

HOUSE BILL 533

P2

9lr0832

By: **Delegates Morhaim and Weldon**

Introduced and read first time: February 5, 2009

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2009

CHAPTER _____

1 AN ACT concerning

2 **Cooperative Purchasing Agreements – Requirements and Expansion of Use**

3 FOR the purpose of requiring that certain procurement contracts entered into by State
4 and local entities include certain provisions that facilitate certain other State,
5 local, and not-for-profit entities to participate in the contracts; authorizing
6 State and local entities to enter into certain agreements for the cooperative or
7 joint administration of programs with other State or local entities; ~~requiring~~
8 ~~that State and local entities make certain efforts to determine if another State~~
9 ~~or local entity is participating in a certain contract before initiating a certain~~
10 ~~procurement;~~ authorizing State and local entities to participate in certain State
11 or local contracts if certain determinations are made; ~~authorizing certain~~
12 ~~not-for-profit entities to participate in certain State or local contracts if certain~~
13 ~~bidding is used; authorizing that in certain fiscal years, certain secretaries may~~
14 ~~withhold certain percentages of funds distributed under certain programs to~~
15 ~~local entities under certain circumstances;~~ providing certain legislative intent;
16 requiring certain units of State government to publish on a website a list of
17 certain procurement solicitations; requiring the Procurement Advisory Council
18 in the Board of Public Works to report to certain committees of the General
19 Assembly on or before a certain date; defining certain terms; and generally
20 relating to requirements and expansion of use for cooperative purchasing
21 agreements.

22 BY repealing and reenacting, with amendments,
23 Article – State Finance and Procurement
24 Section 13–110
25 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2006 Replacement Volume and 2008 Supplement)

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

4 **Article – State Finance and Procurement**

5 13–110.

6 (a) (1) In this section the following words have the meanings indicated.

7 **(2) “COOPERATIVE ENTITY” MEANS ONE OR MORE STATE OR**
8 **LOCAL ENTITIES THAT ENTER INTO AN AGREEMENT FOR THE COOPERATIVE OR**
9 **JOINT ADMINISTRATION OF PROGRAMS.**

10 **[(2)] (3) “Governmental entity” means:**

11 (i) the federal government or an agency or other
12 instrumentality of the federal government;

13 (ii) another state or an agency or other instrumentality of
14 another state;

15 (iii) a bistate or multistate agency;

16 (iv) a county, municipal corporation, or other political
17 subdivision of the State or of another state, or an agency or other instrumentality of
18 the political subdivision;

19 (v) a bicounty or multicounty agency;

20 (vi) a primary procurement unit; or

21 (vii) an affiliation, alliance, consortium, or group composed solely
22 of governmental entities that is established for purposes of promoting
23 intergovernmental cooperative purchasing.

24 **[(3)] (4) “Intergovernmental cooperative purchasing agreement”**
25 **means a contract:**

26 (i) 1. entered into by at least one governmental entity and a
27 person selected in a manner that is consistent with the purposes set forth under §
28 11–201 of this article;

29 2. that is available for use by the governmental entity
30 entering the contract and at least one additional governmental entity which may, but
31 need not be, an original party to the contract; and

1 3. that is intended to promote efficiency and savings
2 that can result from intergovernmental cooperative purchasing; or

3 (ii) between a primary procurement unit and a person who, at
4 the time the intergovernmental cooperative purchasing agreement is awarded, has a
5 contract with the federal government or an agency or other instrumentality of the
6 federal government, and who agrees to provide the unit with identical prices, terms,
7 and conditions as stipulated in the federal contract.

8 (5) (I) “LOCAL ENTITY” MEANS A COUNTY, MUNICIPAL
9 CORPORATION, BICOUNTY OR MULTICOUNTY AGENCY, PUBLIC AUTHORITY,
10 SPECIAL TAXING DISTRICT, OR OTHER POLITICAL SUBDIVISION OR UNIT OF A
11 POLITICAL SUBDIVISION OF THIS STATE.

12 (II) “LOCAL ENTITY” INCLUDES BOARDS OF EDUCATION
13 AND LIBRARY BOARDS THAT RECEIVE FUNDING FROM THE STATE.

