

SENATE BILL 719

Unofficial Copy
P2

1999 Regular Session
9lr0227
CF 9lr0224

By: **The President (Administration)**

Introduced and read first time: February 22, 1999

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement Practices Improvement Act of 1999**

3 FOR the purpose of requiring procurement officers to maintain certain records and
4 document certain information; authorizing procurement officers to disclose only
5 specified information; defining certain terms; authorizing the Attorney General
6 to institute proceedings to debar certain persons under certain circumstances;
7 altering certain definitions; prohibiting certain persons from accepting certain
8 gifts; and generally relating to public ethics and procurement.

9 BY adding to

10 Article - State Finance and Procurement
11 Section 13-202
12 Annotated Code of Maryland
13 (1995 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article - State Finance and Procurement
16 Section 13-211, 16-303, and 16-304
17 Annotated Code of Maryland
18 (1995 Replacement Volume and 1998 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article - State Government
21 Section 15-102(n), 15-501, and 15-502
22 Annotated Code of Maryland
23 (1995 Replacement Volume and 1998 Supplement)

24 BY adding to

25 Article - State Government
26 Section 15-505(d-1)
27 Annotated Code of Maryland
28 (1995 Replacement Volume and 1998 Supplement)

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

3 **Article - State Finance and Procurement**

4 13-202.

5 (A) DURING THE PROCUREMENT PROCESS AND UNTIL A FINAL CONTRACT IS
6 AWARDED, A PROCUREMENT OFFICER MAY DISCLOSE ONLY:

7 (1) WHETHER A DECISION HAS BEEN MADE REGARDING A
8 SOLICITATION; AND

9 (2) INFORMATION THAT IS AVAILABLE TO THE PUBLIC.

10 (B) A PROCUREMENT OFFICER SHALL RECORD THE FOLLOWING
11 INFORMATION FROM AN INQUIRY FROM A SOURCE OUTSIDE THE AGENCY OR UNIT
12 UNDERTAKING THE PROCUREMENT:

13 (1) THE DATE AND TIME OF THE INQUIRY;

14 (2) THE NAME AND AFFILIATION OF THE PERSON MAKING THE INQUIRY;
15 AND

16 (3) THE SUBSTANCE AND NATURE OF THE INQUIRY.

17 (C) A PROCUREMENT OFFICER SHALL MAINTAIN A FILE ON EACH
18 PROCUREMENT THAT INCLUDES:

19 (1) A RECORD OF ALL INQUIRIES FROM SOURCES OUTSIDE THE AGENCY
20 OR UNIT UNDERTAKING THE PROCUREMENT;

21 (2) ALL WRITTEN SOLICITATIONS BY AN AGENCY OR UNIT;

22 (3) ALL OFFERS RECEIVED;

23 (4) ALL INTERNAL AND EXTERNAL CORRESPONDENCE AND
24 COMMUNICATIONS REGARDING THE PROCUREMENT;

25 (5) WRITTEN DOCUMENTATION FROM THE PROCUREMENT OFFICER
26 DESCRIBING EFFORTS TO CONFIRM THE INFORMATION IN THE AFFIDAVITS
27 SUBMITTED BY THE SUCCESSFUL BIDDER OR OFFEROR; AND

28 (6) THE FINAL CONTRACT.

29 13-211.

30 (A) IN THIS SECTION, "PROCUREMENT OFFICIAL" MEANS A PROCUREMENT
31 OFFICER OR AN INDIVIDUAL WHO PARTICIPATES IN THE DRAFTING OF
32 SPECIFICATIONS FOR PROCUREMENT.

1 (B) During the conduct of a procurement, a competing contractor, or any
2 officer, employee, representative, agent, or consultant of any competing contractor,
3 may not knowingly:

4 (1) make any offer or promise of future employment or business
5 opportunity to, or engage in any discussion of future employment or business
6 opportunity with, any procurement official of the agency conducting the procurement;

7 (2) offer, give, or promise to offer or give any money, gratuity, or other
8 thing of value to any procurement official of the agency conducting the procurement;
9 or

10 (3) solicit or obtain from any officer or employee of an agency conducting
11 the procurement, before the award of a contract, any proprietary or source selection
12 information regarding the procurement.

13 16-303.

