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HB 1379/96 - APP

1997 Regular Session
7lr1101

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

Introduced and read first time: January 15, 1997

Assigned to: Commerce and Government Matters

Reassigned: Appropriations, January 17, 1997

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 1997

CHAPTER ____

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

2

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

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

6 WHEREAS, This process referred to as "competitive re-engineering" utilizes
7 performance measurements, auditing, management oversight, incentives, and penalties;
8 and

9 WHEREAS, When such process frees State employees from certain statutory
10 restrictions, rewards innovation, and utilizes an appropriate cost analysis method, a level
11 playing field for the comparison of proposals and fair competition is assured; and

12 WHEREAS, Competition in selecting service providers is not intended as a
13 means to simply reduce costs by reducing salaries and benefits; and

14 WHEREAS, The Maryland General Assembly finds that a process to evaluate the
15 delivery of services to the citizens of the State utilizing "competitive re-engineering" will
16 improve the quality of services and do so in a more cost efficient manner; now, therefore,

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

19 **Article - State Finance and Procurement**

20 TITLE 18. COMPETITIVE RE-ENGINEERING.

21 18-101.

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

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

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

27 (D) "COUNCIL" MEANS THE COUNCIL ON MANAGEMENT AND PRODUCTIVITY.

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

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

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

36 (H) "SERVICES" MEANS:

3

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

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

5 (I) "SERVICE UNIT" MEANS THE GROUP OF STATE EMPLOYEES, INCLUDING
6 MANAGEMENT EMPLOYEES, WHO PERFORM SERVICES FOR WHICH A
7 DETERMINATION HAS BEEN MADE UNDER § 18-103 OF THIS TITLE.

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

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

12 18-102.

13 (A) EACH AGENCY SHALL REVIEW PERIODICALLY EACH SERVICE
14 DELIVERED BY THAT AGENCY OR PROCURED FROM THE PRIVATE SECTOR TO
15 DETERMINE WHETHER THE SERVICE COULD BE IMPROVED THROUGH THE PROCESS
16 DESCRIBED IN THIS TITLE.

17 (B) THE COUNCIL SHALL:

18 (1) REVIEW PERIODICALLY THE COMPETITIVE RE-ENGINEERING
19 PROCUREMENTS CONDUCTED BY AGENCIES;

20 (2) FACILITATE AND ENCOURAGE THE COMPETITIVE RE-ENGINEERING
21 PROCESS;

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

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

26 (5) MAKE RECOMMENDATIONS REGARDING COMPETITIVE
27 RE-ENGINEERING TO THE GOVERNOR.

28 18-103.

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

31 (1) OBJECTIVE PERFORMANCE MEASUREMENTS CAN BE ESTABLISHED;

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

33 (3) COSTS OR INCREASES IN THE COSTS FOR THE SERVICE COULD BE
34 REDUCED; AND

35 (4) COMPETITION FOR THE SERVICE IS IN THE BEST INTEREST OF THE
36 STATE.

4

1 18-104.

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

6 ~~(B)~~ (B) (1) THE NOTICE TO THE SERVICE UNIT SHALL:

7 ~~(1)~~ (I) SPECIFY THE EMPLOYEES COMPRISING THE SERVICE UNIT;

8 ~~(2)~~ (II) ADVISE THE SERVICE UNIT THAT IT MAY SUBMIT A PLAN THAT
9 REDUCES COSTS OR REDUCES COST INCREASES WHILE MAINTAINING THE QUALITY
10 OF THE TARGETED SERVICE; ~~AND~~

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

13 ~~(4) INCLUDE THE CRITERIA WHICH ARE THE BASIS FOR ACCEPTING OR~~
14 ~~REJECTING THE PLAN.~~

15 (III) SPECIFY THE DATE FOR SUBMISSION OF THE PLAN AS
16 PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION; AND

17 (IV) INCLUDE THE CRITERIA THAT ARE THE BASIS FOR ACCEPTING
18 OR REJECTING THE PLAN.

