

# HOUSE BILL 450

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By: **Delegates Rosenberg, Harrison, Kirk, Krysiak, Love, Manno, McHale, and Taylor**

Introduced and read first time: February 6, 2007

Assigned to: Economic Matters

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## 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 service contract; requiring that notice of  
9 certain rights be given to certain employees at certain points in the  
10 procurement process; providing that certain requirements must be met for  
11 certain service contracts to be certified; authorizing the Department of General  
12 Services and the Department of Budget and Management to adopt certain  
13 regulations; requiring that certain calculations account for certain  
14 compensation levels; requiring a unit to include certain features in certain  
15 required plans of assistance; defining certain terms; and generally relating to  
16 wage and benefit standards and other requirements of certain service contracts  
17 with the State.

18 BY repealing and reenacting, without amendments,  
19 Article – State Finance and Procurement  
20 Section 10–101 and 13–218(a)  
21 Annotated Code of Maryland  
22 (2006 Replacement Volume and 2006 Supplement)

23 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Finance and Procurement  
2 Section 12–101(b)  
3 Annotated Code of Maryland  
4 (2006 Replacement Volume and 2006 Supplement)

5 BY adding to  
6 Article – State Finance and Procurement  
7 Section 13–218.1  
8 Annotated Code of Maryland  
9 (2006 Replacement Volume and 2006 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article – State Personnel and Pensions  
12 Section 13–401, 13–404, and 13–405  
13 Annotated Code of Maryland  
14 (2004 Replacement Volume and 2006 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article – State Personnel and Pensions  
17 Section 13–402 and 13–403  
18 Annotated Code of Maryland  
19 (2004 Replacement Volume and 2006 Supplement)

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

22 **Article – State Finance and Procurement**

23 10–101.

24 In this title, “Board” means the Board of Public Works.

25 12–101.

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

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

28 (i) set policy;

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

1 (iii) establish internal operational procedures consistent with  
2 this Division II.

3 (3) The Board shall ensure that the regulations of the primary  
4 procurement units provide for procedures that are consistent with this Division II **AND**  
5 **TITLE 13, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE** and,  
6 to the extent the circumstances of a particular type of procurement or a particular unit  
7 do not require otherwise, are substantially the same.

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

11 (5) Except as limited by the [State] **MARYLAND** Constitution, the  
12 Board may exercise any control authority conferred on a primary procurement unit by  
13 this Division II and, to the extent that its action conflicts with the action of the  
14 primary procurement unit, the action of the Board shall prevail.

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

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

22 13-218.

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

24 (1) termination for default;

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

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

29 (4) liquidated damages, as appropriate;

30 (5) specified excuses for nonperformance;

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

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

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

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

9           (8)     nonvisual access for information technology as required under §  
10 3–412 of this article.

11 **13–218.1.**

12           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
13 **MEANINGS INDICATED.**

14                   **(2) “EMPLOYEE COMPENSATION” HAS THE MEANING STATED IN §**  
15 **13–401 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

16                   **(3) “SERVICE CONTRACT” HAS THE MEANING STATED IN § 13–401**  
17 **OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

18           **(B) (1) A SERVICE CONTRACT THAT IS NOT EXEMPT UNDER §**  
19 **13–403(C) OR § 13–404(B) OF THE STATE PERSONNEL AND PENSIONS ARTICLE**  
20 **SHALL CONTAIN PROVISIONS THAT:**

21                   **(I) ESTABLISH THE EMPLOYEE COMPENSATION FOR EACH**  
22 **POSITION IN THE SERVICE CONTRACT THAT IS AT LEAST EQUIVALENT TO THE**  
23 **EMPLOYEE COMPENSATION PROVIDED BY THE STATE TO A STATE EMPLOYEE**  
24 **WHO PERFORMS SIMILAR DUTIES; AND**

25                   **(II) REQUIRE THE CONTRACTOR TO OFFER AVAILABLE**  
26 **POSITIONS UNDER THE SERVICE CONTRACT TO DISPLACED, QUALIFIED STATE**  
27 **EMPLOYEES.**

1           **(2) THE PROVISIONS OF PARAGRAPH (1)(I) OF THIS SUBSECTION**  
2 **DO NOT APPLY TO SERVICE CONTRACTS WITH NONPROFIT ORGANIZATIONS.**

3           **(C) FAILURE TO PROVIDE EMPLOYEE COMPENSATION AS REQUIRED**  
4 **UNDER THIS SECTION SHALL BE DEEMED TO BE A MATERIAL BREACH OF THE**  
5 **SERVICE CONTRACT.**

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

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

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

15                           **Article – State Personnel and Pensions**

16 13-401.

