
By: **Senators McFadden, Jones, and Conway**
Introduced and read first time: February 5, 2004
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Transit Administration - Regulation of Privatization Contracts**

3 FOR the purpose of requiring the Maryland Transit Administration to follow certain
4 procedures and comply with certain requirements prior to entering into a
5 privatization contract to perform mass transit services; requiring a privatization
6 contract to meet certain conditions and include certain provisions; authorizing
7 certain employees or their representatives to submit a bid to perform mass
8 transit services; requiring the Maryland Transit Administration to certify to the
9 State Comptroller that it has met certain requirements and to provide certain
10 information; requiring the Administration to disclose certain political
11 contributions; prohibiting the Administration from entering into any
12 privatization contract if the Comptroller raises an objection under certain
13 circumstances; requiring the Comptroller to adopt certain regulations; defining
14 certain terms; and generally relating to the regulation of privatization contracts
15 under the jurisdiction of the Maryland Transit Administration.

16 BY adding to
17 Article - Transportation
18 Section 7-213
19 Annotated Code of Maryland
20 (2001 Replacement Volume and 2003 Supplement)

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

23 **Article - Transportation**

24 7-213.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

27 (2) "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING
28 SATURDAYS, SUNDAYS, AND STATE HOLIDAYS.

1 (3) "COMPTROLLER" MEANS THE COMPTROLLER OF THE STATE OF
2 MARYLAND.

3 (4) "DEPENDENT" MEANS THE SPOUSE AND CHILDREN OF AN
4 EMPLOYEE OF THE ADMINISTRATION WHO QUALIFY FOR DEPENDENT STATUS
5 UNDER THE UNITED STATES INTERNAL REVENUE CODE.

6 (5) (I) "PRIVATIZATION CONTRACT" MEANS AN AGREEMENT OR
7 COMBINATION OR SERIES OF AGREEMENTS BETWEEN THE ADMINISTRATION AND A
8 NONGOVERNMENTAL PERSON OR ENTITY IN WHICH THE NONGOVERNMENTAL
9 PERSON OR ENTITY AGREES TO PROVIDE SERVICES, VALUED AT \$100,000 OR
10 GREATER, THAT ARE SUBSTANTIALLY SIMILAR TO AND IN LIEU OF SERVICES
11 PROVIDED BY EMPLOYEES OF THE ADMINISTRATION.

12 (II) "PRIVATIZATION CONTRACT" DOES NOT INCLUDE AN
13 AGREEMENT SOLELY TO PROVIDE LEGAL, MANAGEMENT CONSULTING, PLANNING,
14 ENGINEERING, OR DESIGN SERVICES.

15 (B) (1) THE ADMINISTRATION MAY NOT ENTER INTO A PRIVATIZATION
16 CONTRACT UNLESS THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS
17 SUBSECTION ARE MET.

18 (2) THE ADMINISTRATION SHALL PREPARE A WRITTEN REQUEST FOR
19 BID FOR THE SERVICES PROPOSED TO BE THE SUBJECT OF THE PRIVATIZATION
20 CONTRACT, INCLUDING THE SPECIFIC QUANTITY AND STANDARD OF QUALITY OF
21 THE SERVICES.

22 (3) THE ADMINISTRATION SHALL SOLICIT COMPETITIVE SEALED BIDS
23 FOR THE PRIVATIZATION CONTRACTS AND SHALL DESIGNATE A BUSINESS DAY AS
24 THE FINAL DAY THE ADMINISTRATION WILL ACCEPT BIDS FROM ALL PARTIES.

25 (4) THE REQUEST FOR BID IS A PUBLIC RECORD THAT SHALL BE
26 TRANSMITTED TO THE COMPTROLLER FOR REVIEW UNDER SUBSECTION (G) OF THIS
27 SECTION.

28 (5) THE TERM OF ANY PRIVATIZATION CONTRACT MAY NOT EXCEED 3
29 YEARS.

