
By: **Delegate McIntosh (Chairman, Joint Commission on the Maryland Port Administration) and Delegates Arnick, Branch, Bronrott, Cane, G. Clagett, Edwards, Frush, Glassman, McHale, and Parrott**

Introduced and read first time: February 10, 2006

Assigned to: Environmental Matters and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Maryland Port Administration - Exemption**

3 FOR the purpose of exempting certain procurements of the Maryland Port
 4 Administration from certain provisions of the procurement law; authorizing the
 5 Administration to use maritime enterprise procurement for certain
 6 procurements; requiring the Maryland Port Commission to adopt under certain
 7 guidelines regulations governing certain procurements; providing that the
 8 exemption of the Administration from certain provisions of the procurement law
 9 does not apply until the Commission adopts certain regulations; subjecting the
 10 Administration to certain provisions of the procurement law; exempting an
 11 appeal of final action of the Administration on certain contract protests from the
 12 appeals over which the Maryland Board of Contract Appeals has jurisdiction;
 13 prohibiting a person from appealing to the Appeals Board the final action of the
 14 Administration on certain contract protests; providing that certain provisions of
 15 administrative law do not apply to the appeal of final action of the
 16 Administration on certain contract protests; authorizing a person to appeal the
 17 final action of the Administration on certain contract protests to the
 18 Commission; authorizing the Commission to designate certain persons to hear
 19 certain appeals; exempting the Administration from certain provisions of law
 20 relating to certain telecommunication systems or services; defining certain
 21 terms; and generally relating to procurements by the Maryland Port
 22 Administration.

23 BY repealing and reenacting, with amendments,
 24 Article - State Finance and Procurement
 25 Section 3-703(a), 12-202, 15-211(a), 15-216, and 15-220(a)
 26 Annotated Code of Maryland
 27 (2001 Replacement Volume and 2005 Supplement)

28 BY adding to
 29 Article - State Finance and Procurement
 30 Section 11-203(g) and 15-220.1

1 Annotated Code of Maryland
2 (2001 Replacement Volume and 2005 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Transportation
5 Section 6-201(b), 6-204(f) and (k), and 6-208
6 Annotated Code of Maryland
7 (2001 Replacement Volume and 2005 Supplement)

8 Preamble

9 WHEREAS, The Port of Baltimore is one of Maryland's key assets and is vital to
10 the economic health of the State; and

11 WHEREAS, The Maryland Department of Transportation engaged Mercer
12 Management Consulting to assess the governance model for the Maryland Port
13 Administration and to make recommendations regarding ways to improve
14 organizational effectiveness for the purpose of promoting and enhancing commerce at
15 the Port; and

16 WHEREAS, In its report dated May 17, 2005, Mercer Management Consulting
17 recognized the general sentiment that the success of the Port of Baltimore has been
18 compromised by "bureaucratic procurement processes that unnecessarily increase
19 costs and impose burdensome delays" on those doing business through the Port of
20 Baltimore; and

21 WHEREAS, Because competing ports throughout the nation have implemented
22 more efficient procurement practices to enhance and increase business opportunities,
23 the Maryland Port Administration must improve its procurement standards to
24 remain competitive; and

25 WHEREAS, To increase waterborne commerce through the Port of Baltimore
26 and to maintain and improve the position of the Port of Baltimore in competition with
27 other ports, the Maryland Port Administration must have the ability to procure more
28 expeditiously the facilities, goods, and services needed to attract, maintain, and
29 support business at the Port; now, therefore,

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

32 **Article - State Finance and Procurement**

33 3-703.

34 (a) The provisions of this subtitle may not apply to a telecommunication
35 system or service that is owned or operated by the University System of Maryland,
36 Morgan State University, THE MARYLAND PORT ADMINISTRATION, or a unit of the
37 Legislative or Judicial Branch.

1 11-203.

2 (G) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
3 MEANINGS INDICATED.

4 (II) "ADMINISTRATION" MEANS THE MARYLAND PORT
5 ADMINISTRATION.

6 (III) "COMMISSION" MEANS THE MARYLAND PORT COMMISSION.

