ASSOCIATED WITH CONTRACTING FOR THE SERVICES, INCLUDING UNEMPLOYMENT COMPENSATION AND THE COSTS OF TRANSITIONAL SERVICES.~~

(III) ANY COSTS ASSOCIATED WITH UNEMPLOYMENT COMPENSATION OR OUTPLACEMENT ASSISTANCE FOR DISPLACED EMPLOYEES.

(E) (1) THE COMMISSION SHALL:

~~(I) DEVELOP AND SUBMIT A FORMAL PLAN OF ASSISTANCE FOR EACH COMMISSION EMPLOYEE WHO WILL BE ADVERSELY AFFECTED BY THE SERVICE CONTRACT; AND~~

~~(II) BARGAIN IN GOOD FAITH WITH THE CERTIFIED REPRESENTATIVE BEFORE ADOPTING A FINAL PLAN OF ASSISTANCE, INCLUDING, IF NECESSARY, SUBMISSION OF THE MATTER TO MEDIATION ARBITRATION UNDER § 2-112.1(L) OF THIS SUBTITLE PROVIDE NOT LESS THAN 60 DAYS ADVANCE NOTICE AND MAINTAIN AT ALL TIMES A FORMAL PLAN OF OUTPLACEMENT ASSISTANCE FOR EACH COMMISSION EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE AND WILL BE ADVERSELY AFFECTED BY A SERVICE CONTRACT THAT IS SUBJECT TO THIS SECTION.~~

(2) THE PLAN DESCRIBED IN PARAGRAPH ~~(1)(i)~~ (1) OF THIS SUBSECTION SHALL INCLUDE:

(I) EFFORTS TO TRANSFER OR PLACE EACH ADVERSELY AFFECTED COMMISSION EMPLOYEE IN A VACANT COMMISSION POSITION THAT THEY ARE QUALIFIED TO PERFORM;

(II) INCLUSION IN THE SERVICE CONTRACT OF A REQUIREMENT THAT THE CONTRACTOR SHALL:

1. NOTIFY THE COMMISSION OF ANY VACANT POSITION FOR WHICH DISPLACED COMMISSION EMPLOYEES MAY APPLY; AND

2. CONSIDER AND GIVE FIRST PREFERENCE TO HIRING DISPLACED COMMISSION EMPLOYEES; AND



**(III) WRITTEN NOTIFICATION OF THE ANTICIPATED ADVERSE EFFECT ON ONE OR MORE JOB CLASSIFICATIONS TO EACH AFFECTED COMMISSION EMPLOYEE AND THE CERTIFIED REPRESENTATIVE AT LEAST ~~120~~ 90 CALENDAR DAYS BEFORE THE ANTICIPATED ADVERSE EFFECT WILL OCCUR.**

**(F) THE CERTIFIED REPRESENTATIVE OF AN ADVERSELY AFFECTED COMMISSION EMPLOYEE MAY SUBMIT A PROPOSAL ~~IN RESPONSE TO A SOLICITATION, UNDER APPLICABLE PROCUREMENT REGULATIONS, TO HAVE COMMISSION EMPLOYEES PERFORM~~ FOR EXISTING BARGAINING UNIT EMPLOYEES TO CONTINUE PERFORMING THE SERVICES DESCRIBED IN THE SOLICITATION WHILE SUBSTANTIALLY ACHIEVING THE TARGETED SAVINGS.**

**(G) (1) (I) IF THE COMMISSION FAILS TO COMPLY WITH ANY PROVISION OF THIS ~~SUBTITLE~~ SECTION AND A COMMISSION EMPLOYEE IS ADVERSELY AFFECTED, THE CERTIFIED REPRESENTATIVE OF THE EMPLOYEE MAY FILE AN ~~ACTION~~ APPEAL ON THE RECORD ON BEHALF OF THE EMPLOYEE ~~IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, OR THE DISTRICT COURT OF MARYLAND,~~ DEPENDING ON THE AMOUNT IN CONTROVERSY BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

**~~(H) IF A COURT ENTERS A JUDGMENT IN FAVOR OF A COMMISSION EMPLOYEE, THE COMMISSION SHALL REIMBURSE THE EMPLOYEE FOR ANY LOSSES INCURRED BY THE EMPLOYEE AND REIMBURSE THE CERTIFIED REPRESENTATIVE FOR ALL COSTS AND ATTORNEYS' FEES.~~**

**(II) 1. IF THE HEARING OFFICER FINDS THAT THE COMMISSION WAS ARBITRARY AND CAPRICIOUS IN SOLICITING OR ENTERING INTO A SERVICE CONTRACT THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION, AND THE COMMISSION EMPLOYEE HAS BEEN ADVERSELY AFFECTED, THE HEARING OFFICER MAY AWARD THE EMPLOYEE ACTUAL DAMAGES FOR BACK PAY AND FRONT PAY FOR A COMBINED PERIOD OF UP TO 2 YEARS BEGINNING ON THE DATE THE EMPLOYEE WAS FIRST ADVERSELY AFFECTED, PROVIDED THAT THE EMPLOYEE IS OBLIGATED TO MITIGATE THE ACTUAL DAMAGES.**

**2. THE AWARD OF ACTUAL DAMAGES AUTHORIZED UNDER THIS PARAGRAPH SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR A**

**VIOLATION OF THIS SECTION THAT IS AVAILABLE TO THE EMPLOYEE, AND NO LIABILITY SHALL ACCRUE FOR PUNITIVE DAMAGES, CONSEQUENTIAL DAMAGES, OR DAMAGES FOR EMOTIONAL DISTRESS OR PAIN AND SUFFERING.**

**(2) NONCOMPLIANCE WITH THIS SECTION MAY NOT INVALIDATE A CONTRACT AWARD OR PROPOSED CONTRACT AWARD THAT THE COMMISSION HAS OTHERWISE VALIDLY AWARDED OR ISSUED.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

**Approved by the Governor, May 8, 2007.**