14 (6) “NOT-FOR-PROFIT ENTITY” MEANS A CORPORATION
15 INCORPORATED IN THE STATE, OR OTHERWISE QUALIFIED TO DO BUSINESS IN
16 THE STATE;

17 ~~(I) THAT HAS BEEN DETERMINED BY THE INTERNAL~~
18 ~~REVENUE SERVICE TO BE EXEMPT FROM TAXATION UNDER § 501(C)(3), (4), OR~~
19 ~~(6) OF THE INTERNAL REVENUE CODE; AND~~

20 ~~(II) THAT HAS ANNUAL REVENUES NOT GREATER THAN~~
21 ~~\$750,000.~~

22 (7) “STATE ENTITY” MEANS A DEPARTMENT, BOARD,
23 COMMISSION, AGENCY, OR A SUBUNIT IN THE EXECUTIVE, LEGISLATIVE, OR
24 JUDICIAL BRANCH OF STATE GOVERNMENT.

25 (b) (1) Subject to § 12-107 of this article, whenever a primary
26 procurement unit procurement officer determines that it is in the best interest of the
27 State to sponsor or participate in an intergovernmental cooperative purchasing
28 agreement, with the approval of the unit head and subject to any other approval
29 required by law, the primary procurement unit may become a party to or participate
30 under the agreement.

31 (2) A determination under this subsection shall be in writing and
32 include a statement that the intergovernmental cooperative purchasing agreement:

33 (i) will provide cost benefits to the State, promote
34 administrative efficiencies, or promote intergovernmental cooperation; and

1 (ii) is not intended to evade the purposes of this Division II.

2 [(c) (1)] (3) If a primary procurement unit sponsors an
3 intergovernmental cooperative purchasing agreement:

4 (i) the contract shall be awarded in the same manner as the
5 contract would be awarded under this Division II if the unit was the sole participant
6 under the contract; and

7 (ii) all procedures under this Division II, including procedures
8 governing contract claims and protests, shall apply.

9 [(2) A political subdivision of the State may participate under any
10 intergovernmental cooperative purchasing agreement sponsored by a primary
11 procurement unit in a manner consistent with the terms of the agreement.]

12 [(d)] (4) If a primary procurement unit participates in an
13 intergovernmental cooperative purchasing agreement, any protest or contract claim
14 involving the agreement shall be handled in accordance with the terms of the
15 agreement.

16 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
17 SUBSECTION, EACH PROCUREMENT CONTRACT FOR SUPPLIES OR SERVICES
18 ENTERED INTO BY A STATE OR LOCAL ENTITY SHALL INCLUDE A PROVISION
19 THAT FACILITATES OTHER STATE AND LOCAL ENTITIES AND NOT-FOR-PROFIT
20 ENTITIES TO PARTICIPATE IN THE CONTRACT.

21 (2) (I) THIS SUBSECTION DOES NOT APPLY TO:

22 1. A PROCUREMENT FOR A CAPITAL FACILITY,
23 IMPROVEMENT, OR OTHER UNIQUE PURCHASE; OR

24 2. ~~SMALL PROCUREMENT AS DEFINED BY § 13-109~~
25 ~~OF THIS SUBTITLE~~ A PROCUREMENT WITH A PROJECTED VALUE OF LESS THAN
26 \$100,000.

27 (II) THIS SUBSECTION DOES NOT APPLY IF THE STATE OR
28 LOCAL ENTITY DETERMINES THAT INCLUDING THE PROVISION WOULD:

29 1. UNDERMINE THE DESIRED TIMING OR EFFECT OF
30 THE PROCUREMENT;

31 2. INTERFERE WITH THE LOCAL ENTITY'S ABILITY
32 TO MEET THE MINORITY BUSINESS ENTERPRISE GOALS PROVIDED UNDER §
33 14-302 OF THIS ARTICLE OR THE SMALL BUSINESS RESERVE PROGRAM
34 REQUIREMENTS UNDER § 14-502 OF THIS ARTICLE; OR

1 ~~1. THE FOUNDATION PROGRAM OR ANY OTHER~~
2 ~~PROGRAM FOR BASIC CURRENT EXPENSES FUNDED IN ACCORDANCE WITH~~
3 ~~TITLE 5, SUBTITLE 2 OF THE EDUCATION ARTICLE;~~

4 ~~2. THE COUNTY STATE MINIMUM LIBRARY~~
5 ~~PROGRAM OR ANY OTHER PROGRAM FUNDED IN ACCORDANCE WITH TITLE 23,~~
6 ~~SUBTITLE 5 OF THE EDUCATION ARTICLE;~~

