
By: **Delegates Rosenberg, Benson, Bromwell, G. Clagett, Conroy, Goldwater,
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Introduced and read first time: February 10, 2006

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Service Contracts - Employee Compensation Standards**

3 FOR the purpose of requiring the Board of Public Works to ensure that certain
4 procurement regulations provide for procedures that are consistent with certain
5 provisions of law; requiring certain service contracts to contain provisions that
6 establish compensation at a certain level and require the contractor to offer
7 available positions to certain State employees; providing that failure to meet
8 certain requirements is a breach of the contract; requiring that notice of certain
9 rights be given to certain employees at certain points in the procurement
10 process; providing certain requirements that must be met for certain contracts
11 to be certified; authorizing the Department of General Services and the
12 Department of Budget and Management to adopt certain regulations; requiring
13 that certain calculations account for certain compensation levels; requiring a
14 unit to include certain features in certain required plans of assistance; providing
15 certain employees with standing to contest certain actions; authorizing certain
16 courts to take certain actions under certain circumstances; defining certain
17 terms; and generally relating to wage and benefit standards and other
18 requirements of certain service contracts with the State.

19 BY repealing and reenacting, without amendments,
20 Article - State Finance and Procurement
21 Section 10-101 and 13-218(a)
22 Annotated Code of Maryland
23 (2001 Replacement Volume and 2005 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - State Finance and Procurement
26 Section 12-101(b)
27 Annotated Code of Maryland
28 (2001 Replacement Volume and 2005 Supplement)

29 BY adding to
30 Article - State Finance and Procurement

1 Section 13-218.1
2 Annotated Code of Maryland
3 (2001 Replacement Volume and 2005 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - State Personnel and Pensions
6 Section 13-401, 13-404, and 13-405
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2005 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - State Personnel and Pensions
11 Section 13-402 and 13-403
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2005 Supplement)

14 BY adding to
15 Article - State Personnel and Pensions
16 Section 13-406
17 Annotated Code of Maryland
18 (2004 Replacement Volume and 2005 Supplement)

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

21 **Article - State Finance and Procurement**

22 10-101.

23 In this title, "Board" means the Board of Public Works.

24 12-101.

25 (b) (1) The Board may control procurement by units.

26 (2) To implement the provisions of this Division II, the Board may:

27 (i) set policy;

28 (ii) adopt regulations, in accordance with Title 10, Subtitle 1 of the
29 State Government Article; and

30 (iii) establish internal operational procedures consistent with this
31 Division II.

32 (3) The Board shall ensure that the regulations of the primary
33 procurement units provide for procedures that are consistent with this Division II

1 AND SUBTITLE 4 OF TITLE 13 OF THE STATE PERSONNEL AND PENSIONS ARTICLE
2 and, to the extent the circumstances of a particular type of procurement or a
3 particular unit do not require otherwise, are substantially the same.

4 (4) The Board may delegate any of its authority that it determines to be
5 appropriate for delegation and may require prior Board approval for specified
6 procurement actions.

7 (5) Except as limited by the State Constitution, the Board may exercise
8 any control authority conferred on a primary procurement unit by this Division II
9 and, to the extent that its action conflicts with the action of the primary procurement
10 unit, the action of the Board shall prevail.

11 (6) The Board, with the assistance of the Department of Budget and
12 Management, shall compile comprehensive statistics on the procurement system by
13 agency, amount, and type of procurement.

14 (7) The Board shall develop and submit to the General Assembly, in
15 accordance with § 2-1246 of the State Government Article, an annual report on the
16 procurement system that includes information on actions necessary to improve
17 effective broad-based competition in procurement.

18 13-218.

