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By: ~~Delegate Benson~~ Delegates Benson, Hammen, Goldwater, Barve, Boteler, Bromwell, Costa, Donoghue, Elliott, Frank, Hubbard, Kach, Kohl, Kullen, Mandel, McDonough, Morhaim, Murray, Nathan-Pulliam, Oaks, Pendergrass, Rudolph, V. Turner, and Weldon

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Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 15, 2006

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement - Board of Contract Appeals - Award of Costs Contract Claim**  
3 **Disputes - Alternative Dispute Resolution Pilot Program**

4 FOR the purpose of ~~authorizing the Board of Contract Appeals to award attorney's~~  
5 ~~fees, under certain circumstances, to a prospective bidder or offeror, a bidder, or~~  
6 ~~an offeror who files or pursues a protest; expanding the type of contracts for~~  
7 ~~which a contractor may pursue a claim and be awarded certain costs; altering~~  
8 ~~the standards under which the Board of Contract Appeals may award a~~  
9 ~~contractor the reasonable costs of pursuing a claim; and generally relating to the~~  
10 ~~award of certain costs to certain persons by the Board of Contract Appeals~~  
11 requiring the Office of the Attorney General, in consultation with certain  
12 primary procurement units, to develop and implement a certain alternative  
13 dispute resolution pilot program; providing that the pilot program shall apply to  
14 all procurement claims; requiring the pilot program to allow a party to elect to  
15 proceed without representation by an attorney; requiring the Office of the  
16 Attorney General, in consultation with the primary procurement units, to make  
17 certain reports on or before certain dates; defining certain terms; providing for  
18 the termination of this Act; and generally relating to an alternative dispute  
19 resolution pilot program for procurement contract claim disputes.

20 BY repealing and reenacting, with amendments,  
21 Article - State Finance and Procurement  
22 Section ~~15-221.1~~ and 15-221.2  
23 Annotated Code of Maryland

1 (2001 Replacement Volume and 2005 Supplement)

2 BY adding to

3 Article - State Finance and Procurement

4 Section 15-224

5 Annotated Code of Maryland

6 (2001 Replacement Volume and 2005 Supplement)

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

9 **Article - State Finance and Procurement**

10 ~~15-221.1.~~

11 (a) ~~The Board of Contract Appeals may award a prospective bidder or offeror,~~  
12 ~~a bidder, or an offeror the reasonable costs of filing and pursuing a protest, [not]~~  
13 ~~including attorney's fees, if:~~

14 (1) ~~the prospective bidder or offeror, bidder, or offeror appeals the final~~  
15 ~~action of an agency on a protest;~~

16 (2) ~~the Board of Contract Appeals sustains the appeal; and~~

17 (3) ~~the Board of Contract Appeals finds that there has been a violation of~~  
18 ~~law or regulation.~~

19 (b) ~~The Board of Contract Appeals shall adopt regulations to implement this~~  
20 ~~section and to determine what constitutes reasonable costs of filing and pursuing a~~  
21 ~~protest.~~

22 ~~15-221.2.~~

23 (a) This section only applies to a claim resulting under a PROCUREMENT  
24 contract [for construction].

25 (b) The Appeals Board may award to a contractor the reasonable costs of filing  
26 and pursuing a claim, including reasonable attorney fees, ~~if~~ UNLESS the Appeals  
27 Board finds that the conduct of unit personnel in processing a contract claim is ~~in~~  
28 ~~bad faith or without substantial justification~~ SUBSTANTIALLY JUSTIFIED OR THAT  
29 SPECIAL CIRCUMSTANCES MAKE AN AWARD UNJUST.

30 (c) The Appeals Board shall adopt regulations to implement this section.

31 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
32 ~~October 1, 2006.~~

1 15-224.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (2) "ALTERNATIVE DISPUTE RESOLUTION" MEANS MEDIATION,  
5 NEUTRAL CASE EVALUATION, NEUTRAL FACT-FINDING, OR A SETTLEMENT  
6 CONFERENCE.

7 (3) "MEDIATION" HAS THE MEANING STATED IN TITLE 17 OF THE  
8 MARYLAND RULES.

9 (4) "NEUTRAL CASE EVALUATION" HAS THE MEANING STATED IN TITLE  
10 17 OF THE MARYLAND RULES.

11 (5) "NEUTRAL FACT-FINDING" HAS THE MEANING STATED IN TITLE 17  
12 OF THE MARYLAND RULES.

13 (6) "SETTLEMENT CONFERENCE" HAS THE MEANING STATED IN TITLE  
14 17 OF THE MARYLAND RULES.

15 (B) THE OFFICE OF THE ATTORNEY GENERAL, IN CONSULTATION WITH THE  
16 PRIMARY PROCUREMENT UNITS, SHALL DEVELOP AND IMPLEMENT AN  
17 ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM FOR THE RESOLUTION OF  
18 CLAIMS UNDER PROCUREMENT CONTRACTS.

19 (C) THE ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM SHALL APPLY  
20 TO ALL PROCUREMENT CLAIMS.

21 (D) THE PILOT PROGRAM SHALL PROVIDE FOR AN ELECTION BY A PARTY TO  
22 PROCEED WITHOUT REPRESENTATION BY AN ATTORNEY.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Attorney  
24 General, in consultation with the primary procurement units, shall report on or  
25 before January 1, 2009, to the Governor and, in accordance with § 2-1246 of the State  
26 Government Article, the General Assembly, on the effectiveness and fiscal impact of,  
27 and recommendations about, the alternative dispute resolution pilot program  
28 established under Section 1 of this Act. The report shall include a statistical analysis  
29 of the size of each case, the types of cases, the outcome of any alternative dispute  
30 resolution proceedings, and an estimate of any cost savings or additional costs  
31 resulting from the alternative dispute resolution process.

32 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the Attorney  
33 General, in consultation with the primary procurement units, shall report on or  
34 before January 1 of each year, in accordance with § 2-1246 of the State Government  
35 Article, to the Senate Education, Health, and Environmental Affairs Committee and  
36 the House Health and Government Operations Committee on the alternative dispute  
37 resolution pilot program established under this Act.

1     SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2006. It shall remain effective for a period of 3 years and, at the end of  
3 September 30, 2009, with no further action required by the General Assembly, this  
4 Act shall be abrogated and of no further force and effect.