30 (6) A PRIVATIZATION CONTRACT MAY NOT BE AMENDED IF THE
31 AMENDMENT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

32 (C) (1) FOR EACH POSITION IN WHICH A BIDDER WILL EMPLOY A PERSON IN
33 ACCORDANCE WITH THE PRIVATIZATION CONTRACT AND FOR WHICH THE DUTIES
34 ARE SUBSTANTIALLY SIMILAR TO THE DUTIES PERFORMED BY A REGULAR
35 ADMINISTRATION EMPLOYEE, THE REQUEST FOR BID REQUIRED UNDER THIS
36 SECTION SHALL INCLUDE A STATEMENT OF THE MINIMUM WAGE RATE TO BE PAID
37 FOR THE POSITION, THAT MAY NOT BE LESS THAN THE FIRST STEP OF THE GRADE
38 OR CLASSIFICATION OF THE COMPARABLE REGULAR ADMINISTRATION POSITION.

39 (2) EVERY PRIVATIZATION CONTRACT SHALL INCLUDE:

1 (I) PROVISIONS SPECIFICALLY ESTABLISHING THE WAGE RATE
2 FOR EACH POSITION, THAT MAY NOT BE LESS THAN THE MINIMUM WAGE RATE
3 ESTABLISHED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

4 (II) PROVISIONS FOR THE CONTRACTOR TO PAY NOT LESS THAN A
5 PERCENTAGE, COMPARABLE TO THE PERCENTAGE PAID BY THE STATE FOR STATE
6 EMPLOYEES, OF THE COSTS OF HEALTH INSURANCE PLANS FOR EVERY EMPLOYEE
7 EMPLOYED FOR AT LEAST 20 HOURS PER WEEK UNDER THE CONTRACT AND THE
8 EMPLOYEE'S SPOUSE AND DEPENDENT CHILDREN;

9 (III) A REQUIREMENT THAT THE CONTRACTOR SUBMIT QUARTERLY
10 PAYROLL RECORDS TO THE ADMINISTRATION, LISTING THE NAME, ADDRESS, SOCIAL
11 SECURITY NUMBER, HOURS WORKED, AND THE HOURLY WAGE PAID FOR EACH
12 EMPLOYEE IN THE PREVIOUS QUARTER; AND

13 (IV) A PROVISION REQUIRING THE CONTRACTOR TO COMPLY WITH
14 A POLICY OF NONDISCRIMINATION AND EQUAL OPPORTUNITY FOR ALL PERSONS,
15 AND TO TAKE AFFIRMATIVE STEPS TO PROVIDE EQUAL OPPORTUNITY FOR ALL
16 PERSONS.

17 (3) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION FOR
18 EQUITABLE RELIEF TO ENFORCE THIS SUBSECTION OR TO PREVENT OR REMEDY
19 THE DISMISSAL, DEMOTION, OR OTHER ACTION PREJUDICING ANY EMPLOYEE AS A
20 RESULT OF A REPORT OF A VIOLATION OF THIS SUBSECTION.

21 (D) (1) EVERY PRIVATIZATION CONTRACT SHALL CONTAIN PROVISIONS
22 REQUIRING THE CONTRACTOR TO OFFER AVAILABLE EMPLOYEE POSITIONS UNDER
23 THE CONTRACT TO QUALIFIED REGULAR EMPLOYEES OF THE ADMINISTRATION WHO
24 ARE DISPLACED OR DISMISSED, IN WHOLE OR IN PART, BECAUSE OF THE
25 PRIVATIZATION CONTRACT AND WHO SATISFY THE HIRING CRITERIA OF THE
26 CONTRACTOR.

27 (2) THE ADMINISTRATION SHALL PREPARE A PLAN OF ASSISTANCE FOR
28 EACH EMPLOYEE DISPLACED AS A RESULT OF THE CONTRACT, INCLUDING ANY
29 TRAINING NEEDED TO PLACE THE EMPLOYEE IN A COMPARABLE POSITION WITH
30 THE ADMINISTRATION, OR WITH ANOTHER AGENCY.

31 (E) (1) PRIOR TO ENTERING INTO A PRIVATIZATION CONTRACT, THE
32 ADMINISTRATION SHALL PREPARE A COMPREHENSIVE WRITTEN ESTIMATE OF THE
33 COSTS OF REGULAR ADMINISTRATION EMPLOYEES PROVIDING THE MASS TRANSIT
34 SERVICES IN THE MOST COST-EFFICIENT MANNER.

