

# HOUSE BILL 738

P2, G2

5lr2251

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By: **Delegate Krebs**

Introduced and read first time: February 13, 2015

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Jurisdiction of the State Ethics Commission and the Maryland State Board of**  
3 **Contract Appeals – Participation in Procurement**

4 FOR the purpose of transferring from the State Ethics Commission to the Maryland State  
5 Board of Contract Appeals jurisdiction of certain provisions of law prohibiting certain  
6 participation in procurement by a certain individual or a certain person that employs  
7 a certain individual who assists a certain executive unit in the drafting of  
8 specifications, an invitation for bids, a request for proposals for procurements, or the  
9 selections or awards made in response to an invitation for bids or a request for  
10 proposals; clarifying that violations of certain provisions of law are within the  
11 jurisdiction of the Maryland State Board of Contract of Appeals; and generally  
12 relating to participation in procurement and the jurisdiction of the State Ethics  
13 Commission and the Maryland State Board of Contract Appeals.

14 BY repealing

15 Article – General Provisions

16 Section 5–508

17 Annotated Code of Maryland

18 (2014 Volume)

19 BY adding to

20 Article – State Finance and Procurement

21 Section 13–212.1

22 Annotated Code of Maryland

23 (2009 Replacement Volume and 2014 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – State Finance and Procurement

26 Section 15–211

27 Annotated Code of Maryland

28 (2009 Replacement Volume and 2014 Supplement)

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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 MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – General Provisions**

4 [5–508.

5 (a) An individual who assists an executive unit in the drafting of specifications,  
6 an invitation for bids, a request for proposals for a procurement, or the selection or award  
7 made in response to an invitation for bids or request for proposals, or a person that employs  
8 the individual, may not:

9 (1) submit a bid or proposal for that procurement; or

10 (2) assist or represent another person, directly or indirectly, who is  
11 submitting a bid or proposal for that procurement.

12 (b) For purposes of subsection (a) of this section, assisting in the drafting of  
13 specifications, an invitation for bids, or a request for proposals for a procurement does not  
14 include:

15 (1) providing descriptive literature such as catalogue sheets, brochures,  
16 technical data sheets, or standard specification “samples”, whether requested by an  
17 executive unit or provided unsolicited;

18 (2) submitting written or oral comments on a specification prepared by an  
19 executive unit or on a solicitation for a bid or proposal when comments are solicited from  
20 two or more persons as part of a request for information or a prebid or preproposal process;

21 (3) providing specifications for a sole source procurement made in  
22 accordance with § 13–107 of the State Finance and Procurement Article;

23 (4) providing architectural and engineering services for:

24 (i) programming, master planning, or other project planning  
25 services; or

26 (ii) the design of a construction project if:

27 1. the design services do not involve lead or prime design  
28 responsibilities or construction phase responsibilities on behalf of the State; and

29 2. A. the anticipated value of the procurement contract at  
30 the time of advertisement is at least \$2,500,000 and not more than \$100,000,000; or

1 B. regardless of the amount of the procurement contract, the  
2 payment to the individual or person for the design services does not exceed \$500,000; or

3 (5) for a procurement of health, human, social, or educational services,  
4 comments solicited from two or more persons as part of a request for information, including  
5 written or oral comments on a draft specification, invitation for bids, or request for  
6 proposals.

7 (c) A unit that receives comments as described in subsection (b)(2) and (5) of this  
8 section shall retain:

9 (1) any written comments; and

10 (2) a record of any oral comments.]

### 11 Article – State Finance and Procurement

#### 12 **13-212.1.**

13 (A) AN INDIVIDUAL WHO ASSISTS AN EXECUTIVE UNIT IN THE DRAFTING OF  
14 SPECIFICATIONS, AN INVITATION FOR BIDS, A REQUEST FOR PROPOSALS FOR A  
15 PROCUREMENT, OR THE SELECTION OR AWARD MADE IN RESPONSE TO AN  
16 INVITATION FOR BIDS OR A REQUEST FOR PROPOSALS, OR A PERSON THAT EMPLOYS  
17 THE INDIVIDUAL, MAY NOT:

18 (1) SUBMIT A BID OR PROPOSAL FOR THAT PROCUREMENT; OR

19 (2) ASSIST OR REPRESENT ANOTHER PERSON, DIRECTLY OR  
20 INDIRECTLY, WHO IS SUBMITTING A BID OR PROPOSAL FOR THAT PROCUREMENT.