14 (a) [Except for failure to perform or unsatisfactory performance under §
15 16-203(c) of this title, the Attorney General shall report to the Board information that
16 indicates a basis may exist for instituting debarment proceedings under § 16-202 or §
17 16-203 of this title] THE ATTORNEY GENERAL MAY INSTITUTE PROCEEDINGS TO
18 DEBAR A PERSON UNDER § 16-202(B) OR § 16-203 OF THIS TITLE FROM:

19 (1) BEING CONSIDERED FOR THE AWARD OF, BEING AWARDED, OR
20 PERFORMING A CONTRACT WITH A PUBLIC BODY IF THE PERSON IS DEBARRED
21 UNDER § 16-202(B) OF THIS TITLE; OR

22 (2) BEING CONSIDERED FOR THE AWARD OF, BEING AWARDED, OR
23 PERFORMING A CONTRACT WITH A PUBLIC BODY IF THE PERSON IS DEBARRED
24 UNDER § 16-203 OF THIS TITLE.

25 (b) The Attorney General may recommend whether the Board should[:

26 (1) institute debarment proceedings under § 16-304(b) of this subtitle;
27 and

28 (2)] suspend a person under § 16-305 of this subtitle.

29 (c) The Attorney General:

30 (1) shall investigate the matters to be determined by the Board in a
31 hearing under this title;

32 (2) as a party to any proceeding brought under this title, shall present to
33 the Board the evidence that the Attorney General considers appropriate; and

34 (3) may recommend:

35 (i) whether the Board should debar the person; and

1 (ii) the appropriate time period of the debarment.

2 (d) (1) If the Attorney General reasonably believes that a person may have
3 information or may be in possession, custody, or control of any original or copy of any
4 book, record, report, memorandum, paper communication, tabulation, map, chart,
5 photograph, mechanical transcription, or other tangible document or recording,
6 wherever situated, which the Attorney General believes is relevant to, or may lead to
7 the discovery of, evidence relevant to the subject matter of an investigation of a
8 possible basis for debarment under this title, the Attorney General, before [making
9 any recommendation] INITIATING DEBARMENT PROCEEDINGS OR RECOMMENDING
10 SUSPENSION AS provided for in this title, may serve on the person a written
11 investigative demand which requires the person to perform any one or more of the
12 following:

13 (i) to be examined under oath;

14 (ii) to answer written interrogatories; or

15 (iii) to produce documentary material and permit inspection and
16 copying of such material.

17 (2) The demand of the Attorney General shall:

18 (i) state the grounds for debarment under investigation;

19 (ii) describe the class of documentary material to be produced
20 under the demand with sufficient specificity to indicate fairly the material demanded;

21 (iii) contain a copy of the written interrogatories;

22 (iv) prescribe a reasonable time of not less than 3 days after the
23 demand is served at which time the person must appear to testify, within which time
24 the person must answer the written interrogatories, and within which time the
25 documentary materials must be produced;

26 (v) specify the place for the taking of testimony and for the
27 production of documentary materials; and

28 (vi) identify the member of the Office of the Attorney General who
29 will:

30 1. take testimony;

31 2. receive the answers to the written interrogatories; and

32 3. review the documentary material to be made available for
33 inspection and copying.

34 (3) A petition to extend the time for compliance or to modify or set aside
35 a demand issued under this subsection may be filed at any time before the date

1 specified in the demand in the circuit court of the county of the petitioner's residence
2 or principal place of business.

3 16-304.

4 (a) The Board shall notify a person that the person is debarred under §
5 16-202(a) of this title, and shall give reasonable opportunity for that person to be
6 heard on whether the stated basis for debarment exists.

7 (b) (1) The [Board] ATTORNEY GENERAL may institute proceedings to
8 debar a person under § 16-202(b) or § 16-203 of this title BY FILING AN
9 ADMINISTRATIVE COMPLAINT WITH THE BOARD [from:

10 (1) being considered for the award of, being awarded, or performing a
11 contract with a public body, if the person is debarred under § 16-202(b) of this title; or

12 (2) being considered for the award of, being awarded, or performing a
13 contract with the State, if the person is debarred under § 16-203 of this title].

14 (2) THE BOARD SHALL NOTIFY THE PERSON THAT DEBARMENT
15 PROCEEDINGS HAVE BEEN INITIATED AND THAT THE PERSON HAS A RIGHT TO A
16 HEARING.

17 (c) Before being debarred, a person subject to debarment under § 16-202(b) or
18 § 16-203 of this title is entitled to a hearing before the Board. The Board shall
19 conduct the hearing in accordance with Title 10, Subtitle 2 of the State Government
20 Article.

21 (d) When a unit contracting for a public body is notified that a person who has
22 applied for a contract is subject to debarment under this title, the unit shall notify the
23 person in writing that:

24 (1) the application may be disqualified; and

25 (2) the person has a right to a hearing before the Board.

26 (e) Unless a person notified by the Board pursuant to this section submits a
27 request to the Board for a hearing within 30 days after receiving such notice, the
28 person:

29 (1) waives the right to a hearing; and

30 (2) is debarred.

