

HOUSE BILL 533

P2

9lr0832

By: **Delegates Morhaim and Weldon**

Introduced and read first time: February 5, 2009

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Cooperative Purchasing Agreements – Requirements and Expansion of Use**

3 FOR the purpose of requiring that certain procurement contracts entered into by State
4 and local entities include certain provisions that facilitate certain other entities
5 to participate in the contracts; authorizing State and local entities to enter into
6 certain agreements for the cooperative or joint administration of programs with
7 other State or local entities; requiring that State and local entities make certain
8 efforts to determine if another State or local entity is participating in a certain
9 contract before initiating a certain procurement; authorizing State and local
10 entities to participate in certain State or local contracts if certain
11 determinations are made; authorizing certain not-for-profit entities to
12 participate in certain State or local contracts if certain bidding is used;
13 authorizing that in certain fiscal years, certain secretaries may withhold certain
14 percentages of funds distributed under certain programs to local entities under
15 certain circumstances; providing certain legislative intent; requiring the
16 Procurement Advisory Council in the Board of Public Works to report to certain
17 committees of the General Assembly on or before a certain date; defining certain
18 terms; and generally relating to requirements and expansion of use for
19 cooperative purchasing agreements.

20 BY repealing and reenacting, with amendments,
21 Article – State Finance and Procurement
22 Section 13–110
23 Annotated Code of Maryland
24 (2006 Replacement Volume and 2008 Supplement)

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

27 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 13-110.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) **“COOPERATIVE ENTITY” MEANS ONE OR MORE STATE OR**
4 **LOCAL ENTITIES THAT ENTER INTO AN AGREEMENT FOR THE COOPERATIVE OR**
5 **JOINT ADMINISTRATION OF PROGRAMS.**

6 [(2)] (3) “Governmental entity” means:

7 (i) the federal government or an agency or other
8 instrumentality of the federal government;

9 (ii) another state or an agency or other instrumentality of
10 another state;

11 (iii) a bistate or multistate agency;

12 (iv) a county, municipal corporation, or other political
13 subdivision of the State or of another state, or an agency or other instrumentality of
14 the political subdivision;

15 (v) a bicounty or multicounty agency;

16 (vi) a primary procurement unit; or

17 (vii) an affiliation, alliance, consortium, or group composed solely
18 of governmental entities that is established for purposes of promoting
19 intergovernmental cooperative purchasing.

20 [(3)] (4) “Intergovernmental cooperative purchasing agreement”
21 means a contract:

22 (i) 1. entered into by at least one governmental entity and a
23 person selected in a manner that is consistent with the purposes set forth under §
24 11-201 of this article;

25 2. that is available for use by the governmental entity
26 entering the contract and at least one additional governmental entity which may, but
27 need not be, an original party to the contract; and

28 3. that is intended to promote efficiency and savings
29 that can result from intergovernmental cooperative purchasing; or

30 (ii) between a primary procurement unit and a person who, at
31 the time the intergovernmental cooperative purchasing agreement is awarded, has a
32 contract with the federal government or an agency or other instrumentality of the

1 federal government, and who agrees to provide the unit with identical prices, terms,
2 and conditions as stipulated in the federal contract.

3 (5) (I) "LOCAL ENTITY" MEANS A COUNTY, MUNICIPAL
4 CORPORATION, BICOUNTY OR MULTICOUNTY AGENCY, PUBLIC AUTHORITY,
5 SPECIAL TAXING DISTRICT, OR OTHER POLITICAL SUBDIVISION OR UNIT OF A
6 POLITICAL SUBDIVISION OF THIS STATE.

7 (II) "LOCAL ENTITY" INCLUDES BOARDS OF EDUCATION
8 AND LIBRARY BOARDS THAT RECEIVE FUNDING FROM THE STATE.

9 (6) "NOT-FOR-PROFIT ENTITY" MEANS A CORPORATION
10 INCORPORATED IN THE STATE, OR OTHERWISE QUALIFIED TO DO BUSINESS IN
11 THE STATE:

12 (I) THAT HAS BEEN DETERMINED BY THE INTERNAL
13 REVENUE SERVICE TO BE EXEMPT FROM TAXATION UNDER § 501(C)(3), (4), OR
14 (6) OF THE INTERNAL REVENUE CODE; AND

15 (II) THAT HAS ANNUAL REVENUES NOT GREATER THAN
16 \$750,000.

17 (7) "STATE ENTITY" MEANS A DEPARTMENT, BOARD,
18 COMMISSION, AGENCY, OR A SUBUNIT IN THE EXECUTIVE, LEGISLATIVE, OR
19 JUDICIAL BRANCH OF STATE GOVERNMENT.

20 (b) (1) Subject to § 12-107 of this article, whenever a primary
21 procurement unit procurement officer determines that it is in the best interest of the
22 State to sponsor or participate in an intergovernmental cooperative purchasing
23 agreement, with the approval of the unit head and subject to any other approval
24 required by law, the primary procurement unit may become a party to or participate
25 under the agreement.

