

HOUSE BILL 894

P2

4lr2487

By: **Delegates Chisholm, Arikan, Buckel, Ciliberti, Fisher, Grammer, Hornberger, Kipke, Mangione, McComas, M. Morgan, Nawrocki, Schmidt, Szeliga, Tomlinson, Valentine, ~~and Wivell~~ Wivell, Alston, Cullison, Hill, Hutchinson, S. Johnson, Kaiser, Kerr, Pena-Melnyk, Reilly, and Rosenberg**

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 1, 2024

CHAPTER _____

1 AN ACT concerning

2 **Procurement – ~~Government of the People’s Republic of China~~ Scrutinized**
3 **Entities – Prohibition**

4 FOR the purpose of prohibiting an entity owned, operated, or controlled by the government
5 of ~~the People’s Republic of China~~ certain countries subject to an embargo under the
6 International Traffic in Arms Regulations from participating in any procurement
7 with the State, a local government in the State, a public instrumentality in the State,
8 or any governmental unit in the State; requiring the Board of Public Works to make
9 certain determinations and maintain and publish a certain list of scrutinized
10 entities; requiring a person to make a certain certification when making a bid or offer
11 to provide goods and services, or when entering or renewing a procurement contract;
12 authorizing certain remedies and penalties for making a false certification; providing
13 for the preemption of any local ordinance, rule, or regulation that conflicts with this
14 Act; and generally relating to ~~the government of the People’s Republic of China~~
15 scrutinized entities and procurement in the State.

16 BY adding to

17 Article – State Finance and Procurement

18 Section 17–7A–01 through 17–7A–06 to be under the new subtitle “Subtitle 7A.

19 ~~Government of the People’s Republic of China~~ Procurement With Scrutinized
20 Entities”

21 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2021 Replacement Volume and 2023 Supplement)

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

Article – State Finance and Procurement

**SUBTITLE 7A. ~~GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA~~
PROCUREMENT WITH SCRUTINIZED ENTITIES.**

17-7A-01.

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

(B) “PUBLIC BODY” MEANS:

(1) THE STATE;

(2) A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL
SUBDIVISION;

(3) A PUBLIC INSTRUMENTALITY; OR

(4) ANY GOVERNMENTAL UNIT AUTHORIZED TO AWARD A CONTRACT.

(C) (1) “SCRUTINIZED ENTITY” MEANS ANY ENTITY OWNED, OPERATED,
OR CONTROLLED BY THE GOVERNMENT OF ~~THE PEOPLE’S REPUBLIC OF CHINA~~ A
COUNTRY SUBJECT TO AN EMBARGO UNDER THE INTERNATIONAL TRAFFIC IN ARMS
REGULATIONS AND LISTED UNDER 22 C.F.R. 126.1(D)(1) OR (2).

(2) “SCRUTINIZED ENTITY” INCLUDES:

(I) A NATURAL PERSON, SOLE PROPRIETOR, CORPORATION,
COMPANY, LIMITED LIABILITY COMPANY, BUSINESS ASSOCIATION, PARTNERSHIP,
SOCIETY, TRUST, OR ANY OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR
GROUP;

(II) A GOVERNMENTAL ENTITY OR INSTRUMENTALITY OF A
GOVERNMENT, INCLUDING A MULTILATERAL DEVELOPMENT INSTITUTION, AS
DEFINED BY THE FEDERAL INTERNATIONAL FINANCIAL INSTITUTIONS ACT, 22
U.S.C. § 262R(C)(3); AND

1 (III) ANY PARENT, SUCCESSOR, SUBUNIT, OR DIRECT OR
2 INDIRECT SUBSIDIARY OF, OR ANY ENTITY UNDER COMMON OWNERSHIP OR
3 CONTROL WITH, AN ENTITY DESCRIBED IN ITEM (I) OR (II) OF THIS PARAGRAPH.

4 **17-7A-02.**

5 A PERSON THAT, AT THE TIME OF BID OR PROPOSAL FOR A NEW CONTRACT OR
6 RENEWAL OF AN EXISTING CONTRACT, IS IDENTIFIED ON A LIST CREATED BY THE
7 BOARD UNDER § 17-7A-03 OF THIS SUBTITLE AS A SCRUTINIZED ENTITY IS
8 INELIGIBLE TO AND MAY NOT BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR
9 RENEW A CONTRACT WITH A PUBLIC BODY FOR GOODS OR SERVICES.

