

Unofficial Copy
P2
HB 1379/96 - APP

1997 Regular Session
7lr1101

By: Chairman, Commerce and Government Matters Committee (Departmental - Council on Management and Productivity)

Introduced and read first time: January 15, 1997

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Employees - Procurement - Competitive Re-Engineering - Government Services**

3 FOR the purpose of requiring that State agencies periodically review certain services;
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 proposals issued by a State agency; defining certain terms;
8 providing for exemptions from certain provisions of law; and generally relating to
9 competitive re-engineering.

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 Competitive Re-Engineering"
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1996 Supplement)

16 Preamble

17 WHEREAS, The State of Maryland has utilized State employees and private
18 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
25 in which government employees compete against the private sector to provide services;
26 and

27 WHEREAS, This process referred to as "competitive re-engineering" utilizes
28 performance measurements, auditing, management oversight, incentives, and penalties;
29 and

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 the comparison of proposals 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 "competitive re-engineering" 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. COMPETITIVE RE-ENGINEERING.

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 COUNCIL ON MANAGEMENT AND PRODUCTIVITY.

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

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

23 (G) "SERVICE REDESIGN" MEANS THE PROCESS DESCRIBED UNDER § 18-104
24 OF THIS TITLE BY WHICH EMPLOYEES DEVELOP A PLAN TO IMPROVE SERVICE
25 DELIVERY.

26 (H) "SERVICES" MEANS:

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

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

31 (I) "SERVICE UNIT" MEANS THE GROUP OF STATE EMPLOYEES WHO
32 PERFORM SERVICES FOR WHICH A DETERMINATION HAS BEEN MADE UNDER §
33 18-103 OF THIS TITLE.

34 (J) (1) "TARGETED SERVICE" MEANS A SERVICE FOR WHICH THE
35 DETERMINATION PROVIDED UNDER § 18-103 OF THIS TITLE HAS BEEN MADE.

3

1 (2) "TARGETED SERVICE" INCLUDES SERVICES PROVIDED BY
2 CONTRACTORS.

3 18-102.

4 (A) EACH AGENCY SHALL REVIEW PERIODICALLY EACH SERVICE
5 DELIVERED BY THAT AGENCY OR PROCURED FROM THE PRIVATE SECTOR TO
6 DETERMINE WHETHER THE SERVICE COULD BE IMPROVED THROUGH THE PROCESS
7 DESCRIBED IN THIS TITLE.

8 (B) THE COUNCIL SHALL:

9 (1) REVIEW PERIODICALLY THE COMPETITIVE RE-ENGINEERING
10 PROCUREMENTS CONDUCTED BY AGENCIES;

11 (2) FACILITATE AND ENCOURAGE THE COMPETITIVE RE-ENGINEERING
12 PROCESS;

13 (3) PROVIDE TECHNICAL ASSISTANCE REGARDING COMPETITIVE
14 RE-ENGINEERING TO HEADS OF AGENCIES;

15 (4) ASSURE THAT THE COMPETITIVE RE-ENGINEERING PROCESS IS
16 IMPLEMENTED FAIRLY; AND

17 (5) MAKE RECOMMENDATIONS REGARDING COMPETITIVE
18 RE-ENGINEERING TO THE GOVERNOR.

19 18-103.

20 A SERVICE MAY BE PROVIDED THROUGH COMPETITIVE RE-ENGINEERING IF
21 THE HEAD OF THE AGENCY DETERMINES THAT:

22 (1) OBJECTIVE PERFORMANCE MEASUREMENTS CAN BE ESTABLISHED;

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

24 (3) COSTS OR INCREASES IN THE COSTS FOR THE SERVICE COULD BE
25 REDUCED; AND

26 (4) COMPETITION FOR THE SERVICE IS IN THE BEST INTEREST OF THE
27 STATE.

28 18-104.

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

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

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

35 (2) ADVISE THE SERVICE UNIT THAT IT MAY SUBMIT A PLAN THAT
36 REDUCES COSTS OR COST INCREASES WHILE MAINTAINING THE QUALITY OF THE
37 TARGETED SERVICE; AND

4

1 (3) SPECIFY THE DATE FOR SUBMISSION OF THE PLAN WHICH MAY NOT
2 BE LATER THAN 5 MONTHS AFTER THE DATE OF THE NOTICE.