26 (2) A determination under this subsection shall be in writing and
27 include a statement that the intergovernmental cooperative purchasing agreement:

28 (i) will provide cost benefits to the State, promote
29 administrative efficiencies, or promote intergovernmental cooperation; and

30 (ii) is not intended to evade the purposes of this Division II.

31 [(c) (1)] (3) If a primary procurement unit sponsors an
32 intergovernmental cooperative purchasing agreement:

1 (i) the contract shall be awarded in the same manner as the
 2 contract would be awarded under this Division II if the unit was the sole participant
 3 under the contract; and

4 (ii) all procedures under this Division II, including procedures
 5 governing contract claims and protests, shall apply.

6 [(2) A political subdivision of the State may participate under any
 7 intergovernmental cooperative purchasing agreement sponsored by a primary
 8 procurement unit in a manner consistent with the terms of the agreement.]

9 [(d)] (4) If a primary procurement unit participates in an
 10 intergovernmental cooperative purchasing agreement, any protest or contract claim
 11 involving the agreement shall be handled in accordance with the terms of the
 12 agreement.

13 (C) (1) **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
 14 **SUBSECTION, EACH PROCUREMENT CONTRACT FOR SUPPLIES OR SERVICES**
 15 **ENTERED INTO BY A STATE OR LOCAL ENTITY SHALL INCLUDE A PROVISION**
 16 **THAT FACILITATES OTHER STATE AND LOCAL ENTITIES AND NOT-FOR-PROFIT**
 17 **ENTITIES TO PARTICIPATE IN THE CONTRACT.**

18 (2) (I) **THIS SUBSECTION DOES NOT APPLY TO:**

19 1. **A PROCUREMENT FOR A CAPITAL FACILITY,**
 20 **IMPROVEMENT, OR OTHER UNIQUE PURCHASE; OR**

21 2. **SMALL PROCUREMENT AS DEFINED BY § 13-109**
 22 **OF THIS SUBTITLE.**

23 (II) **THIS SUBSECTION DOES NOT APPLY IF THE STATE OR**
 24 **LOCAL ENTITY DETERMINES THAT INCLUDING THE PROVISION WOULD:**

25 1. **UNDERMINE THE DESIRED TIMING OR EFFECT OF**
 26 **THE PROCUREMENT;**

27 2. **INTERFERE WITH THE LOCAL ENTITY'S ABILITY**
 28 **TO MEET THE MINORITY BUSINESS ENTERPRISE GOALS PROVIDED UNDER §**
 29 **14-302 OF THIS ARTICLE OR THE SMALL BUSINESS RESERVE PROGRAM**
 30 **REQUIREMENTS UNDER § 14-502 OF THIS ARTICLE; OR**

31 3. **NOT BE IN THE BEST INTEREST OF THE ENTITY.**

1 (D) (1) A STATE OR LOCAL ENTITY MAY ENTER INTO AN AGREEMENT
2 FOR THE COOPERATIVE OR JOINT ADMINISTRATION OF PROGRAMS WITH ONE
3 OR MORE OTHER STATE OR LOCAL ENTITIES.

4 (2) A COOPERATIVE ENTITY ESTABLISHED UNDER THIS SECTION
5 MAY ADMINISTER THE PROGRAMS AND EXERCISE THE POWERS AND DUTIES
6 SPECIFICALLY DELEGATED TO THE COOPERATIVE ENTITY BY THE AGREEMENT
7 THAT ESTABLISHED THE COOPERATIVE ENTITY.

8 (3) AN AGREEMENT DESCRIBED UNDER THIS SUBSECTION DOES
9 NOT RELIEVE A STATE OR LOCAL ENTITY OR OTHER PARTICIPANT OF THE
10 AGREEMENT FROM ANY OBLIGATION OR RESPONSIBILITY IMPOSED ON THE
11 ENTITY BY LAW.

12 (E) BEFORE INITIATING A PROCUREMENT FOR SUPPLIES OR SERVICES,
13 A STATE OR LOCAL ENTITY SHALL MAKE A REASONABLE EFFORT TO DETERMINE
14 IF ANOTHER STATE OR LOCAL ENTITY IS PARTICIPATING IN A CONTRACT FOR
15 THE SAME SUPPLIES OR SERVICES.

16 (F) NOTWITHSTANDING ANY OTHER LAW, A STATE OR LOCAL ENTITY
17 MAY PARTICIPATE IN AN EXISTING STATE OR LOCAL CONTRACT DRAFTED IN
18 ACCORDANCE WITH THIS SECTION, IF THE GOVERNING BODY OF THE ENTITY
19 DETERMINES THAT PARTICIPATION WOULD:

20 (1) PROVIDE A COST SAVINGS IN PURCHASE PRICE OR
21 ADMINISTRATIVE BURDEN; OR

22 (2) FURTHER OTHER POLICY GOALS INCLUDING OPERATIONAL
23 AND ENERGY-EFFICIENCY GOALS RELATED TO THE PURCHASE, OPERATION, OR
24 MAINTENANCE OF THE SUPPLY OR SERVICE.