7 (IV) "MARITIME ENTERPRISE PROCUREMENT" MEANS
8 PROCUREMENT DETERMINED BY THE COMMISSION TO BE NECESSARY TO ATTRACT,
9 RETAIN, SUPPORT, OR PROVIDE SECURITY FOR MARITIME BUSINESS AT THE
10 ADMINISTRATION'S PORT FACILITIES.

11 (2) THE ADMINISTRATION MAY USE MARITIME ENTERPRISE
12 PROCUREMENT TO PROCURE ARCHITECTURAL OR ENGINEERING SERVICES,
13 CONSTRUCTION AND CONSTRUCTION RELATED SERVICES, ENERGY PERFORMANCE
14 CONTRACTS, LEASES OF REAL PROPERTY AS LESSEE, MAINTENANCE, SERVICES, AND
15 SUPPLIES OTHER THAN INSURANCE.

16 (3) EXCEPT AS PROVIDED IN PARAGRAPHS (5) AND (7) OF THIS
17 SUBSECTION, THIS DIVISION II DOES NOT APPLY TO MARITIME ENTERPRISE
18 PROCUREMENTS.

19 (4) (I) THE COMMISSION SHALL ADOPT REGULATIONS GOVERNING
20 MARITIME ENTERPRISE PROCUREMENT.

21 (II) THE REGULATIONS ADOPTED BY THE COMMISSION FOR
22 MARITIME ENTERPRISE PROCUREMENT SHALL:

23 1. PROMOTE EFFICIENCY AND SPEED IN MARITIME
24 ENTERPRISE PROCUREMENT; AND

25 2. COMPLY WITH THE PURPOSES AND POLICIES OF §
26 11-201(A) OF THIS SUBTITLE.

27 (5) BEFORE THE EFFECTIVE DATE OF THE REGULATIONS ADOPTED BY
28 THE COMMISSION, MARITIME ENTERPRISE PROCUREMENT SHALL BE GOVERNED BY
29 THIS DIVISION II.

30 (6) THE COMMISSION MAY IDENTIFY SPECIFIC PROCUREMENTS OR
31 SPECIFIC CLASSES OF PROCUREMENTS AS MARITIME ENTERPRISE PROCUREMENTS.

32 (7) THE FOLLOWING PROVISIONS OF DIVISION II OF THIS ARTICLE
33 APPLY TO MARITIME ENTERPRISE PROCUREMENTS:

34 (I) § 11-205 ("COLLUSION");

35 (II) § 11-205.1 ("FALSIFICATION OF MATERIAL FACTS");

1 (III) § 13-219 ("REQUIRED CLAUSES - NONDISCRIMINATION
2 CLAUSE");

3 (IV) § 13-225 ("RETAINAGE");

4 (V) TITLE 14, SUBTITLE 3 ("MINORITY BUSINESS PARTICIPATION");

5 (VI) TITLE 14, SUBTITLE 5 ("SMALL BUSINESS RESERVE PROGRAM");

6 (VII) TITLE 15, SUBTITLE 1 ("PROCUREMENT CONTRACT
7 ADMINISTRATION");

8 (VIII) TITLE 15, SUBTITLE 2 ("DISPUTE RESOLUTION");

9 (IX) TITLE 16 ("SUSPENSION AND DEBARMENT OF CONTRACTORS");
10 AND

11 (X) TITLE 17, SUBTITLE 4 ("NOTICE OF POLITICAL
12 CONTRIBUTIONS").

13 (8) THIS SUBSECTION DOES NOT APPLY TO:

14 (I) PROCUREMENT BY THE ADMINISTRATION FROM:

15 1. ANOTHER UNIT;

16 2. A POLITICAL SUBDIVISION OF THE STATE;

17 3. AN AGENCY OF A POLITICAL SUBDIVISION OF THE STATE;

18 4. A GOVERNMENT, INCLUDING THE GOVERNMENT OF
19 ANOTHER STATE, OF THE UNITED STATES, OR OF ANOTHER COUNTRY;

20 5. AN AGENCY OR POLITICAL SUBDIVISION OF A
21 GOVERNMENT; OR

22 6. A BISTATE, MULTISTATE, BICOUNTY, OR MULTICOUNTY
23 GOVERNMENTAL AGENCY; OR

24 (II) PROCUREMENT BY THE ADMINISTRATION IN SUPPORT OF
25 ENTERPRISE ACTIVITIES FOR THE PURPOSE OF:

26 1. DIRECT RESALE; AND

27 2. REMANUFACTURE AND SUBSEQUENT RESALE.