7 ~~3. LOCAL HEALTH PROGRAMS FUNDED IN~~
8 ~~ACCORDANCE WITH TITLE 2, SUBTITLE 5 OF THE HEALTH GENERAL ARTICLE;~~
9 ~~AND~~

10 ~~4. HIGHWAY USER PROGRAMS FUNDED IN~~
11 ~~ACCORDANCE WITH TITLE 8, SUBTITLE 4 OF THE TRANSPORTATION ARTICLE.~~

12 ~~(H) "SECRETARY" MEANS:~~

13 ~~1. THE SUPERINTENDENT OF SCHOOLS;~~

14 ~~2. THE SECRETARY OF HEALTH AND MENTAL~~
15 ~~HYGIENE; OR~~

16 ~~3. THE SECRETARY OF TRANSPORTATION.~~

17 ~~(2) A SECRETARY MAY WITHHOLD FUNDS DISTRIBUTED UNDER A~~
18 ~~PROGRAM TO A LOCAL ENTITY AS FOLLOWS:~~

19 ~~(i) FOR FISCAL YEAR 2010, A SECRETARY MAY WITHHOLD~~
20 ~~UP TO .5% UNLESS THE LOCAL ENTITY:~~

21 ~~1. REPORTS THAT THE LOCAL ENTITY HAS ENTERED~~
22 ~~OR DEMONSTRATES THAT IT ACTIVELY PARTICIPATES IN AT LEAST ONE~~
23 ~~INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT;~~

24 ~~2. SUBMITS A PLAN FOR IMPLEMENTING AN~~
25 ~~INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR~~

26 ~~3. DEMONSTRATES THAT PROCUREMENT FOR THE~~
27 ~~LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT~~
28 ~~COMPLIES WITH ITEM 1 OR 2 OF THIS ITEM;~~

29 ~~(ii) FOR FISCAL YEAR 2011, A SECRETARY MAY WITHHOLD~~
30 ~~UP TO .5% UNLESS THE LOCAL ENTITY;~~

~~1. DEMONSTRATES THAT THE LOCAL ENTITY ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR~~

~~2. DEMONSTRATES THAT PROCUREMENT FOR THE LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; AND~~

~~(III) FOR FISCAL YEAR 2012, A SECRETARY MAY WITHHOLD UP TO 1% UNLESS THE LOCAL ENTITY:~~

~~1. DEMONSTRATES THAT THE LOCAL ENTITY ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR~~

~~2. DEMONSTRATES THAT PROCUREMENT FOR THE LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT.~~

SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly intends for State and local entities to collaborate on how to promote communication and efficiency in procurement.

SECTION 3. AND BE IT FURTHER ENACTED, That the Department of General Services, the Department of Transportation, the Department of Information Technology, and the Department of Budget and Management shall ~~work with the Maryland Association of Counties and the Maryland Municipal League to develop educational tools for counties and municipalities on procurement efficiencies and price saving, including seminars, pamphlets, and newsletters~~ publish on a website a list of all procurement solicitations reasonably expected to have a projected value of \$100,000 or more that are submitted by a procurement agency in accordance with COMAR 21.11.03.08.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) On or before December 1, 2009, the Procurement Advisory Council in the Board of Public Works shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2-1246 of the State Government Article, on:

(1) the extent of collaboration and cooperation that exists among State and local entities for public purchasing;

1 (2) means in place for making information about State and local
2 contracts available to other State and local entities; ~~and~~

3 (3) means and methods for expanding items (1) and (2) of this
4 subsection in order to improve cost effectiveness and efficiency in procurement; and

5 (4) methods for maximizing the opportunity for small businesses to
6 compete for intergovernmental cooperative purchasing contracts that are not solicited
7 through eMaryland Marketplace.

8 (b) In developing the report, the Procurement Advisory Council shall consult
9 with:

10 (1) the Department of Budget and Management;

11 (2) the Department of General Services;

12 (3) the Department of Information Technology;

13 (4) the Maryland Association of Counties;

14 (5) the Maryland Municipal League;

15 (6) the Maryland Association of Boards of Education; and

16 (7) any other State, local, or regional entity participating in or
17 providing information on public procurement.

18 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 June 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.