19 (a) Each procurement contract shall include clauses covering:

20 (1) termination for default;

21 (2) termination wholly or partly by the State for its convenience if the
22 head of the primary procurement unit determines that termination is appropriate;

23 (3) variations that occur between estimated and actual quantities of
24 work in a procurement contract;

25 (4) liquidated damages, as appropriate;

26 (5) specified excuses for nonperformance;

27 (6) except for real property leases, the unilateral right of the State to
28 order in writing:

29 (i) changes in the work, if the changes are within the scope of the
30 procurement contract; and

31 (ii) a temporary stop or delay in performance;

32 (7) the obligation of the contractor to comply with the political
33 contribution reporting requirements under Title 14 of the Election Law Article, to
34 which the contractor may be subject as required under § 17-402 of this article; and

1 (8) nonvisual access for information technology as required under §
2 3-412 of this article.

3 13-218.1.

4 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (2) "EMPLOYEE COMPENSATION" HAS THE MEANING STATED IN § 13-401
7 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

8 (3) "SERVICE CONTRACT" HAS THE MEANING STATED IN § 13-401 OF THE
9 STATE PERSONNEL AND PENSIONS ARTICLE.

10 (B) A SERVICE CONTRACT THAT IS NOT EXEMPT UNDER § 13-403(C) OR §
11 13-404(B) OF THE STATE PERSONNEL AND PENSIONS ARTICLE SHALL CONTAIN
12 PROVISIONS THAT:

13 (1) ESTABLISH THE EMPLOYEE COMPENSATION FOR EACH POSITION IN
14 THE CONTRACT THAT IS AT LEAST EQUIVALENT TO THE EMPLOYEE COMPENSATION
15 PROVIDED BY THE STATE TO A STATE EMPLOYEE WHO PERFORMS SIMILAR DUTIES;
16 AND

17 (2) REQUIRE THE CONTRACTOR TO OFFER AVAILABLE POSITIONS
18 UNDER THE CONTRACT TO DISPLACED, QUALIFIED STATE EMPLOYEES WITH
19 EMPLOYEE COMPENSATION AT LEAST EQUIVALENT TO THE EMPLOYEE
20 COMPENSATION EARNED BY THE EMPLOYEE AT THE TIME OF DISPLACEMENT.

21 (C) FAILURE TO PROVIDE EMPLOYEE COMPENSATION AS REQUIRED UNDER
22 THIS SECTION SHALL BE DEEMED TO BE A MATERIAL BREACH OF THE SERVICE
23 CONTRACT.

24 (D) AT LEAST 60 DAYS BEFORE THE ISSUANCE OF A SOLICITATION FOR A
25 SERVICE CONTRACT THAT IS NOT EXEMPT UNDER § 13-403(C) OR § 13-404(B) OF THE
26 STATE PERSONNEL AND PENSIONS ARTICLE, THE UNIT SHALL PROVIDE EMPLOYEES
27 WHO MAY BE AFFECTED BY THE CONTRACT WITH WRITTEN NOTICE OF:

28 (1) WORK THAT IS BEING PROPOSED FOR CONTRACTING; AND

29 (2) CONTRACTING PROCEDURES, REQUIREMENTS, TIMETABLES, AND
30 EMPLOYEE RIGHTS AS PROVIDED IN TITLE 13, SUBTITLE 4 OF THE STATE PERSONNEL
31 AND PENSIONS ARTICLE.

32 **Article - State Personnel and Pensions**

33 13-401.

34 (a) In this subtitle the following words have the meanings indicated.

1 (B) "EMPLOYEE COMPENSATION" MEANS THE COMBINED MONETARY VALUE
2 OF WAGES AND BENEFITS INCLUDING HEALTH INSURANCE, RETIREMENT, AND
3 LEAVE BENEFITS.

4 [(b)] (C) "Service contract" means a procurement contract for services that:

5 (1) will be provided to a unit in the Executive Branch of State
6 government; AND

7 (2) [will be performed within a State-operated facility; and

8 (3)] in the estimation of the procurement officer, will exceed an annual
9 cost of \$100,000.

10 [(c)] (D) "Services" has the meaning stated in § 11-101 of the State Finance
11 and Procurement Article.

12 [(d)] (E) "Unit" has the meaning stated in § 11-101 of the State Finance and
13 Procurement Article.

14 13-402.