19 (2) THE DATE FOR SUBMISSION OF THE PLAN SHOULD PROVIDE
20 SUFFICIENT TIME TO DEVELOP A COMPREHENSIVE PLAN THAT:

21 (I) IS NOT LESS THAN 30 DAYS; AND

22 (II) IS NOT LATER THAN 5 MONTHS AFTER THE DATE OF THE
23 NOTICE, UNLESS THE TIME LIMIT IS WAIVED BY THE AGENCY HEAD FOR A PERIOD
24 NOT TO EXCEED 30 DAYS.

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

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

29 (2) THE PLAN SHALL PROVIDE FOR PERFORMANCE MEASUREMENTS
30 AND BUDGET REQUIREMENTS;

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

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

35 (5) THE PLAN MAY PROVIDE INCENTIVES FOR EXCEEDING PLAN
36 GOALS; AND

5

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

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

5 (E) THE HEAD OF THE AGENCY:

6 (1) MAY CONDUCT DISCUSSIONS WITH THE SERVICE UNIT REGARDING
7 THE PLAN;

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

10 (3) SHALL APPROVE OR REJECT THE PLAN IN WRITING TO THE SERVICE
11 UNIT.

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

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

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

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

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

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

21 18-105.

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

25 (1) THE SERVICE UNIT FAILS TO SUBMIT A PLAN IN ACCORDANCE WITH
26 § 18-104 OF THIS TITLE;

27 (2) THE PLAN SUBMITTED BY THE SERVICE UNIT IS REJECTED BY THE
28 HEAD OF THE AGENCY; ~~OR~~

29 (3) THE SERVICE UNIT FAILS TO COMPLY WITH AN APPROVED ~~PLAN~~.
30 PLAN; OR

31 (4) A NOTICE IS ISSUED UNDER § 18-106(B) OF THIS SUBTITLE.

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

34 (1) SPECIFY OBJECTIVE PERFORMANCE MEASURES FOR THE
35 CONTRACT THAT RESULTS FROM THE PROCUREMENT;

6

1 (2) REQUIRE ANNUAL AUDITS OF PERFORMANCE MEASURES AND THE
2 BUDGET;

3 (3) PERMIT INCENTIVES AND PENALTIES FOR COMPLIANCE WITH
4 PERFORMANCE MEASURES; ~~AND~~

5 (4) INCLUDE AN APPROPRIATE COST ANALYSIS METHOD THAT
6 ENABLES THE STATE TO COMPARE THE PRICE PROPOSALS ON AN EQUAL ~~BASIS~~.
7 BASIS; AND

8 (5) TO THE EXTENT THAT POSITIONS ARE AVAILABLE, THE
9 CONTRACTOR IS ENCOURAGED TO OFFER EMPLOYMENT TO ANY STATE
10 EMPLOYEES AFFECTED BY COMPETITIVE RE-ENGINEERING UNDER THIS SECTION.

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

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

15 (D) IF THE SERVICE UNIT IS AWARDED THE CONTRACT FOR THE TARGETED
16 SERVICE, THE EMPLOYEES OF THE SERVICE UNIT SHALL CONTINUE AS STATE
17 EMPLOYEES, AND THE PROPOSAL SHALL BE SUBJECT TO CRITERIA SPECIFIED IN
18 SUBSECTION (B) OF THIS SECTION.

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

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

23 (2) SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND
24 PENSIONS ARTICLE.

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

28 18-106.

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

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

36 18-107.

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

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

3 (C) IF AN AGENCY CONDUCTS A PROCUREMENT FOR A SERVICE PROVIDED
4 BY A SERVICE UNIT WITHOUT CONDUCTING A SERVICE REDESIGN UNDER THIS
5 TITLE, THE HEAD OF THE AGENCY SHALL PROVIDE TO THE GOVERNOR OR HIS
6 DESIGNEE A WRITTEN EXPLANATION AS TO WHY THE SERVICE REDESIGN WAS NOT
7 CONDUCTED.

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