

HOUSE BILL 788

P2, P4

1lr1249

By: **Delegate Krimm**

Introduced and read first time: January 29, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement Officers – Hiring Practices and Certification**

3 FOR the purpose of requiring the Procurement Advisor to the Board of Public Works to
4 establish minimum qualifications that a unit shall include in a position selection
5 plan to fill a vacant procurement officer position; requiring the Procurement Advisor
6 to establish a standardized selection test that a unit shall administer to certain
7 applicants for a procurement officer position; specifying that individuals issued State
8 purchasing cards are included amongst the officials for which the Procurement
9 Advisor is required to establish certain training policies; requiring that the training
10 policies established by the Procurement Advisor require certification in State
11 procurement law within a certain number of days after the date of hire of a
12 procurement officer; requiring that the training policies prohibit a newly hired
13 procurement officer from taking certain actions with respect to a procurement
14 contract until the newly hired procurement officer is certified; authorizing a
15 noncertified procurement officer to assist a certified procurement officer in the
16 execution of certain duties; requiring the Procurement Improvement Council to
17 provide a forum for the discussion of procurement officer hiring practices; providing
18 for the prospective application of this Act; and generally relating to the hiring and
19 training of State procurement officers.

20 BY repealing and reenacting, without amendments,
21 Article – State Finance and Procurement
22 Section 11–101(a), (d), (n) through (p), and (y), 12–101(b)(2), 12–102(a)(1), and
23 12–105(a)
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2020 Supplement)

26 BY adding to
27 Article – State Finance and Procurement
28 Section 12–102(a)(2)(xi) and (4)
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 12–102(a)(2)(xi) through (xiv) and 12–105(g)
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

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

Article – State Finance and Procurement

11–101.

(a) In this Division II the following words have the meanings indicated unless:

(1) the context clearly requires a different meaning; or

(2) a different definition is provided for a particular title or provision.

(d) “Board” means the Board of Public Works.

(n) (1) “Procurement” means the process of:

(i) leasing real or personal property as lessee; or

(ii) buying or otherwise obtaining supplies, services, construction,
construction related services, architectural services, engineering services, or services
provided under an energy performance contract.

(2) “Procurement” includes the solicitation and award of procurement
contracts and all phases of procurement contract administration.

(o) (1) “Procurement contract” means an agreement in any form entered into
by a unit for procurement.

(2) “Procurement contract” does not include:

(i) a collective bargaining agreement with an employee
organization;

(ii) an agreement with a contractual employee, as defined in §
1–101(d) of the State Personnel and Pensions Article;

(iii) a Medicaid, Judicare, or similar reimbursement contract for
which law sets:

1 1. user or recipient eligibility; and

2 2. price payable by the State; or

3 (iv) a Medicaid contract with a managed care organization, as
4 defined in § 15–101(e) of the Health – General Article as to which regulations adopted by
5 the Department establish:

6 1. recipient eligibility;

7 2. minimum qualifications for managed care organizations;

8 and

9 3. criteria for enrolling recipients in managed care
10 organizations.

11 (p) “Procurement officer” means an individual authorized by a unit to:

12 (1) enter into a procurement contract;

13 (2) administer a procurement contract; or

14 (3) make determinations and findings with respect to a procurement
15 contract.

16 (y) (1) “Unit” means an officer or other entity that is in the Executive Branch
17 of the State government and is authorized by law to enter into a procurement contract.

18 (2) “Unit” does not include:

19 (i) a bistate, multistate, bicounty, or multicounty governmental
20 agency; or

21 (ii) a special tax district, sanitary district, drainage district, soil
22 conservation district, water supply district, or other political subdivision of the State.

23 12–101.

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

25 (i) set policy;

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

28 (iii) establish internal operational procedures consistent with this

1 Division II.

2 12-102.

3 (a) (1) The Board shall appoint a Procurement Advisor, who serves at the
4 pleasure of the Board.

