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By: **Senator Middleton (Chairman, Joint Commission on the Maryland Port Administration)**

Introduced and read first time: February 8, 2006

Assigned to: Rules

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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  
31 Annotated Code of Maryland

1 (2001 Replacement Volume and 2005 Supplement)

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

7 Preamble

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

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

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

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

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

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

31 **Article - State Finance and Procurement**

32 3-703.

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