31 **Article - State Government**

32 15-102.

33 (n) "Financial interest" means:

1 (1) ownership of an interest as the result of which the owner has
2 received within the past 3 years, is currently receiving, or in the future is entitled to
3 receive, more than \$1,000 per year; or

4 (2) (i) ownership of more than 3% of a business entity BY:

5 1. AN OFFICIAL;

6 2. AN EMPLOYEE; OR

7 3. THE SPOUSE OF AN OFFICIAL OR EMPLOYEE; or

8 (ii) ownership of securities of any kind that represent, or are
9 convertible into, ownership of more than 3% of a business entity BY:

10 1. AN OFFICIAL;

11 2. AN EMPLOYEE; OR

12 3. THE SPOUSE OF AN OFFICIAL OR EMPLOYEE.

13 15-501.

14 (a) Except as otherwise provided in subsection (c) of this section, an official or
15 employee may not participate in a matter if:

16 (1) the official or employee or a qualifying relative of the official or
17 employee has an interest in the matter and the official or employee knows of the
18 interest; or

19 (2) any of the following is a party to the matter:

20 (i) a business entity in which the official or employee has a direct
21 financial interest of which the official or employee reasonably may be expected to
22 know;

23 (ii) a business entity, including a limited liability company or a
24 limited liability partnership, of which any of the following is an officer, director,
25 trustee, partner, or employee:

26 1. the official or employee; or

27 2. if known to the official or employee, a qualifying relative of
28 the official or employee;

29 (iii) a business entity with which any of the following HAS APPLIED
30 FOR A POSITION, is negotiating EMPLOYMENT, or has arranged prospective
31 employment:

32 1. the official or employee; or

1 (1) the disqualification would leave a body with less than a quorum
2 capable of acting;

3 (2) the disqualified official or employee is required by law to act; or

4 (3) the disqualified official or employee is the only individual authorized
5 to act.

6 15-502.

7 (a) This section does not apply to members of the General Assembly.

8 (b) Except as provided in subsections (c) and (d) of this section, an official or
9 employee may not:

10 (1) be employed by or have a financial interest in:

11 (i) an entity subject to the authority of that official or employee or
12 of the governmental unit with which the official or employee is affiliated; or

13 (ii) an entity that is negotiating or has entered a contract with that
14 governmental unit OR AN ENTITY THAT IS A SUBCONTRACTOR ON A CONTRACT WITH
15 THAT GOVERNMENTAL UNIT; or

16 (2) hold any other employment relationship if that employment
17 relationship would impair the impartiality and independent judgment of the official
18 or employee.

19 (c) The prohibitions of subsection (b) of this section do not apply:

20 (1) to employment or a financial interest allowed by regulation of the
21 Ethics Commission if:

22 (i) the employment does not create a conflict of interest or the
23 appearance of a conflict of interest; or

24 (ii) the financial interest is disclosed;

25 (2) to a public official who is appointed to a regulatory or licensing unit
26 pursuant to a statutory requirement that entities subject to the jurisdiction of the
27 unit be represented in appointments to it;

28 (3) as allowed by regulations adopted by the Commission, to an employee
29 whose government duties are ministerial, if the private employment or financial
30 interest does not create a conflict of interest or the appearance of a conflict of interest;
31 or

32 (4) to a member of a board who holds the employment or financial
33 interest when appointed if the employment or financial interest is publicly disclosed
34 to the appointing authority, the Ethics Commission, and, if applicable, the Senate of
35 Maryland before Senate confirmation.

1 (d) (1) Subject to paragraph (2) of this subsection, the Ethics Commission
2 may exempt a public official of an executive unit or an employee of an executive unit
3 from the prohibitions of subsection (b) of this section if the Ethics Commission
4 determines that:

5 (i) failure to grant the exemption would limit the ability of the
6 State to:

7 1. recruit and hire highly qualified or uniquely qualified
8 professionals for public service; or

9 2. assure the availability of competent services to the public;
10 and

11 (ii) the number of exemptions granted under this subsection has
12 not tended to erode the purposes of subsection (b) of this section or other provisions of
13 this title.

14 (2) (i) The Ethics Commission may grant an exemption under
15 paragraph (1) of this subsection only:

16 1. in extraordinary situations; and

17 2. upon the recommendation of the Governor, at the request
18 of the executive unit involved.

19 (ii) The Ethics Commission shall apply this subsection as
20 consistently as possible under similar facts and circumstances.

21 15-505.

22 (D-1) AN OFFICIAL OR EMPLOYEE MAY NOT ACCEPT A GIFT THAT IS
23 PROHIBITED UNDER § 13-211 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect October 1, 1999.