3 (4) INCLUDE THE CRITERIA WHICH ARE THE BASIS FOR ACCEPTING OR
4 REJECTING THE PLAN.

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

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

9 (2) THE PLAN SHALL PROVIDE FOR PERFORMANCE MEASUREMENTS
10 AND BUDGET REQUIREMENTS;

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

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

15 (5) THE PLAN MAY PROVIDE INCENTIVES FOR EXCEEDING PLAN
16 GOALS; AND

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

20 (D) THE PLAN SHALL BE SUBMITTED TO THE HEAD OF THE AGENCY.

21 (E) THE HEAD OF THE AGENCY:

22 (1) MAY CONDUCT DISCUSSIONS WITH THE SERVICE UNIT REGARDING
23 THE PLAN;

24 (2) SHALL ASCERTAIN THAT THE PLAN REFLECTS THE VIEWS OF A
25 MAJORITY OF THE EMPLOYEES OF THE SERVICE UNIT; AND

26 (3) SHALL APPROVE OR REJECT THE PLAN IN WRITING TO THE SERVICE
27 UNIT.

28 (F) THE TARGETED SERVICE SHALL BE SUBJECT TO COMPETITIVE
29 RE-ENGINEERING UNDER § 18-105 OF THIS TITLE IF:

30 (1) THE SERVICE UNIT FAILS TO COMPLY WITH THE PLAN;

31 (2) THE SERVICE UNIT FAILS TO SUBMIT A PLAN; OR

32 (3) THE HEAD OF THE AGENCY REJECTS THE PLAN.

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

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

5

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 THE
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) (1) FOR PURPOSES OF THE REQUEST FOR PROPOSALS ISSUED UNDER
21 THIS SECTION, THE SERVICE UNIT MAY SUBMIT A PROPOSAL.

22 (2) THE AGENCY SHALL PROVIDE THE SERVICE UNIT WITH
23 REASONABLE TECHNICAL ASSISTANCE TO DEVELOP A PROPOSAL.

24 (D) IF THE SERVICE UNIT IS AWARDED THE CONTRACT FOR THE TARGETED
25 SERVICE, THE EMPLOYEES OF THE SERVICE UNIT SHALL CONTINUE AS STATE
26 EMPLOYEES.

27 (E) IF THE SERVICE UNIT IS NOT AWARDED THE CONTRACT FOR THE
28 TARGETED SERVICE, THE EMPLOYEES OF THE SERVICE UNIT SHALL BE:

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

31 (2) SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND
32 PENSIONS ARTICLE.

33 (F) THE PROPOSAL OF A SERVICE UNIT SUBMITTED UNDER THIS SECTION
34 SHALL BE SUBJECT TO INSPECTION UNDER THE PUBLIC INFORMATION ACT ONLY IF
35 THE PROPOSAL OF A CONTRACTOR WOULD BE SUBJECT TO INSPECTION.

6

1 18-106.

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

5 (B) UPON A DETERMINATION UNDER § 18-103 OF THIS TITLE, FOR A SERVICE
6 PROVIDED BY A CONTRACTOR, THE AGENCY SHALL PROVIDE WRITTEN NOTICE TO
7 THE CONTRACTOR THAT A COMPETITIVE RE-ENGINEERING UNDER § 18-105 OF THIS
8 TITLE SHALL BE INITIATED.

9 18-107.

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

11 (B) THIS TITLE MAY NOT BE CONSTRUED TO REQUIRE AN AGENCY TO
12 CONDUCT COMPETITIVE RE-ENGINEERING.

13 (C) IF AN AGENCY CONDUCTS A PROCUREMENT FOR A SERVICE PROVIDED
14 BY A SERVICE UNIT WITHOUT CONDUCTING A SERVICE REDESIGN UNDER THIS
15 TITLE, THE HEAD OF THE AGENCY SHALL PROVIDE TO THE GOVERNOR OR HIS
16 DESIGNEE A WRITTEN EXPLANATION AS TO WHY THE SERVICE REDESIGN WAS NOT
17 CONDUCTED.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 1997.