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By: **Delegates Bates and Getty**

Introduced and read first time: February 7, 2002

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Private Attorney Contracts - Requirements**

3 FOR the purpose of requiring the Board of Public Works, prior to award of certain  
4 contracts for procurement of private attorney services, to submit these contracts  
5 to certain committees of the General Assembly for review and comment;  
6 establishing a time line for the review and comment process; requiring that  
7 certain contracts contain certain provisions; requiring that contingency fee  
8 contracts for attorney services be made subject to certain standards; and  
9 generally relating to certain contracts for procurement of legal services.

10 BY repealing and reenacting, with amendments,

11 Article - State Finance and Procurement

12 Section 12-101

13 Annotated Code of Maryland

14 (2001 Replacement Volume)

15 BY repealing and reenacting, with amendments,

16 Article - State Finance and Procurement

17 Section 13-215

18 Annotated Code of Maryland

19 (2001 Replacement Volume)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - State Finance and Procurement**

23 12-101.

24 (a) This section does not apply to capital expenditures by the Department of  
25 Transportation or the Maryland Transportation Authority, in connection with State  
26 roads, bridges, or highways, as provided in § 12-202 of this title.

27 (b) (1) The Board may control procurement by units.

1 (2) To implement the provisions of this Division II, the Board may:

2 (i) set policy;

3 (ii) adopt regulations, in accordance with Title 10, Subtitle 1 of the  
4 State Government Article; and

5 (iii) establish internal operational procedures consistent with this  
6 Division II.

7 (3) The Board shall ensure that the regulations of the primary  
8 procurement units provide for procedures that are consistent with this Division II  
9 and, to the extent the circumstances of a particular type of procurement or a  
10 particular unit do not require otherwise, are substantially the same.

11 (4) The Board may delegate any of its authority that it determines to be  
12 appropriate for delegation and may require prior Board approval for specified  
13 procurement actions.

14 (5) Except as limited by the State Constitution, the Board may exercise  
15 any control authority conferred on a primary procurement unit by this Division II  
16 and, to the extent that its action conflicts with the action of the primary procurement  
17 unit, the action of the Board shall prevail.

18 (6) The Board, with the assistance of the Department of Budget and  
19 Management, shall compile comprehensive statistics on the procurement system by  
20 agency, amount, and type of procurement.

21 (7) The Board shall develop and submit to the General Assembly, in  
22 accordance with § 2-1246 of the State Government Article, an annual report on the  
23 procurement system that includes information on actions necessary to improve  
24 effective broad-based competition in procurement.

25 (8) (I) ON OR BEFORE 75 DAYS BEFORE EXECUTING A PROCUREMENT  
26 CONTRACT FOR ATTORNEY SERVICES WHERE THE FEE FOR THOSE SERVICES  
27 EXCEEDS, OR CAN BE REASONABLY EXPECTED TO EXCEED, \$1 MILLION, THE BOARD  
28 SHALL PROVIDE A COPY OF THE CONTRACT TO:

29 1. THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL  
30 ASSEMBLY WHEN THE GENERAL ASSEMBLY IS NOT IN SESSION; OR

31 2. ONE OR MORE OF THE APPROPRIATE STANDING  
32 COMMITTEES OF THE GENERAL ASSEMBLY WHEN THE GENERAL ASSEMBLY IS IN  
33 SESSION.

34 (II) IF THE BOARD RECEIVES RECOMMENDATIONS FOR CHANGES  
35 TO THE CONTRACT FROM A COMMITTEE OF THE GENERAL ASSEMBLY IN  
36 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD SHALL:

1 1. INCORPORATE THE RECOMMENDED CHANGES TO THE  
2 CONTRACT; OR

3 2. STATE, IN WRITING, ITS REASONS FOR NOT  
4 INCORPORATING THE RECOMMENDED CHANGES.

5 (III) IF NO RESPONSE FROM A COMMITTEE OF THE GENERAL  
6 ASSEMBLY IS RECEIVED WITHIN 45 DAYS FROM THE DAY WHEN THE COMMITTEE  
7 RECEIVED THE CONTRACT, THE BOARD MAY AWARD THE CONTRACT AS PROPOSED.

8 13-215.

9 (a) A unit may not enter into a cost-reimbursement contract unless the  
10 procurement officer determines that:

11 (1) a cost-reimbursement contract is likely to be less costly to the State  
12 than any other type of contract; or

13 (2) except for leases of real property, the kind or quality of procurement  
14 that the unit requires could not be obtained practicably under any other type of  
15 contract.

16 (b) A unit may not enter into a procurement contract that is wholly or partly a  
17 cost-reimbursement contract unless the procurement officer determines that the  
18 accounting system of the contractor:

19 (1) will allow timely development of all necessary cost data in the form  
20 required by the specific type of procurement contract under consideration; and

21 (2) is adequate to allocate costs in accordance with generally accepted  
22 accounting principles.

23 (c) A cost-reimbursement contract shall provide that costs, including costs for  
24 subcontractors, will be reimbursed only if the costs are allowable and allocable under:

25 (1) the procurement contract; or

26 (2) the regulations of the Board on Cost Principles.

27 (d) A contractor under a cost-reimbursement contract shall give notice to and,  
28 as required under the contract, obtain approval from a procurement officer before the  
29 contractor enters into:

30 (1) a cost-reimbursement subcontract; or

31 (2) any subcontract involving more than:

32 (i) \$25,000; or

33 (ii) 5% of the estimated cost of the procurement contract.

1 (E) A CONTINGENCY FEE CONTRACT FOR ATTORNEY SERVICES THAT  
2 INCLUDES EXPENSE REIMBURSEMENT PROVISIONS SHALL PROVIDE THAT THE  
3 TOTAL FEE MUST BE REASONABLE AND IN CONFORMANCE WITH THE STANDARDS  
4 ESTABLISHED IN THE MARYLAND RULES OF PROFESSIONAL CONDUCT.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
6 effect October 1, 2002.