25 (G) A NOT-FOR-PROFIT ENTITY MAY PARTICIPATE IN A STATE OR
26 LOCAL CONTRACT DRAFTED IN ACCORDANCE WITH THIS SECTION IF THE STATE
27 OR LOCAL ENTITY USES AUCTION BIDDING IN ACCORDANCE WITH § 13-111 OF
28 THIS SUBTITLE.

29 (H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE
30 THE MEANINGS INDICATED.

31 (II) "PROGRAM" MEANS:

32 1. THE FOUNDATION PROGRAM OR ANY OTHER
33 PROGRAM FOR BASIC CURRENT EXPENSES FUNDED IN ACCORDANCE WITH
34 TITLE 5, SUBTITLE 2 OF THE EDUCATION ARTICLE;

1 **2. THE COUNTY-STATE MINIMUM LIBRARY**
2 **PROGRAM OR ANY OTHER PROGRAM FUNDED IN ACCORDANCE WITH TITLE 23,**
3 **SUBTITLE 5 OF THE EDUCATION ARTICLE;**

4 **3. LOCAL HEALTH PROGRAMS FUNDED IN**
5 **ACCORDANCE WITH TITLE 2, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE;**
6 **AND**

7 **4. HIGHWAY USER PROGRAMS FUNDED IN**
8 **ACCORDANCE WITH TITLE 8, SUBTITLE 4 OF THE TRANSPORTATION ARTICLE.**

9 **(III) "SECRETARY" MEANS:**

- 10 **1. THE SUPERINTENDENT OF SCHOOLS;**
11 **2. THE SECRETARY OF HEALTH AND MENTAL**
12 **HYGIENE; OR**
13 **3. THE SECRETARY OF TRANSPORTATION.**

14 **(2) A SECRETARY MAY WITHHOLD FUNDS DISTRIBUTED UNDER A**
15 **PROGRAM TO A LOCAL ENTITY AS FOLLOWS:**

16 **(I) FOR FISCAL YEAR 2010, A SECRETARY MAY WITHHOLD**
17 **UP TO .5% UNLESS THE LOCAL ENTITY:**

18 **1. REPORTS THAT THE LOCAL ENTITY HAS ENTERED**
19 **OR DEMONSTRATES THAT IT ACTIVELY PARTICIPATES IN AT LEAST ONE**
20 **INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT;**

21 **2. SUBMITS A PLAN FOR IMPLEMENTING AN**
22 **INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR**

23 **3. DEMONSTRATES THAT PROCUREMENT FOR THE**
24 **LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT**
25 **COMPLIES WITH ITEM 1 OR 2 OF THIS ITEM;**

26 **(II) FOR FISCAL YEAR 2011, A SECRETARY MAY WITHHOLD**
27 **UP TO .5% UNLESS THE LOCAL ENTITY:**

28 **1. DEMONSTRATES THAT THE LOCAL ENTITY**
29 **ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
30 **COOPERATIVE PURCHASING AGREEMENT; OR**

1 **2. DEMONSTRATES THAT PROCUREMENT FOR THE**
2 **LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT**
3 **THAT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
4 **COOPERATIVE PURCHASING AGREEMENT; AND**

5 **(III) FOR FISCAL YEAR 2012, A SECRETARY MAY WITHHOLD**
6 **UP TO 1% UNLESS THE LOCAL ENTITY:**

7 **1. DEMONSTRATES THAT THE LOCAL ENTITY**
8 **ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
9 **COOPERATIVE PURCHASING AGREEMENT; OR**

10 **2. DEMONSTRATES THAT PROCUREMENT FOR THE**
11 **LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT**
12 **THAT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL**
13 **COOPERATIVE PURCHASING AGREEMENT.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
15 intends for State and local entities to collaborate on how to promote communication
16 and efficiency in procurement.

17 SECTION 3. AND BE IT FURTHER ENACTED, That the Department of
18 General Services and the Department of Budget and Management shall work with the
19 Maryland Association of Counties and the Maryland Municipal League to develop
20 educational tools for counties and municipalities on procurement efficiencies and price
21 saving, including seminars, pamphlets, and newsletters.

22 SECTION 4. AND BE IT FURTHER ENACTED, That:

23 (a) On or before December 1, 2009, the Procurement Advisory Council in the
24 Board of Public Works shall report to the Senate Education, Health, and
25 Environmental Affairs Committee and the House Health and Government Operations
26 Committee, in accordance with § 2-1246 of the State Government Article, on:

27 (1) the extent of collaboration and cooperation that exists among State
28 and local entities for public purchasing;

29 (2) means in place for making information about State and local
30 contracts available to other State and local entities; and

31 (3) means and methods for expanding items (1) and (2) of this
32 subsection in order to improve cost effectiveness and efficiency in procurement.

33 (b) In developing the report, the Procurement Advisory Council shall consult
34 with:

- 1 (1) the Department of Budget and Management;
- 2 (2) the Department of General Services;
- 3 (3) the Department of Information Technology;
- 4 (4) the Maryland Association of Counties;
- 5 (5) the Maryland Municipal League;
- 6 (6) the Maryland Association of Boards of Education; and
- 7 (7) any other State, local, or regional entity participating in or
- 8 providing information on public procurement.

9 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 June 1, 2009.