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

18           **(B) “EMPLOYEE COMPENSATION” MEANS THE COMBINED MONETARY**  
19 **VALUE OF WAGES AND BENEFITS INCLUDING HEALTH INSURANCE,**  
20 **RETIREMENT, AND LEAVE BENEFITS.**

21           **[(b)] (C) “Service contract” means a procurement contract for services that:**

22           (1) will be provided to a unit in the Executive Branch of State  
23 government; **AND**

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

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

1            [(c)] (D) “Services” has the meaning stated in § 11–101 of the State Finance  
2 and Procurement Article.

3            [(d)] (E) “Unit” has the meaning stated in § 11–101 of the State Finance  
4 and Procurement Article.

5 13–402.

6            The policy of this State is to use State employees to perform all State functions  
7 in State–operated facilities in preference to contracting with the private sector to  
8 perform those functions.

9 13–403.

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

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

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

16                    (2) the unit has complied with the requirements of § 13–404(c) of this  
17 subtitle.

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

22 13–404.

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

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

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

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

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

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

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

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

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

14           (2)] the Department finds that:

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

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

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

21           [(iii)] **(4)** the service contract includes adequate control  
22 mechanisms to ensure that the services will be performed in accordance with the  
23 service contract; [and

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

26           **(6) AT LEAST 15 DAYS BEFORE CERTIFYING THE SERVICE**  
27 **CONTRACT, THE DEPARTMENT HAS NOTIFIED EMPLOYEES WHO MAY BE**  
28 **AFFECTED BY THE SERVICE CONTRACT IN WRITING OF THE FOLLOWING:**

1                   **(I) THE DEPARTMENT'S INTENT TO CERTIFY THE SERVICE**  
2 **CONTRACT;**

3                   **(II) THAT EMPLOYEES MAY REVIEW AND RECEIVE A COPY,**  
4 **AT NO CHARGE, OF THE SERVICE CONTRACT, THE PROPOSED CERTIFICATION,**  
5 **AND THE INFORMATION RELIED ON BY THE DEPARTMENT IN MAKING THE**  
6 **PROPOSED CERTIFICATION; AND**

7                   **(III) THAT EMPLOYEES MAY SUBMIT COMMENTS TO THE**  
8 **DEPARTMENT REGARDING THE PROPOSED CERTIFICATION.**

9                   **(D) THE DEPARTMENT OF GENERAL SERVICES AND THE DEPARTMENT**  
10 **OF BUDGET AND MANAGEMENT MAY ADOPT REGULATIONS TO CARRY OUT THE**  
11 **REQUIREMENTS OF THIS SUBSECTION.**

12                   **(E) (1) WHEN A NONEXEMPT SERVICE CONTRACT UNDER**  
13 **SUBSECTION (C) OF THIS SECTION IS CERTIFIED, THE DEPARTMENT SHALL**  
14 **NOTIFY EMPLOYEES WHO MAY BE AFFECTED BY THE SERVICE CONTRACT IN**  
15 **WRITING OF THE EMPLOYEES' RIGHT TO:**

16                           **(I) RECEIVE, WITHOUT CHARGE, A COPY OF THE**  
17 **CERTIFICATION DOCUMENT AND THE SERVICE CONTRACT; AND**

18                           **(II) COMMENT ON THE CERTIFICATION AND THE SERVICE**  
19 **CONTRACT BEFORE THE BOARD OF PUBLIC WORKS.**

20                   **(2) THE DEPARTMENT'S NOTIFICATION TO EMPLOYEES**  
21 **REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION MUST BE PERFORMED AT**  
22 **LEAST 15 DAYS BEFORE THE SERVICE CONTRACT IS CONSIDERED BY THE**  
23 **BOARD OF PUBLIC WORKS.**

24 13-405.

25                   (a) A unit that seeks to enter into a service contract that is not exempt under  
26 § 13-403(c) or § 13-404(b) of this subtitle shall submit to the Department the  
27 information required by this section.

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



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

2 (i) compare the cost of the service contract **INCLUDING**  
3 **EMPLOYEE COMPENSATION THAT IS AT LEAST EQUIVALENT TO THAT PROVIDED**  
4 **TO STATE EMPLOYEES TO PERFORM SIMILAR DUTIES** with the cost of using State  
5 employees; and

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

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

10 (i) direct costs, including fringe benefits;

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

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

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

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

23 (2) The plan of assistance shall include:

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

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

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

2 1. the day the contract is signed; or

3 2. 6 months before the day the adverse effect will occur.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2007.