35 (2) THE ESTIMATE REQUIRED UNDER THIS SUBSECTION SHALL
36 INCLUDE ALL DIRECT AND INDIRECT COSTS OF REGULAR ADMINISTRATION
37 EMPLOYEES PROVIDING THE TRANSIT SERVICES, INCLUDING PENSION, INSURANCE,
38 AND OTHER EMPLOYEE BENEFITS COSTS.

39 (3) THE ESTIMATE SHALL REMAIN CONFIDENTIAL UNTIL AFTER THE
40 FINAL DAY FOR THE ADMINISTRATION TO RECEIVE SEALED BIDS FOR THE

1 PRIVATIZATION CONTRACT, AT WHICH TIME THE ESTIMATE SHALL BECOME A
2 PUBLIC RECORD AND SHALL BE TRANSMITTED TO THE COMPTROLLER FOR REVIEW.

3 (4) FOR THE PURPOSE OF THE ESTIMATE, ANY EMPLOYEE
4 ORGANIZATION MAY, AT ANY TIME BEFORE THE FINAL DAY FOR THE
5 ADMINISTRATION TO RECEIVE SEALED BIDS, PROPOSE AMENDMENTS TO ANY
6 RELEVANT COLLECTIVE BARGAINING AGREEMENT TO WHICH IT IS A PARTY.

7 (5) ANY AMENDMENTS PROPOSED UNDER PARAGRAPH (4) OF THIS
8 SUBSECTION MAY TAKE EFFECT ONLY IF THE BID SUBMITTED BY THE EMPLOYEE
9 ORGANIZATION IS AWARDED.

10 (6) AFTER CONSULTING WITH ANY RELEVANT EMPLOYEE
11 ORGANIZATION, THE ADMINISTRATION SHALL PROVIDE ADEQUATE RESOURCES FOR
12 THE PURPOSE OF ENCOURAGING AND ASSISTING PRESENT ADMINISTRATION
13 EMPLOYEES OR THEIR REPRESENTATIVES TO SUBMIT A BID TO PROVIDE MASS
14 TRANSIT SERVICES.

15 (7) THE ADMINISTRATION SHALL CONSIDER ANY BID SUBMITTED
16 UNDER PARAGRAPH (6) OF THIS SUBSECTION ON THE SAME BASIS AS ALL OTHER
17 BIDS.

18 (F) (1) AFTER SOLICITING AND RECEIVING BIDS, THE ADMINISTRATION
19 SHALL PUBLICLY DESIGNATE THE BIDDER TO WHICH IT PROPOSES TO AWARD THE
20 CONTRACT.

21 (2) THE ADMINISTRATION SHALL PREPARE A COMPREHENSIVE
22 WRITTEN ANALYSIS OF THE CONTRACT COST BASED ON THE DESIGNATED BID,
23 INCLUDING THE COST OF:

24 (I) TRANSITION FROM PUBLIC TO PRIVATE OPERATION;

25 (II) ADDITIONAL UNEMPLOYMENT AND RETIREMENT BENEFITS, IF
26 ANY; AND

27 (III) ADMINISTRATION OF CONTRACT PERFORMANCE.

28 (3) IF THE DESIGNATED BIDDER IS HEADQUARTERED OUTSIDE THE
29 STATE, THE CONTRACT COST SHALL BE INCREASED BY THE AMOUNT OF INCOME TAX
30 REVENUE, IF ANY, THAT WILL BE LOST TO THE STATE, AS DETERMINED BY THE
31 COMPTROLLER.

32 (G) PRIOR TO THE AWARD OF THE CONTRACT, THE ADMINISTRATION SHALL
33 CERTIFY IN WRITING TO THE COMPTROLLER THAT:

34 (1) THE ADMINISTRATION HAS COMPLIED WITH ALL PROVISIONS OF
35 THIS SECTION AND ALL OTHER APPLICABLE LAWS;

36 (2) THE QUALITY OF THE MASS TRANSIT SERVICES TO BE PROVIDED BY
37 THE DESIGNATED BIDDER IS LIKELY TO SATISFY THE REQUIREMENTS OF THIS

1 SECTION AND TO EQUAL OR EXCEED THE QUALITY OF SERVICES THAT COULD BE
2 PROVIDED BY REGULAR ADMINISTRATION EMPLOYEES;

3 (3) THE CONTRACT COST WILL BE AT LEAST 15% LESS THAN THE
4 ESTIMATED COST SPECIFIED IN SUBSECTION (E) OF THIS SECTION, TAKING INTO
5 ACCOUNT ALL COMPARABLE TYPES OF COSTS;