28 12-202.

29 (a) This section does not apply to capital expenditures by:

1 (1) the Department of Transportation or the Maryland Transportation
2 Authority, in connection with State roads, bridges, or highways; OR

3 (2) THE MARYLAND PORT ADMINISTRATION, IN CONNECTION WITH
4 MARITIME ENTERPRISE PROCUREMENT CONTRACTS UNDER §11-203(G) OF THIS
5 ARTICLE.

6 (b) Before execution, a contract for a capital expenditure other than in
7 connection with a State correctional facility, St. Mary's College of Maryland, Morgan
8 State University, or the University System of Maryland shall be:

9 (1) reviewed by the Secretary of General Services; and

10 (2) except as provided in § 12-203 of this subtitle and § 13-108 of this
11 article, after that review, approved by the Board.

12 (c) Before execution, a contract for a capital expenditure in connection with a
13 State correctional facility shall be:

14 (1) reviewed by the Secretary of Public Safety and Correctional Services;
15 and

16 (2) except as provided in § 12-203 of this subtitle, after that review,
17 approved by the Board.

18 (d) Before execution, a contract for a capital expenditure in connection with
19 the University System of Maryland shall be:

20 (1) subject to the provisions of Title 4, Subtitle 4 of this article;

21 (2) approved by the Board of Regents of the University System of
22 Maryland; and

23 (3) approved by the Board of Public Works.

24 (e) Before execution, a contract for a capital expenditure in connection with
25 St. Mary's College of Maryland shall be:

26 (1) subject to the provisions of Title 4, Subtitle 4 of this article;

27 (2) approved by the Board of Trustees of St. Mary's College of Maryland;
28 and

29 (3) approved by the Board of Public Works.

30 (f) Before execution, a contract for a capital expenditure in connection with
31 Morgan State University shall be:

32 (1) subject to the provisions of Title 4, Subtitle 4 of this article;

33 (2) approved by the Board of Regents of Morgan State University; and

1 (3) approved by the Board of Public Works.

2 (g) The Board shall supervise the expenditure of any money that the General
3 Assembly appropriates for:

4 (1) buildings;

5 (2) equipment;

6 (3) new construction; or

7 (4) any other capital expenditure.

8 15-211.

9 (a) The Appeals Board shall have jurisdiction to hear and decide all appeals
10 arising from the final action of a unit:

11 (1) EXCEPT FOR A PROTEST RELATING TO A MARITIME ENTERPRISE
12 PROCUREMENT CONTRACT, on a protest relating to the formation of a procurement
13 contract; or

14 (2) except for a contract claim relating to a lease of real property, on a
15 contract claim by a contractor or a unit concerning:

16 (i) breach;

17 (ii) performance;

18 (iii) modification; or

19 (iv) termination.

20 15-216.

21 (a) Title 10, Subtitle 2 of the State Government Article does not apply to:

22 (1) the disposition of a protest or a contract claim by:

23 [(1)] (I) a primary procurement unit;

24 [(2)] (II) a procurement officer; or

25 [(3)] (III) a unit; OR

26 (2) AN APPEAL OF FINAL ACTION OF THE MARYLAND PORT
27 ADMINISTRATION ON A PROTEST UNDER § 15-220.1 OF THIS SUBTITLE.

28 (b) The Appeals Board shall conduct its proceedings in accordance with Title
29 10, Subtitle 2 of the State Government Article.

1 15-220.

2 (a) Except for a contract claim related to a lease for real property OR A
3 PROTEST RELATED TO A MARITIME ENTERPRISE PROCUREMENT CONTRACT, a bidder
4 or offeror, a prospective bidder or offeror, a unit, or a contractor may appeal the final
5 action of a unit to the Appeals Board.

