

SENATE BILL 212

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2004 Regular Session
4r0815
CF 4r1506

By: **Senator Grosfeld**

Introduced and read first time: January 28, 2004

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Alternative Dispute Resolution Pilot Program**

3 FOR the purpose of requiring the primary procurement units to develop, implement,
4 and administer an alternative dispute resolution pilot program for construction
5 contract claims; declaring that the policy of the State is to encourage the use of
6 alternative methods of dispute resolution to resolve procurement claims and
7 disputes; authorizing the use of nonbinding mediation under the pilot program;
8 authorizing certain parties to mediate during a certain time period if both
9 parties agree; requiring certain parties to mediate at the discretion of the
10 contractor after a certain time period has expired; requiring the Office of the
11 Attorney General to establish and maintain a list of certain mediators;
12 establishing procedures for the selection of a mediator under the pilot program;
13 requiring the costs of mediation to be shared equally between the parties;
14 requiring the Attorney General, in consultation with the primary procurement
15 units, to report to the Governor and the General Assembly on or before a certain
16 date; providing for the termination of this Act; and generally relating to the
17 alternative dispute resolution pilot program for construction contract claims.

18 BY adding to
19 Article - State Finance and Procurement
20 Section 15-224
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2003 Supplement)

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

25 **Article - State Finance and Procurement**

26 15-224.

27 (A) IT IS THE DECLARED POLICY OF THE STATE TO ENCOURAGE TO THE
28 MAXIMUM EXTENT PRACTICABLE THE USE OF ALTERNATIVE METHODS OF DISPUTE
29 RESOLUTION TO RESOLVE PROCUREMENT CLAIMS AND DISPUTES.

1 (B) THE PRIMARY PROCUREMENT UNITS SHALL DEVELOP, IMPLEMENT, AND
2 ADMINISTER AN ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM, FOR THE
3 RESOLUTION OF CLAIMS UNDER PROCUREMENT CONTRACTS FOR CONSTRUCTION,
4 UNDER GUIDELINES ESTABLISHED UNDER SUBSECTION (D) OF THIS SECTION.

5 (C) THE PILOT PROGRAM SHALL APPLY ONLY TO CONSTRUCTION CONTRACT
6 CLAIMS.

7 (D) (1) TO RESOLVE CONSTRUCTION CONTRACT CLAIMS, THE PILOT
8 PROGRAM SHALL AUTHORIZE THE USE OF NONBINDING MEDIATION, UNLESS THE
9 PARTIES OTHERWISE AGREE.

10 (2) THE PARTIES TO A CONTRACT:

11 (I) BEFORE THE EARLIER OF 180 DAYS AFTER THE CLAIM IS FILED
12 OR THE DATE THAT THE REVIEWING AUTHORITY GIVES WRITTEN NOTICE OF A
13 RESOLUTION UNDER § 15-219(D) OF THIS SUBTITLE, MAY MEDIATE IF BOTH PARTIES
14 AGREE; OR

15 (II) AFTER THE EARLIER OF 180 DAYS AFTER THE CLAIM IS FILED
16 OR THE DATE THAT THE REVIEWING AUTHORITY GIVES WRITTEN NOTICE OF A
17 RESOLUTION, SHALL MEDIATE AT THE DISCRETION OF THE CONTRACTOR.

18 (3) THE OFFICE OF THE ATTORNEY GENERAL SHALL ESTABLISH AND
19 MAINTAIN A LIST OF MEDIATORS QUALIFIED TO MEDIATE A CONSTRUCTION
20 CONTRACT CLAIM.

21 (4) IF MEDIATION IS USED TO RESOLVE A CLAIM UNDER THIS SECTION,
22 THE MEDIATOR SHALL BE:

23 (I) AGREED TO BY THE INTERESTED PARTIES; OR

24 (II) CHOSEN BY THE CONTRACTOR FROM A LIST OF THREE
25 MEDIATORS PROVIDED BY THE ATTORNEY GENERAL FROM THE ROSTER OF
26 QUALIFIED MEDIATORS ESTABLISHED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

27 (5) THE COSTS OF A MEDIATION SHALL BE SHARED EQUALLY BETWEEN
28 THE INTERESTED PARTIES.

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Attorney
30 General, in consultation with the primary procurement units, shall report on or
31 before January 1, 2006 to the Governor and, in accordance with § 2-1246 of the State
32 Government Article, the General Assembly, on the effectiveness and fiscal impact of,
33 and recommendations about, the alternative dispute resolution pilot program
34 established under Section 1 of this Act. The report shall include a statistical analysis
35 of the size of each case and the types of cases mediated, the outcome of any
36 alternative dispute resolution proceedings, and an estimate of any cost savings or
37 additional costs resulting from the alternative dispute resolution process.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2004. It shall remain effective for a period of 2 years and, at the end of
3 September 30, 2006, with no further action required by the General Assembly, this
4 Act shall be abrogated and of no further force and effect.