10 **17-7A-03.**

11 (A) (1) ON OR BEFORE DECEMBER 31, 2024, THE BOARD SHALL USE
12 CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC TO CREATE A LIST OF ANY
13 PERSONS THAT THE BOARD DETERMINES TO BE SCRUTINIZED ENTITIES.

14 (2) THE BOARD SHALL UPDATE THE LIST AT LEAST EVERY 180 DAYS.

15 (3) BEFORE THE BOARD INCLUDES A PERSON ON THE LIST, THE
16 BOARD SHALL PROVIDE THE PERSON WITH 90 DAYS' WRITTEN NOTICE THAT:

17 (I) THE BOARD INTENDS TO INCLUDE THE PERSON ON THE
18 LIST; AND

19 (II) INCLUSION ON THE LIST WOULD MAKE THE PERSON
20 INELIGIBLE TO BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A
21 CONTRACT WITH A PUBLIC BODY FOR GOODS OR SERVICES.

22 (4) THE NOTICE REQUIRED UNDER PARAGRAPH (3) OF THIS
23 SUBSECTION SHALL SPECIFY THAT IF THE PERSON CEASES TO BE A SCRUTINIZED
24 ENTITY, THE PERSON MAY BECOME ELIGIBLE FOR A FUTURE CONTRACT OR
25 CONTRACT RENEWAL WITH A PUBLIC BODY FOR GOODS OR SERVICES ON REMOVAL
26 FROM THE LIST.

27 (B) (1) THE BOARD SHALL PROVIDE A PERSON WITH AN OPPORTUNITY
28 TO COMMENT IN WRITING TO THE BOARD THAT THE PERSON IS NOT A SCRUTINIZED
29 ENTITY.

30 (2) IF THE PERSON DEMONSTRATES TO THE BOARD THAT THE
31 PERSON IS NOT A SCRUTINIZED ENTITY, THE BOARD MAY NOT INCLUDE THE PERSON
32 ON THE LIST.

1 **(C) THE BOARD SHALL REMOVE A PERSON FROM THE LIST IF THE PERSON**
2 **DEMONSTRATES TO THE BOARD THAT THE PERSON IS NO LONGER A SCRUTINIZED**
3 **ENTITY.**

4 **(D) THE BOARD SHALL MAKE EVERY REASONABLE EFFORT TO AVOID**
5 **ERRONEOUSLY INCLUDING A PERSON ON THE LIST.**

6 **(E) THE BOARD SHALL PUBLISH THE LIST REQUIRED UNDER THIS SECTION**
7 **ON THE INTERNET.**

8 **17-7A-04.**

9 **ON OR AFTER JANUARY 1, 2025, A PUBLIC BODY SHALL REQUIRE A PERSON**
10 **THAT SUBMITS A BID OR PROPOSAL TO THE PUBLIC BODY FOR A CONTRACT FOR**
11 **GOODS OR SERVICES, OR OTHERWISE PROPOSES TO ENTER INTO OR RENEW A**
12 **CONTRACT FOR GOODS OR SERVICES WITH THE PUBLIC BODY, TO CERTIFY AT THE**
13 **TIME THE BID IS SUBMITTED OR THE CONTRACT IS RENEWED THAT THE PERSON IS**
14 **NOT IDENTIFIED ON THE LIST CREATED BY THE BOARD AS A SCRUTINIZED ENTITY.**

15 **17-7A-05.**

16 **(A) (1) IF A PUBLIC BODY, USING CREDIBLE INFORMATION AVAILABLE TO**
17 **THE PUBLIC, DETERMINES THAT A PERSON HAS SUBMITTED A FALSE**
18 **CERTIFICATION UNDER § 17-7A-04 OF THIS SUBTITLE, THE PUBLIC BODY SHALL**
19 **PROVIDE WRITTEN NOTICE TO THE PERSON AND AN OPPORTUNITY FOR THE PERSON**
20 **TO DEMONSTRATE IN WRITING THAT THE PERSON IS NOT A SCRUTINIZED ENTITY.**

