
By: Senator Hafer

Requested: November 15, 1996

Introduced and read first time: January 8, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Construction Contracts - High Unemployment Regions - Use of Local Workers**

3 FOR the purpose of requiring that State procurement contracts for construction of public
4 improvements in a political subdivision with a specified unemployment rate require
5 the contractor and any subcontractor to establish a certain hiring preference for
6 certain work; restricting the number of employees who are domiciled outside a
7 specific region from being used at certain work sites; requiring the Board of Public
8 Works to adopt certain regulations; providing that regulations may authorize certain
9 waivers; providing that this Act does not apply under specified circumstances; and
10 generally relating to the awarding of State construction contracts and the use of
11 local employees in certain high unemployment regions.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 13-218
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1996 Supplement)

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 13-218.

21 (a) Each procurement contract shall include clauses covering:

22 (1) termination for default;

23 (2) termination wholly or partly by the State for its convenience if the head
24 of the primary procurement unit determines that termination is appropriate;25 (3) variations that occur between estimated and actual quantities of work in
26 a procurement contract;

27 (4) liquidated damages, as appropriate;

28 (5) specified excuses for nonperformance; and

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1 (6) except for real property leases, the unilateral right of the State to order
2 in writing:

3 (i) changes in the work, if the changes are within the scope of the
4 procurement contract; and

5 (ii) a temporary stop or delay in performance.

6 (b) In addition to the clauses required under subsection (a) of this section, a
7 procurement contract for construction shall include:

8 (1) a clause providing for contract modification if the condition of a site
9 differs from the condition described in the specifications; and

10 (2) a clause covering the requirements for notice of contract claims,
11 submission of contract claims, and resolution of contract claims under § 15-219 of this
12 article.

13 (c) (1) (I) THIS SUBSECTION ONLY APPLIES TO A PROCUREMENT
14 CONTRACT FOR CONSTRUCTION OF A PUBLIC IMPROVEMENT LOCATED IN A
15 COUNTY THAT, IN THE MOST RECENT 12-MONTH PERIOD FOR WHICH DATA IS
16 AVAILABLE AS REPORTED BY THE MARYLAND DEPARTMENT OF LABOR, LICENSING,
17 AND REGULATION, HAS AN AVERAGE UNEMPLOYMENT RATE THAT IS MORE THAN
18 ONE AND ONE-HALF TIMES THE STATE UNEMPLOYMENT RATE AS A WHOLE.

19 (II) THIS SUBSECTION DOES NOT APPLY IF THE CONTRACT
20 PROVISION WOULD CONFLICT WITH FEDERAL LAW OR PROVISIONS OF A FEDERAL
21 GRANT AFFECTING THE PROCUREMENT CONTRACT.

22 (2) A PROCUREMENT CONTRACT SUBJECT TO THIS SUBSECTION SHALL
23 INCLUDE A CLAUSE REQUIRING THE CONTRACTOR AND ANY SUBCONTRACTOR TO
24 ESTABLISH A HIRING PREFERENCE FOR INDIVIDUALS DOMICILED IN THE COUNTY
25 WHERE THE PUBLIC IMPROVEMENT IS LOCATED, OR IN AN ADJACENT COUNTY, FOR
26 WORK AT THE SITE OF THE PUBLIC IMPROVEMENT IN ACCORDANCE WITH
27 PARAGRAPH (3) OF THIS SUBSECTION AND REGULATIONS OF THE BOARD.

28 (3) UNLESS A WAIVER IS GRANTED UNDER PARAGRAPH (4)(II) OF THIS
29 SUBSECTION, A CONSTRUCTION CONTRACT SUBJECT TO THIS SECTION SHALL
30 PROVIDE THAT A CONTRACTOR OR SUBCONTRACTOR UNDER THE CONSTRUCTION
31 CONTRACT MAY NOT USE AT THE PUBLIC IMPROVEMENT WORK SITE MORE THAN
32 20% OF WORKERS WHO ARE NOT DOMICILED IN THE COUNTY, OR IN AN ADJACENT
33 COUNTY, WHERE THE PUBLIC IMPROVEMENT IS LOCATED.

34 (4) (I) THE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THIS
35 SUBSECTION.

36 (II) THE REGULATIONS ADOPTED UNDER THIS SUBSECTION MAY
37 AUTHORIZE A PROCUREMENT OFFICER TO WAIVE A REQUIREMENT ESTABLISHED
38 UNDER THIS SUBSECTION ON PETITION OF THE CONTRACTOR IF THE CONTRACTOR
39 CAN DEMONSTRATE TO THE SATISFACTION OF THE PROCUREMENT OFFICER THAT
40 AN ADEQUATE POOL OF WORKERS WHO POSSESS THE NECESSARY SKILLS AND
41 ABILITIES IS UNAVAILABLE IN THE DESIGNATED REGION.

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1 (D) Each procurement contract shall include a clause that gives to the parties
2 notice that preexisting regulations apply to the procurement contract in accordance with
3 § 11-206 of this article.

4 [(d)] (E) At any time after the parties enter into a procurement contract they may
5 include additional clauses in the procurement contract, by consent, without consideration.

6 [(e)] (F) A clause required under this section for contract modification of or
7 change orders to a procurement contract for construction shall:

8 (1) make each contract modification or change order that affects the price
9 of the procurement contract subject to:

10 (i) prior written approval from the unit and any other person
11 responsible for the procurement contract; and

12 (ii) prior certification by the fiscal authority responsible for the unit
13 about:

14 1. the availability of money; and

15 2. the effect of the contract modification or change order on the
16 project budget or the total construction cost; and

17 (2) prohibit the contract modification or change order if the certification by
18 the fiscal authority discloses that the contract modification or change order will increase
19 the cost beyond budgeted and available money, unless:

20 (i) sufficient additional money is made available; or

21 (ii) the scope of the project is adjusted to allow completion within the
22 project budget.

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