

SENATE BILL 712

P4, P2

4lr2621
CF 4lr2613

By: **Senators Feldman, Astle, Benson, Frosh, Klausmeier, Manno, Muse, Pugh,
Ramirez, and Rosapepe**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **State Personnel – Service Contracts – Procurement, Audit, and Reporting**
3 **Requirements**

4 FOR the purpose of altering the definition of “service contract”, for purposes of
5 provisions of law governing procurement contracts for certain services, to
6 include services provided to a unit in the Executive Branch of State government
7 that has an independent personnel system and to repeal the limitation that the
8 services be performed within a State–operated facility; requiring that certain
9 service contracts be subject to an audit under certain provisions of law to
10 determine compliance with certain requirements; requiring that certain audit
11 findings be reported to the General Assembly and made available to the public;
12 requiring that certain units submit certain information to a certain exclusive
13 representative and the public under certain circumstances; providing that a
14 contractor under a certain service agreement is subject to a certain audit; and
15 generally relating to procurement, audit, and reporting requirements relating to
16 service contracts.

17 BY repealing and reenacting, with amendments,
18 Article – State Personnel and Pensions
19 Section 13–401 and 13–405
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2013 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – State Finance and Procurement
24 Section 15–110
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – State Personnel and Pensions**

4 13–401.

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

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

7 (1) will be provided to a unit in the Executive Branch of State
8 government, **INCLUDING A UNIT WITH AN INDEPENDENT PERSONNEL SYSTEM;**
9 **AND**

10 (2) [will be performed within a State–operated facility; and

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

13 (c) “Services” has the meaning stated in § 11–101 of the State Finance and
14 Procurement Article.

15 (d) “Unit” has the meaning stated in § 11–101 of the State Finance and
16 Procurement Article.

17 13–405.

18 (a) A unit that seeks to enter into a service contract that is not exempt under
19 § 13–403(c) or § 13–404(b) of this subtitle shall submit to the Department, **THE**
20 **EXCLUSIVE REPRESENTATIVE OF THE EMPLOYEES WHO MAY BE AFFECTED BY**
21 **THE SERVICE CONTRACT, AND, ON REQUEST, A MEMBER OF THE PUBLIC** the
22 information required by this section.

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

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

27 (i) compare the cost of the service contract with the cost of
28 using State employees; and

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

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

3 (i) direct costs, including fringe benefits;

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

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

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

14 **(D) (1) SERVICE CONTRACTS SHALL BE SUBJECT TO AUDIT UNDER §**
15 **15-110 OF THE STATE FINANCE AND PROCUREMENT ARTICLE TO DETERMINE**
16 **COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.**

17 **(2) AUDIT FINDINGS FROM AN AUDIT CONDUCTED UNDER**
18 **PARAGRAPH (1) OF THIS SUBSECTION SHALL BE REPORTED, IN ACCORDANCE**
19 **WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL**
20 **ASSEMBLY AND MADE AVAILABLE TO THE PUBLIC.**

21 **[(d)] (E) (1)** The unit shall submit a formal plan of assistance for all
22 State 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; and

28 (iii) prior notification to affected employees in accordance with §
29 13-218.1 of the State Finance and Procurement Article.

30 **Article – State Finance and Procurement**

31 15-110.

1 (a) The following persons are subject to an audit of books, accounts, or
2 records:

3 (1) before the expiration of the period of retention under subsection (c)
4 of this section, a person who submits cost and price information under § 13–220 of this
5 article, if the books, accounts, or records being audited are reasonably connected with
6 the cost and price information;

7 (2) a contractor or subcontractor under a procurement contract if, from
8 an audit of a cost–type contract, the unit has reason to believe that costs have been
9 inappropriately assigned to the cost–type contract from a fixed–price contract; **[and]**

10 (3) a contractor or subcontractor under a procurement contract that:

11 (i) was awarded by a method other than competitive sealed
12 bids; and

13 (ii) is not a firm fixed–price procurement contract; **AND**

14 **(4) A CONTRACTOR UNDER A SERVICE CONTRACT SUBJECT TO**
15 **TITLE 13, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

16 (b) An audit under this section may be conducted by:

17 (1) the Department of Legislative Services;

18 (2) a unit engaged in procurement; or

19 (3) as authorized by law, any other unit.

20 (c) A person subject to an audit under subsection (a) of this section shall
21 keep books, accounts, and records for:

22 (1) at least 3 years after the day on which the person receives final
23 payment under a procurement contract or a subcontract; or

24 (2) if longer, the period required under the procurement contract.

25 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
26 **October 1, 2014.**