

SENATE BILL 362

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By: **Senators Pinsky, Britt, Della, Frosh, Grosfeld, Hughes, Kelley, and Stone**

Introduced and read first time: February 4, 2004

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Contracts for Services Rendered Outside the**
3 **United States -**

Prohibitions

4 FOR the purpose of prohibiting a procurement unit from awarding a contract for
5 services to be rendered by certain persons from a site that is located outside of
6 the United States; requiring a certain contractor or subcontractor to certify that
7 certain services will be performed in the United States; requiring a contractor or
8 subcontractor to pay certain damages to a certain procurement unit under
9 certain circumstances; requiring a unit to terminate a certain contract under
10 certain circumstances; authorizing a procurement unit to bring a certain civil
11 action in a certain court under certain circumstances; requiring a certain court
12 to award reasonable attorney's fees and costs under certain circumstances;
13 providing that a provision that authorizes the Board of Public Works to modify
14 or waive certain requirements for certain procurement contracts that are to be
15 performed outside the United States or certain leases of real property outside
16 the State does not apply to certain contracts for services; establishing that
17 certain provisions of law apply to certain procurement; and generally relating to
18 procurement for services to be rendered by persons from a site that is located
19 outside the United States.

20 BY repealing and reenacting, with amendments,
21 Article - State Finance and Procurement
22 Section 11-203(b)(1)(i), (d), and (e)(5)(i) and 12-104
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2003 Supplement)

25 BY adding to
26 Article - State Finance and Procurement
27 Section 14-407
28 Annotated Code of Maryland
29 (2001 Replacement Volume and 2003 Supplement)

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Preamble

2 WHEREAS, The State of Maryland procures services in part through contracts
3 with private vendors; and

4 WHEREAS, Increasingly private vendors carry out these services, or
5 subcontract or otherwise procure these services, from a location outside the United
6 States; and

7 WHEREAS, Such international outsourcing exacerbates unemployment and
8 workforce dislocation and deprives Maryland residents of job opportunities,
including

9 industries and jobs this State has expended resources to attract; and

10 WHEREAS, International outsourcing erodes State and local revenues by
11 drawing jobs and income away from the State; and

12 WHEREAS, International outsourcing additionally may provide less privacy
13 protections for State residents whose personal information may, in the course of
14 service delivery, be transmitted to locations outside the United States; now,
therefore,

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

17

Article - State Finance and Procurement

18 11-203.

19 (b) (1) (i) The following provisions of this Division II apply to each
20 procurement enumerated in subsection (a) of this section:

21 1. § 11-205 of this subtitle ("Fraud in procurement");

22 2. § 12-204 of this article ("Board approval for
designated
23 contracts");

24 3. Title 12, Subtitle 2 of this article ("Supervision of
Capital
25 Expenditures and Real Property Leases");

26 4. § 13-219 of this article ("Required clauses -

1 (d) Except as provided in Title 14, Subtitle 3 AND § 14-407 of this article,
this
2 Division II does not apply to the Board of Trustees of the State Retirement and
3 Pension System for:

4 (1) services of managers to invest the assets of the State Retirement
and
5 Pension System, including real and personal property;

6 (2) expenditures to manage, maintain, and enhance the value of the
7 assets of the State Retirement and Pension System in accordance with investment
8 guidelines adopted by the Board of Trustees; and

9 (3) services related to the administration of the optional retirement
10 program under Title 30 of the State Personnel and Pensions Article.

11 (e) (5) (i) Except as provided in paragraph (7) of this subsection, the
12 following provisions of Division II of this article apply to the University:

- 13 1. § 11-205 of this subtitle ("Fraud in procurement");
- 14 2. § 11-205.1 of this subtitle ("Falsification of material
15 facts");
- 16 3. § 13-219 of this article ("Required clauses -
17 Nondiscrimination clause");
- 18 4. § 13-225 of this article ("Retainage");
- 19 5. Title 14, Subtitle 3 of this article ("Minority
Business
20 Participation");
- 21 6. Title 15, Subtitle 1 of this article ("Procurement
Contract
22 Administration");
- 23 7. § 15-226 of this article ("Prompt payment of
24 subcontractors"); [and]
- 25 8. Title 16 of this article ("Debarment of
Contractors"); AND

26
CONTRACTS FOR
27 SERVICES").

9. § 14-407 OF THIS ARTICLE ("FOREIGN

28 12-104.

29 (a) Except as provided in subsection (b) of this section, the Board may modify
30 or waive any requirement under this Division II for a procurement contract or a class
31 of procurement contracts that is to be performed entirely outside the United States,
or

32 any lease of real property outside this State, to the extent that:

33 (1) the purposes stated in § 11-201(a) of this article are fostered;

34 (2) the circumstances require the modification or waiver; and

1 (3) foreign or out-of-state contractors are expected to be involved in
the
2 procurement.

3 (b) The Board may not modify or waive the following requirements:

4 (1) § 14-404 of this article ("Coal in heating systems");

5 (2) § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR
SERVICES");

6 (3) Title 16, Subtitle 2 of this article ("Debarment from State and
Local
7 Contracts -- Bribery"); and

8 [(3)] (4) Title 17 of this article ("Special Provisions -- State and
Local
9 Subdivisions").

10 14-407.

11 (A) A UNIT MAY NOT AWARD A PROCUREMENT CONTRACT FOR
SERVICES TO
12 BE RENDERED BY A CONTRACTOR OR SUBCONTRACTOR FROM A SITE
THAT IS
13 OUTSIDE THE UNITED STATES.

14 (B) EACH CONTRACTOR OR SUBCONTRACTOR SUBMITTING A BID
OR
15 PROPOSAL TO PROVIDE SERVICES FOR THE STATE SHALL CERTIFY
THAT THE
16 SERVICES WILL BE PERFORMED IN THE UNITED STATES.

17 (C) IF, DURING THE LIFE OF THE CONTRACT, THE CONTRACTOR
OR
18 SUBCONTRACTOR SHIFTS WORK OUTSIDE THE UNITED STATES:

19 (1) THE CONTRACTOR OR SUBCONTRACTOR SHALL PAY
DAMAGES TO
20 THE UNIT IN AN AMOUNT EQUAL TO THE AMOUNT PAID BY THE UNIT
FOR THE
21 PERCENTAGE OF WORK PERFORMED OUTSIDE THE UNITED STATES;
AND

22 (2) THE UNIT SHALL TERMINATE THE CONTRACT FOR
23 NONCOMPLIANCE.

24 (D) (1) THE UNIT MAY BRING A CIVIL ACTION IN STATE OR
FEDERAL COURT
25 TO COMPEL ENFORCEMENT UNDER THIS SECTION.

26 (2) THE COURT SHALL AWARD REASONABLE ATTORNEY'S
FEES AND
27 COSTS TO THE UNIT.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect October 1, 2004.