6 (4) THE DESIGNATED BIDDER AND ITS EMPLOYEES, WHILE IN THE
7 EMPLOY OF THE DESIGNATED BIDDER, HAVE NO ADJUDICATED RECORD OF
8 SUBSTANTIAL OR REPEATED WILLFUL NONCOMPLIANCE WITH ANY RELEVANT
9 FEDERAL OR STATE LAW, INCLUDING, LAWS PERTAINING TO LABOR RELATIONS,
10 OCCUPATIONAL SAFETY AND HEALTH, NONDISCRIMINATION AND AFFIRMATIVE
11 ACTION, ENVIRONMENTAL PROTECTION, AND CONFLICTS OF INTEREST;

12 (5) THE PROPOSED PRIVATIZATION CONTRACT IS IN THE PUBLIC
13 INTEREST BY MEETING THE APPLICABLE QUALITY AND FISCAL STANDARDS
14 ESTABLISHED IN THIS SECTION; AND

15 (6) THE CONTRACT IS IN CONFORMANCE WITH THE PROVISIONS OF ANY
16 APPLICABLE COLLECTIVE BARGAINING AGREEMENT AND ANY EMPLOYEE
17 PROTECTION ARRANGEMENTS ESTABLISHED UNDER 49 U.S.C. 5333(B).

18 (H) A COPY OF THE PROPOSED PRIVATIZATION CONTRACT SHALL ACCOMPANY
19 THE CERTIFICATION TRANSMITTED TO THE COMPTROLLER.

20 (I) THE ADMINISTRATION SHALL DISCLOSE ALL POLITICAL CONTRIBUTIONS
21 MADE BY THE PROPOSED CONTRACTOR, ITS SUBSIDIARIES OR AFFILIATES, OR
22 PRINCIPAL OR MANAGERIAL EMPLOYEES OF THE CONTRACTOR OR ITS SUBSIDIARIES
23 OR AFFILIATES, TO ANY ELECTED OFFICIAL OF THE STATE DURING THE 4 YEARS
24 IMMEDIATELY PRECEDING THE DATE OF THE BID.

25 (J) (1) THE ADMINISTRATION MAY NOT ENTER INTO A PRIVATIZATION
26 CONTRACT IF, WITHIN 30 BUSINESS DAYS AFTER RECEIVING THE CERTIFICATION
27 REQUIRED UNDER SUBSECTION (G) OF THIS SECTION, THE COMPTROLLER NOTIFIES
28 THE ADMINISTRATION IN WRITING OF THE COMPTROLLER'S OBJECTION TO THE
29 PRIVATIZATION CONTRACT.

30 (2) THE COMPTROLLER MAY ONLY OBJECT TO THE PRIVATIZATION
31 CONTRACT IF THE ADMINISTRATION HAS FAILED TO COMPLY WITH ONE OR MORE OF
32 THE REQUIREMENTS OF THIS SECTION.

33 (3) FOR THE PURPOSE OF REVIEWING THE CERTIFICATION REQUIRED
34 UNDER SUBSECTION (G) OF THIS SECTION, THE COMPTROLLER MAY REQUIRE BY
35 SUMMONS THE ATTENDANCE AND TESTIMONY UNDER OATH OF WITNESSES AND
36 THE PRODUCTION OF BOOKS, PAPERS, AND OTHER RECORDS.

37 (4) THE OBJECTION OF THE COMPTROLLER SHALL BE FINAL AND
38 BINDING ON THE ADMINISTRATION, UNLESS THE COMPTROLLER, IN WRITING,
39 WITHDRAWS THE OBJECTION BASED ON THE REVIEW OF A REVISED CERTIFICATION
40 SUBMITTED BY THE ADMINISTRATION.

1 (5) THE COMPTROLLER MAY EXTEND THE TIME TO MAKE AN
2 OBJECTION TO THE PRIVATIZATION CONTRACT FOR AN ADDITIONAL 30 BUSINESS
3 DAYS AND MUST STATE THE REASON FOR THE EXTENSION.

4 (K) THE COMPTROLLER SHALL ADOPT REGULATIONS NECESSARY TO CARRY
5 OUT THE PROVISIONS OF THIS SECTION.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2004.