15 The policy of this State is to use State employees to perform all State functions
16 in State-operated facilities in preference to contracting with the private sector to
17 perform those functions.

18 13-403.

19 (a) A service contract may be entered into only as approved by the Board of
20 Public Works in accordance with this subtitle.

21 (b) Except as provided in subsection (c) of this section, the Board of Public
22 Works may approve a service contract for a unit only if the Board receives a
23 certification from the Department that:

24 (1) the service contract is exempt under § 13-404(b) of this subtitle; or

25 (2) the unit has complied with the requirements of § 13-404(c) of this
26 subtitle.

27 (c) If the General Assembly authorizes or requires that certain services be
28 performed by an independent contractor, the Board of Public Works may approve a
29 service contract for those services without the certification required by subsection (b)
30 of this section.

31 13-404.

32 (a) The Department may certify a service contract to the Board of Public
33 Works as provided in this section.

1 (b) The Department may certify a service contract as being exempt from the
2 preference stated in § 13-402 of this subtitle if:

3 (1) State employees are not available to perform the services;

4 (2) a conflict of interest would result if a State employee were to perform
5 the services;

6 (3) the nature of the services meets the standards set by the Department
7 for emergency appointments;

8 (4) the services are incidental to the purchase or lease of personal
9 property or real property, such as a service agreement that is part of the purchase or
10 rental of computers or office equipment; or

11 (5) a clear need exists to obtain an unbiased finding or opinion, such as
12 an expert witness in litigation.

13 (c) The Department may certify a service contract that is not exempt under
14 subsection (b) of this section only if[

15 (1) the unit that seeks to enter into the service contract has complied
16 with § 13-405 of this subtitle; and

17 (2)] the Department finds that:

18 (1) THE UNIT THAT SEEKS TO ENTER INTO THE SERVICE CONTRACT HAS
19 COMPLIED WITH § 13-405 OF THIS SUBTITLE;

20 [(i)] (2) the potential economic advantage of entering into the
21 service contract is not outweighed by the preference stated in § 13-402 of this
22 subtitle;

23 [(ii)] (3) the service contract does not adversely affect the
24 affirmative action efforts of this State;

25 [(iii)] (4) the service contract includes adequate control
26 mechanisms to ensure that the services will be performed in accordance with the
27 service contract; [and

28 (iv)] (5) the service contract complies with all of the requirements
29 of Division II of the State Finance and Procurement Article; AND

30 (6) AT LEAST 15 DAYS BEFORE CERTIFYING THE CONTRACT, THE
31 DEPARTMENT HAS NOTIFIED EMPLOYEES WHO MAY BE AFFECTED BY THE
32 CONTRACT IN WRITING OF THE FOLLOWING:

33 (I) THE DEPARTMENT'S INTENT TO CERTIFY THE CONTRACT;

34 (II) EMPLOYEES MAY REVIEW AND RECEIVE A COPY, AT NO
35 CHARGE, OF THE CONTRACT, THE PROPOSED CERTIFICATION, AND THE

1 INFORMATION RELIED ON BY THE DEPARTMENT IN MAKING THE PROPOSED
2 CERTIFICATION; AND

3 (III) EMPLOYEES MAY SUBMIT COMMENTS TO THE DEPARTMENT
4 REGARDING THE PROPOSED CERTIFICATION.

5 (D) THE DEPARTMENT OF GENERAL SERVICES AND THE DEPARTMENT OF
6 BUDGET AND MANAGEMENT MAY ADOPT REGULATIONS TO CARRY OUT THE
7 REQUIREMENTS OF THIS SUBSECTION.

8 (E) (1) WHEN A NONEXEMPT CONTRACT UNDER SUBSECTION (C) OF THIS
9 SECTION IS CERTIFIED, THE DEPARTMENT SHALL NOTIFY EMPLOYEES WHO MAY BE
10 AFFECTED BY THE CONTRACT IN WRITING OF THE EMPLOYEES' RIGHT TO:

11 (I) RECEIVE, WITHOUT CHARGE, A COPY OF THE CERTIFICATION
12 DOCUMENT AND THE CONTRACT;

13 (II) COMMENT ON THE CERTIFICATION AND THE CONTRACT
14 BEFORE THE BOARD OF PUBLIC WORKS; AND

15 (III) SEEK JUDICIAL REVIEW OF THE CERTIFICATION, AS PROVIDED
16 IN § 13-406 OF THIS SUBTITLE.