21 **(2) IF THE PERSON FAILS TO DEMONSTRATE TO THE PUBLIC BODY**
22 **WITHIN 90 DAYS AFTER THE PUBLIC BODY PROVIDES NOTICE UNDER PARAGRAPH**
23 **(1) OF THIS SUBSECTION THAT THE PERSON IS NOT A SCRUTINIZED ENTITY, THE**
24 **PUBLIC BODY SHALL REPORT TO THE BOARD AND THE ATTORNEY GENERAL:**

25 **(I) THE NAME OF THE PERSON DETERMINED TO HAVE**
26 **SUBMITTED A FALSE CERTIFICATION; AND**

27 **(II) THE INFORMATION ON WHICH THE PUBLIC BODY MADE ITS**
28 **DECISION.**

29 **(B) (1) THE ATTORNEY GENERAL MAY INSTITUTE AN ACTION AGAINST A**
30 **PERSON DETERMINED TO HAVE SUBMITTED A FALSE CERTIFICATION UNDER §**
31 **17-7A-04 OF THIS SUBTITLE.**

32 **(2) AN ACTION BROUGHT UNDER THIS SECTION SHALL BE BROUGHT**
33 **WITHIN 3 YEARS AFTER THE DATE THE CERTIFICATION IS MADE.**

1 (C) IF, IN AN ACTION BROUGHT UNDER THIS SECTION, A COURT
2 DETERMINES THAT A PERSON SUBMITTED A FALSE CERTIFICATION:

3 (1) THE PERSON SHALL PAY ALL REASONABLE COSTS AND FEES
4 INCURRED IN THE CIVIL ACTION, INCLUDING:

5 (I) ANY COSTS INCURRED BY THE PUBLIC BODY FOR THE
6 INVESTIGATION THAT LED TO THE FINDING OF THE FALSE CERTIFICATION; AND

7 (II) ALL REASONABLE COSTS AND FEES INCURRED BY THE
8 ATTORNEY GENERAL IN BRINGING THE ACTION;

9 (2) THE COURT MAY IMPOSE A CIVIL PENALTY EQUAL TO THE
10 GREATER OF \$250,000 OR TWICE THE AMOUNT OF THE CONTRACT FOR WHICH THE
11 FALSE CERTIFICATION WAS SUBMITTED;

12 (3) THE PUBLIC BODY SHALL TERMINATE THE CONTRACT FOR WHICH
13 THE FALSE CERTIFICATION WAS SUBMITTED; AND

14 (4) THE PERSON IS INELIGIBLE TO BID ON A CONTRACT WITH A
15 PUBLIC BODY FOR THE LATER OF:

16 (I) A PERIOD OF 3 YEARS AFTER THE DATE OF THE COURT
17 ORDER; OR

18 (II) THE TIME AT WHICH THE PERSON CEASES TO BE A
19 SCRUTINIZED ENTITY.

20 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
21 AN UNSUCCESSFUL BIDDER OR ANY OTHER PERSON MAY NOT PROTEST THE AWARD
22 OF A CONTRACT OR CONTRACT RENEWAL ON THE BASIS OF A FALSE CERTIFICATION.

23 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT PROHIBIT A
24 PUBLIC BODY FROM FILING A PROTEST OBJECTING TO THE AWARD OF A CONTRACT
25 OR CONTRACT RENEWAL ON THE BASIS OF A FALSE CERTIFICATION.

26 (E) THIS SUBTITLE DOES NOT CREATE OR AUTHORIZE A PRIVATE RIGHT OF
27 ACTION.

28 17-7A-06.

1 THIS SUBTITLE PREEMPTS ANY LAW, ORDINANCE, RULE, OR REGULATION OF
2 ANY LOCAL GOVERNING BODY INVOLVING PROCUREMENT CONTRACTS FOR GOODS
3 OR SERVICES WITH A PERSON WHO IS A SCRUTINIZED ENTITY.

4 SECTION 2. AND BE IT FURTHER ENACTED, That:

5 (a) This Act shall remain in effect until federal law no longer authorizes the states
6 to adopt and enforce provisions of the type authorized under this Act.

7 (b) The Board of Public Works shall notify the Department of Legislative Services
8 within 5 days after the federal government enacts a law described in subsection (a) of this
9 section and, as of the date the law becomes effective, this Act, with no further action
10 required by the General Assembly, shall be abrogated and of no further force and effect.

11 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.