

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 600

(Senator Grosfeld)

Judicial Proceedings

Health and Government Operations

State Board of Contract Appeals - State Procurement Law

This bill specifies that a contractor may be represented by legal counsel in an appeal before the Maryland State Board of Contract Appeals (MSBCA) and permits other individuals to represent contractors in expedited procedures before MSBCA.

The bill is effective July 1, 2004 with study provisions terminating December 31, 2004 and MSBCA provisions terminating June 30, 2006.

Fiscal Summary

State Effect: The bill would not materially affect State government operations.

Local Effect: None.

Small Business Effect: Potential minimal. Small businesses could recognize cost savings if they are not required to retain the services of an attorney to bring a minor claim before MSBCA.

Analysis

Bill Summary: The bill provides that the following persons, not admitted to practice law in the State of Maryland, may represent a contractor before MSBCA in expedited procedures:

- sole proprietors;
- corporate officers or directors;

- general partners;
- limited liability company members;
- persons with at least 10% ownership; or
- other principal of a contractor.

The bill also provides that Title 10 of the Business Occupations and Professions Article, which provides statutory authority to practice law in Maryland, does not apply to individuals that are representing contractors before MSBCA.

Study Provisions

The bill requests the Board of Public Works (BPW) to review the level of delegation of its procurement responsibilities to units of State government and whether there are appropriate safeguards and accountability measures in place to promote the purposes of the State's procurement law. BPW must report its findings, including any recommendations for revisions to State procurement law, to the Governor and the General Assembly by December 1, 2004.

The Department of Legislative Services, with the assistance and cooperation of BPW, is requested to conduct a study that reviews all exemptions from State procurement law. The study must include: (1) the extent of any exemptions; (2) the original justification for exemptions and whether the circumstances continue to exist; (3) any procurement policies and procedures developed by the entity and the extent to which the policies and procedures comply with the purposes of State procurement law; (4) the existence of any accountability measures for determining the efficiency, effectiveness, and economy with which the entity is using State resources; and (5) the date of, and findings from, the most recent legislative audit of the entity. The report must be submitted to the Governor and the General Assembly on or before December 1, 2004.

Current Law: Code of Maryland Regulations (COMAR) 21.10.05.03 specifies that an individual may appear before MSBCA in person, or may be represented by an attorney at law licensed in Maryland. Corporations, partnerships, and joint ventures must be represented by an attorney at law licensed in Maryland. The State must be represented by an attorney designated by the Office of the Attorney General who is licensed in Maryland. An attorney specially admitted may act as co-counsel for a participant in a proceeding who also is represented by an attorney admitted to practice in this State. The specially admitted attorney may, upon motion, be permitted to participate in Appeals Board proceedings without being accompanied by Maryland counsel.

COMAR 21.10.06.12 specifies the regulations regarding expedited procedures. Contractors may elect to receive an expedited procedure when the amount in dispute is

\$10,000 or less. Expedited procedures require decision of the appeal, when possible, within 120 days after MSBCA receives written notice of the appellant's election to use this procedure. The MSBCA member assigned to the case is required to identify and simplify the issues; establish a simplified procedure appropriate to the particular appeal involved; determine whether the appellant wants a hearing, and if so, fix a time and place for a hearing; require the procurement officer, through the Office of the Attorney General, to furnish all correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the agency final action was issued; and establish an expedited schedule for resolution of the appeal.

Pleadings, discovery, and other pre-hearing activity are permitted only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow a decision within the 120-day limit. MSBCA may impose shortened time periods to enable the board to decide the appeal within the 120-day limit and may reserve 30 days for the preparation of the decision. Decisions made in expedited procedures have no value as precedent.

Background: The MSBCA provisions of this bill implement a recommendation of the Task Force to Study Efficiency in Procurement (created by Chapter 386 of 2003). The task force was charged with evaluating the dispute resolution process in State procurements. The task force, and its dispute resolution subcommittee, reviewed MSBCA, expedited procedures, and issues related to representation and determined that the purposes of the expedited procedure were being undermined by requiring the participation of attorneys. The task force felt that a more collegial process could occur in these small, nonprecedential cases, if representation of contractors was expanded.

The Governor's Commission on the Structure and Efficiency of State Government has recommended the abolition of MSBCA citing, among other reasons, the high cost per case of the board and the ability of the MSBCA's case load to be handled by the Judiciary.

State Fiscal Effect: MSBCA does not anticipate any fiscal impact from the provisions of this bill. MSBCA advises that it receives approximately one request for expedited procedures every two years and that the provisions of the bill would require only a minor alteration of regulations.

Additional Information

Prior Introductions: None.

Cross File: HB 907 (Delegates Morhaim and Weldon) (Task Force to Study Efficiency in Procurement) – Health and Government Operations.

Information Source(s): Department of General Services, Board of Public Works, Maryland Department of Transportation, Department of Budget and Management, Office of the Attorney General, State Board of Contract Appeals, Department of Legislative Services

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