6 15-220.1.

7 (A) A BIDDER OR OFFEROR OR A PROSPECTIVE BIDDER OR OFFEROR MAY
8 APPEAL THE FINAL ACTION OF THE MARYLAND PORT ADMINISTRATION ON A
9 PROTEST RELATED TO A MARITIME ENTERPRISE PROCUREMENT CONTRACT TO THE
10 MARYLAND PORT COMMISSION IN ACCORDANCE WITH REGULATIONS ADOPTED BY
11 THE COMMISSION.

12 (B) THE COMMISSION MAY:

13 (1) ALLOCATE ITS HEARING AND DECISION MAKING AUTHORITY UNDER
14 THIS SECTION AMONG THE COMMISSIONERS; OR

15 (2) AUTHORIZE ANOTHER PERSON TO HEAR AND DECIDE AN APPEAL.

16 (C) TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE DOES NOT
17 APPLY TO AN APPEAL UNDER THIS SECTION AS PROVIDED IN § 15-216 OF THIS
18 SUBTITLE.

19 **Article - Transportation**

20 6-201.

21 (b) The Commission shall:

22 (1) Establish policies directed toward improving the competitive position
23 of the ports of Maryland within the international port industry;

24 (2) Adopt regulations for the operation of the Administration in a
25 competitive manner within the port industry;

26 (3) Exercise those powers granted to the Commission and to the
27 Maryland Port Administration by this title or by any other provision of law;

28 (4) Unless otherwise directed by the Secretary, serve as the board of
29 directors of any private operating company created under this title; [and]

30 (5) In carrying out the provisions of this subtitle, seek information and
31 advice from port labor and management groups; AND

32 (6) ADOPT REGULATIONS ESTABLISHING A MARITIME ENTERPRISE
33 PROCUREMENT PROCESS AS REQUIRED UNDER § 11-203(G) OF THE STATE FINANCE
34 AND PROCUREMENT ARTICLE.

1 6-204.

2 (f) The Administration may do anything necessary to promote and increase
3 commerce within its territorial jurisdiction, including:

4 (1) Purchasing advertising;

5 (2) Engaging in public relations programs;

6 (3) Publishing literature;

7 (4) Soliciting business by correspondence and traveling representatives;

8 [and]

9 (5) Cooperating with civic, technical, professional, and business
10 organizations and associations; AND

11 (6) CONDUCTING MARITIME ENTERPRISE PROCUREMENT UNDER §
12 11-203(G) OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

13 (k) [(1)] In the exercise of its powers and the performance of its duties under
14 this title, the Administration may acquire and hold in its own name and may lease,
15 convey, or otherwise dispose of any property, including:

16 [(i)] (1) Lands lying under water;

17 [(ii)] (2) Riparian rights in and adjacent to lands; and

18 [(iii)] (3) Property devoted to a public use in or near the navigable
19 waters within the territorial jurisdiction of the Administration.

20 [(2)] The acquisition by or on behalf of the Administration of personal
21 property to be used outside of this State is not subject to Title 4, Subtitle 3 of the State
22 Finance and Procurement Article requiring purchases through the Department of
23 General Services.]

24 6-208.

25 (A) Except as otherwise provided in this title, the Administration may make
26 any contract necessary for or incidental to the performance of its duties and the
27 exercise of its powers under this title.

28 (B) THE ADMINISTRATION SHALL CONDUCT MARITIME ENTERPRISE
29 PROCUREMENT UNDER § 11-203(G) OF THE STATE FINANCE AND PROCUREMENT
30 ARTICLE IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE COMMISSION.

31 (C) THE ADMINISTRATION IS NOT SUBJECT TO:

32 (1) TITLE 3, SUBTITLES 5 AND 7 OF THE STATE FINANCE AND
33 PROCUREMENT ARTICLE; OR

1 (2) TITLE 4, SUBTITLES 3 AND 4 OF THE STATE FINANCE AND
2 PROCUREMENT ARTICLE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2006.