21 (B) FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, ASSISTING IN THE  
22 DRAFTING OF SPECIFICATIONS, AN INVITATION FOR BIDS, OR A REQUEST FOR  
23 PROPOSALS FOR A PROCUREMENT DOES NOT INCLUDE:

24 (1) PROVIDING DESCRIPTIVE LITERATURE, SUCH AS CATALOGUE  
25 SHEETS, BROCHURES, TECHNICAL DATA SHEETS, OR STANDARD SPECIFICATION  
26 “SAMPLES”, WHETHER REQUESTED BY AN EXECUTIVE UNIT OR PROVIDED  
27 UNSOLICITED;

28 (2) SUBMITTING WRITTEN OR ORAL COMMENTS ON A SPECIFICATION  
29 PREPARED BY AN EXECUTIVE UNIT OR ON A SOLICITATION FOR A BID OR PROPOSAL  
30 WHEN COMMENTS ARE SOLICITED FROM TWO OR MORE PERSONS AS PART OF A  
31 REQUEST FOR INFORMATION OR A PREBID OR PREPROPOSAL PROCESS;

1           **(3) PROVIDING SPECIFICATIONS FOR A SOLE SOURCE PROCUREMENT**  
2 **MADE IN ACCORDANCE WITH § 13-107 OF THIS ARTICLE;**

3           **(4) PROVIDING ARCHITECTURAL AND ENGINEERING SERVICES FOR:**

4                   **(I) PROGRAMMING, MASTER PLANNING, OR OTHER PROJECT**  
5 **PLANNING SERVICES; OR**

6                   **(II) THE DESIGN OF A CONSTRUCTION PROJECT IF:**

7                           **1. THE DESIGN SERVICES DO NOT INVOLVE LEAD OR**  
8 **PRIME DESIGN RESPONSIBILITIES OR CONSTRUCTION PHASE RESPONSIBILITIES ON**  
9 **BEHALF OF THE STATE; AND**

10                                   **2. A. THE ANTICIPATED VALUE OF THE**  
11 **PROCUREMENT CONTRACT AT THE TIME OF ADVERTISEMENT IS AT LEAST**  
12 **\$2,500,000 AND NOT MORE THAN \$100,000,000; OR**

13   **B. REGARDLESS OF THE AMOUNT OF THE**  
14 **PROCUREMENT CONTRACT, THE PAYMENT TO THE INDIVIDUAL OR PERSON FOR THE**  
15 **DESIGN SERVICES DOES NOT EXCEED \$500,000; OR**

16           **(5) FOR A PROCUREMENT OF HEALTH, HUMAN, SOCIAL, OR**  
17 **EDUCATIONAL SERVICES, COMMENTS SOLICITED FROM TWO OR MORE PERSONS AS**  
18 **PART OF A REQUEST FOR INFORMATION, INCLUDING WRITTEN OR ORAL COMMENTS**  
19 **ON A DRAFT SPECIFICATION, AN INVITATION FOR BIDS, OR A REQUEST FOR**  
20 **PROPOSALS.**

21           **(C) A UNIT THAT RECEIVES COMMENTS AS DESCRIBED IN SUBSECTION**  
22 **(B)(2) AND (5) OF THIS SECTION SHALL RETAIN:**

23                   **(1) ANY WRITTEN COMMENTS; AND**

24                   **(2) A RECORD OF ANY ORAL COMMENTS.**

25 15-211.

26           (a) The Appeals Board shall have jurisdiction to hear and decide all appeals  
27 arising from the final action of a unit:

28                   (1) on a protest relating to the formation of a procurement contract,  
29 **INCLUDING A VIOLATION OF § 13-212.1 OF THIS ARTICLE; or**

1                   (2)    except for a contract claim relating to a lease of real property, on a  
2 contract claim by a contractor or a unit concerning:

- 3                   (i)    breach;
- 4                   (ii)   performance;
- 5                   (iii)   modification; or
- 6                   (iv)   termination.

7           (b)    A decision of the Appeals Board is final, subject to any judicial review.

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2015.