

SENATE BILL 401

F2, P4, P2

11r1635
CF 11r2504

By: **Senators King, Gladden, Klausmeier, Madaleno, McFadden, Montgomery, Muse, Pinsky, Rosapepe, and Stone**

Introduced and read first time: February 4, 2011

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Use of State Employees Instead of Service Contracts**

3 FOR the purpose of requiring the University System of Maryland and its constituent
4 institutions, Morgan State University, St. Mary’s College of Maryland, and
5 Baltimore City Community College to comply with certain procurement
6 requirements relating to service contracts; and generally relating to the
7 procurement rights of certain higher education institutions.

8 BY repealing and reenacting, without amendments,
9 Article – State Personnel and Pensions
10 Section 13–401 through 13–405
11 Annotated Code of Maryland
12 (2009 Replacement Volume and 2010 Supplement)

13 BY adding to
14 Article – State Personnel and Pensions
15 Section 13–406
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2010 Supplement)

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

20 **Article – State Personnel and Pensions**

21 13–401.

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

23 (b) “Service contract” means a procurement contract for services that:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

6 (c) “Services” has the meaning stated in § 11-101 of the State Finance and
7 Procurement Article.

8 (d) “Unit” has the meaning stated in § 11-101 of the State Finance and
9 Procurement Article.

10 13-402.

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

14 13-403.

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

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

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

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

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

27 13-404.

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

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

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

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

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

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

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

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

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

15 (2) the Department finds that:

16 (i) the potential economic advantage of entering into the service
17 contract is not outweighed by the preference stated in § 13–402 of this subtitle;

18 (ii) the service contract does not adversely affect the affirmative
19 action efforts of this State;

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

23 (iv) the service contract complies with all of the requirements of
24 Division II of the State Finance and Procurement Article.

25 13–405.

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

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

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

1 (i) compare the cost of the service contract with the cost of
2 using State employees; and

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

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

7 (i) direct costs, including fringe benefits;

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

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

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

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

20 (2) The plan of assistance shall include:

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

23 (ii) provisions in the service contract, if feasible, for the hiring
24 by the contractor of displaced employees; and

25 (iii) prior notification to affected employees in accordance with §
26 13-218.1 of the State Finance and Procurement Article.

27 **13-406.**

28 **THIS SUBTITLE APPLIES TO PROCUREMENTS MADE BY THE UNIVERSITY**
29 **SYSTEM OF MARYLAND AND ITS CONSTITUENT INSTITUTIONS, MORGAN STATE**
30 **UNIVERSITY, ST. MARY'S COLLEGE OF MARYLAND, AND BALTIMORE CITY**
31 **COMMUNITY COLLEGE.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2011.