17 (2) THE DEPARTMENT'S NOTIFICATION TO EMPLOYEES REQUIRED BY
18 PARAGRAPH (1) OF THIS SUBSECTION MUST BE PERFORMED AT LEAST 15 DAYS
19 BEFORE THE CONTRACT IS CONSIDERED BY THE BOARD OF PUBLIC WORKS.

20 13-405.

21 (a) A unit that seeks to enter into a service contract that is not exempt under
22 § 13-403(c) or § 13-404(b) of this subtitle shall submit to the Department the
23 information required by this section.

24 (b) The unit shall submit a demonstration that the unit has taken formal and
25 positive steps to consider alternatives to the service contract, including
26 reorganization, reevaluation of service, and reevaluation of performance.

27 (c) (1) The unit shall submit calculations that:

28 (i) compare the cost of the service contract INCLUDING EMPLOYEE
29 COMPENSATION AT LEAST EQUIVALENT TO THOSE PROVIDED TO STATE EMPLOYEES
30 TO PERFORM SIMILAR DUTIES with the cost of using State employees; and

31 (ii) show savings to this State, over the duration of the service
32 contract, of 20% of the contract or \$200,000, whichever is less.

33 (2) In calculating the cost comparison required by this subsection, a unit
34 shall include:

35 (i) direct costs, including fringe benefits;

1 (ii) indirect overhead costs, including the proportional share of
2 existing administrative salaries and benefits, rent, equipment costs, utilities, and
3 materials, but only to the extent that those costs are attributed solely to the service in
4 question and would not exist if the service were not performed by State employees;

5 (iii) any continuing or transitional costs that would be directly
6 associated with contracting for the services, including unemployment compensation
7 and the cost of transitional services; and

8 (iv) additional costs of performance of the services by State
9 employees, including salaries and benefits of additional staff and the cost of
10 additional space, equipment, and materials needed to perform the services.

11 (d) (1) The unit shall submit a formal plan of assistance for all State
12 employees who will be adversely affected by the service contract.

13 (2) The plan of assistance shall include:

14 (i) efforts to place affected employees in vacant positions in the
15 unit or in another unit;

16 (ii) provisions in the service contract[, if feasible,] for the hiring by
17 the contractor of displaced employees THAT MEET THE REQUIREMENTS SET FORTH IN
18 § 13-218.1(B) OF THE STATE FINANCE AND PROCUREMENT ARTICLE; and

19 (iii) prior notification to affected employees by the earlier of:

20 1. the day the contract is signed; or

21 2. 6 months before the day the adverse effect will occur.

22 13-406.

23 (A) A STATE EMPLOYEE WHO MAY BE AFFECTED BY A VIOLATION OF THE
24 PROVISIONS OF THIS SUBTITLE MAY BRING AN ORIGINAL ACTION IN ANY CIRCUIT
25 COURT OF THIS STATE.

26 (B) IF A STATE EMPLOYEE BRINGS AN ACTION IN ACCORDANCE WITH
27 SUBSECTION (A) OF THIS SECTION, THE COURT MAY:

28 (1) ISSUE DECLARATORY AND INJUNCTIVE RELIEF TO CORRECT ANY
29 VIOLATION OF THIS SUBTITLE;

30 (2) AWARD ATTORNEY'S FEES TO A STATE EMPLOYEE WHO
31 SUBSTANTIALLY PREVAILS IN THE ACTION; AND

32 (3) MAKE WHOLE ANY STATE EMPLOYEE FOR A LOSS OF EMPLOYEE
33 COMPENSATION CAUSED BY A DEMONSTRATED VIOLATION OF THIS SUBTITLE.

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

