
By: **Senators Brochin, Britt, Conway, Garagiola, Grosfeld, Klausmeier, and Teitelbaum**

Introduced and read first time: January 26, 2005

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Debarment - Causes**

3 FOR the purpose of authorizing the debarment of certain persons that are debarred
4 under certain federal regulations; authorizing the person debarred to petition
5 the Board of Public Works for the removal of the debarment under certain
6 circumstances; and generally relating to debarment from State contracts.

7 BY repealing and reenacting, with amendments,
8 Article - State Finance and Procurement
9 Section 16-203 and 16-310(a) and (b)
10 Annotated Code of Maryland
11 (2001 Replacement Volume and 2004 Supplement)

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

14 **Article - State Finance and Procurement**

15 16-203.

16 (a) A person may be debarred from entering into a contract with the State if
17 the person, an officer, partner, controlling stockholder or principal of that person, or
18 any other person substantially involved in that person's contracting activities has:

19 (1) been convicted under the laws of the State, another state or the
20 United States of:

21 (i) a criminal offense incident to obtaining, attempting to obtain, or
22 performing a public or private contract, except as provided in § 16-202; or

23 (ii) fraud, embezzlement, theft, forgery, falsification or destruction
24 of records, or receiving stolen property;

25 (2) been convicted of a criminal violation of an antitrust statute of the
26 State, another state, or the United States;

1 (3) been convicted of a violation of the Racketeer Influenced and Corrupt
2 Organization Act, or the Mail Fraud Act, for acts in connection with the submission of
3 bids or proposals for a public or private contract;

4 (4) been convicted of a violation of § 14-308 of this article;

5 (5) been convicted of conspiracy to commit any act or omission that
6 would constitute grounds for conviction under any of the laws or statutes described in
7 paragraphs (1), (2), (3), or (4) of this subsection; or

8 (6) been found civilly liable under an antitrust statute of the State,
9 another state, or the United States for acts or omissions in connection with the
10 submission of bids or proposals for a public or private contract.

11 (b) A person may be debarred from entering into a contract with the State if,
12 during the course of an official investigation or other proceedings, the person, an
13 officer, partner, controlling stockholder or principal of that person, or any other
14 person substantially involved in that person's contracting activities has admitted, in
15 writing or under oath, an act or omission that constitutes grounds for conviction or
16 liability under any law or statute described in subsection (a) of this section.

17 (C) A PERSON MAY BE DEBARRED FROM ENTERING INTO A CONTRACT WITH
18 THE STATE IF THE PERSON, AN OFFICER, PARTNER, CONTROLLING STOCKHOLDER OR
19 PRINCIPAL OF THAT PERSON, OR ANY OTHER PERSON SUBSTANTIALLY INVOLVED IN
20 THAT PERSON'S CONTRACTING ACTIVITIES HAS BEEN DEBARRED FROM FEDERAL
21 CONTRACTS UNDER THE FEDERAL ACQUISITION REGULATIONS, AS PROVIDED IN 48
22 C.F.R. CHAPTER 1.

23 [(c)] (D) A person may be debarred from entering into a contract with the
24 State:

25 (1) if the Board finds that the person was established or operates in a
26 manner designed to evade the application of this title or to defeat the purpose of this
27 title;

28 (2) if the person is a successor, assignee, subsidiary, or affiliate of a
29 person who is debarred or suspended;

30 (3) for one of the following violations of a contract provision if the Board
31 believes it to be serious enough to justify debarment:

32 (i) the deliberate failure, without good cause, to perform in
33 accordance with the specifications, or within the time limit, provided in a contract; or

34 (ii) within the preceding 5 years, the failure to perform or of
35 unsatisfactory performance in accordance with the terms of one or more contracts,
36 unless the failure to perform or unsatisfactory performance was caused by acts
37 beyond the control of the person;

1 (4) if the person is a competing contractor, or any officer, employee,
2 representative, agent, or consultant of any competing contractor who violates §
3 13-211 of this article; or

4 (5) for any other cause that the Board determines to be so serious as to
5 affect the integrity of the procurement process.

6 16-310.

7 (a) (1) If the conviction that is the basis for a debarment or suspension is
8 reversed or otherwise rendered void, the debarment or suspension terminates
9 automatically.

10 (2) IF THE FEDERAL DEBARMENT THAT IS THE BASIS FOR A STATE
11 DEBARMENT OR SUSPENSION IS REVERSED OR OTHERWISE RENDERED VOID, THE
12 PERSON DEBARRED MAY PETITION THE BOARD FOR REMOVAL OF THE DEBARMENT.

13 (b) (1) Any person debarred under § 16-202 of this title may, after a period
14 of 5 years from the date of the debarment, petition the Board for removal of the
15 debarment.

16 (2) Any person debarred under § 16-203(A), (B), OR (D) of this title may
17 petition the Board for removal of the debarment, after the expiration of:

18 (i) one-half of the period of debarment; or

19 (ii) 5 years.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect October 1, 2005.