5 (2) The Procurement Advisor shall:

6 (XI) ESTABLISH, IN ACCORDANCE WITH TITLE 7, SUBTITLE 2 OF
7 THE STATE PERSONNEL AND PENSIONS ARTICLE:

8 1. MINIMUM QUALIFICATIONS THAT A UNIT SHALL
9 INCLUDE IN A POSITION SELECTION PLAN TO FILL A VACANT PROCUREMENT
10 OFFICER POSITION; AND

11 2. A STANDARDIZED SELECTION TEST THAT A UNIT
12 SHALL ADMINISTER TO THOSE APPLICANTS WHO MEET THE MINIMUM
13 QUALIFICATIONS FOR A PROCUREMENT OFFICER POSITION;

14 [(xi)] (XII) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION,
15 establish policies for the effective training of State procurement officials, INCLUDING
16 INDIVIDUALS ISSUED PURCHASING CARDS BY THE STATE, to ensure that the State's
17 procurement system is utilizing the most advanced procurement methods and management
18 techniques;

19 [(xii)] (XIII) coordinate activities with other entities performing
20 similar functions;

21 [(xiii)] (XIV) review internal audit reports and comment as
22 appropriate; and

23 [(xiv)] (XV) notify the Legislative Auditor when the Procurement
24 Advisor undertakes an investigation under item (v) or (vi) of this paragraph.

25 (4) THE POLICIES ESTABLISHED UNDER PARAGRAPH (2)(XII) OF THIS
26 SUBSECTION SHALL:

27 (I) REQUIRE CERTIFICATION IN STATE PROCUREMENT LAW
28 WITHIN 60 DAYS AFTER THE DATE OF HIRE OF A PROCUREMENT OFFICER,
29 INCLUDING SPECIFIC INSTRUCTION AND TESTING WITH REGARD TO SOLE SOURCE,
30 EMERGENCY, AND EXPEDITED PROCUREMENTS; AND

31 (II) PROHIBIT A NEWLY HIRED PROCUREMENT OFFICER FROM
32 ENTERING INTO, ADMINISTERING, OR MAKING DETERMINATIONS AND FINDINGS

1 WITH RESPECT TO A PROCUREMENT CONTRACT UNTIL THE NEWLY HIRED
2 PROCUREMENT OFFICER IS CERTIFIED, EXCEPT THAT A NONCERTIFIED
3 PROCUREMENT OFFICER MAY ASSIST A CERTIFIED PROCUREMENT OFFICER IN THE
4 EXECUTION OF THESE DUTIES.

5 12–105.

6 (a) In this section, “Council” means the Procurement Improvement Council.

7 (g) The Council shall:

8 (1) ensure that the State’s procurement system is utilizing the most
9 advanced procurement methods and management techniques, including policies,
10 procedures, and forms for all procurement activity and contract management;

11 (2) effect and enhance communication between State units on procurement
12 matters, with an emphasis on disseminating information on current developments and
13 advances in procurement methods and management;

14 (3) provide a forum for the discussion of specific procurement issues and
15 problems that arise, including:

16 (i) procurement officer **HIRING PRACTICES AND** training;

17 (ii) risk analysis and insurance requirements;

18 (iii) management of eMaryland Marketplace and other Internet
19 procurement resources;

20 (iv) use of intergovernmental cooperative purchasing agreements;
21 and

22 (v) any other issues or problems identified by the Council;

23 (4) advise the Board on problems in the procurement process and make
24 recommendations for improvement of the process;

25 (5) review existing procurement regulations to:

26 (i) determine whether they fulfill the intent and purpose of the law,
27 especially as it relates to fostering broad-based competition; and

28 (ii) make recommendations on the regulations, if revising and
29 restructuring them will result in easier understanding and use; and

30 (6) advise the General Assembly on proposed legislation in order to
31 enhance the efficiency and transparency of State procurement.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply only prospectively and may not be applied or interpreted to have any effect on or
3 application to any procurement officer hired by a unit, as defined by § 11-101(y) of the State
4 Finance and Procurement Article, before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2021.