

SENATE BILL 243

P4

5lr1633
CF HB 158

By: **Senators Feldman, Benson, Currie, Guzzone, King, Madaleno, Manno, McFadden, Ramirez, and Rosapepe**

Introduced and read first time: February 4, 2015

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 24, 2015

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of ~~altering the definition of “service contract”, for purposes of provisions~~
5 ~~of law governing procurement contracts for certain services, to include services~~
6 ~~provided within a State owned facility; requiring that certain units submit a certain~~
7 ~~demonstration to a certain exclusive representative under certain circumstances;~~
8 requiring that certain units meet with a certain exclusive representative to discuss
9 certain alternatives under certain circumstances; requiring that certain service
10 contracts be subject to ~~an~~ a legislative audit to determine compliance with certain
11 requirements; requiring that certain audits be completed before the expiration of an
12 initial term of certain service contracts; requiring that a certain audit finding be
13 made available to the public; requiring a unit in the Executive Branch of State
14 government that has an independent personnel system to adopt certain rules and
15 regulations; and generally relating to service contracts, reporting requirements, and
16 audits of service contracts.

17 BY repealing and reenacting, with amendments,
18 Article – State Finance and Procurement
19 Section 13–218.1(b)(1)
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2014 Supplement)

22 BY repealing and reenacting, ~~with~~ without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – State Personnel and Pensions
 2 Section 13–401 ~~and 13–405~~
 3 Annotated Code of Maryland
 4 (2009 Replacement Volume and 2014 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – State Personnel and Pensions
 7 Section 13–405
 8 Annotated Code of Maryland
 9 (2009 Replacement Volume and 2014 Supplement)

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

12 **Article – State Finance and Procurement**

13 13–218.1.

14 (b) (1) At least 60 days before the issuance of a solicitation for a service
 15 contract that is not exempt under § 13–403(c) or § 13–404(b) of the State Personnel and
 16 Pensions Article, the unit shall provide the exclusive representative of the employees who
 17 may be affected by the service contract with:

18 (I) written notice of:

19 [(i)] 1. work that is being proposed for contracting; and

20 [(ii)] 2. contracting procedures, requirements, timetables, and
 21 employee rights as provided in Title 13, Subtitle 4 of the State Personnel and Pensions
 22 Article; AND

23 (II) A REASONABLE OPPORTUNITY TO MEET AND DISCUSS
 24 ALTERNATIVES TO THE PROPOSED SERVICE CONTRACT.

25 **Article – State Personnel and Pensions**

26 13–401.

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

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

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

30 (2) will be performed within a ~~STATE OWNED OR~~ State–operated facility;

31 and

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

3 (c) "Services" has the meaning stated in § 11-101 of the State Finance and
4 Procurement Article.

5 (d) "Unit" has the meaning stated in § 11-101 of the State Finance and
6 Procurement Article.

7 13-405.

8 (a) A unit that seeks to enter into a service contract that is not exempt under §
9 13-403(c) or § 13-404(b) of this subtitle shall submit to the Department the information
10 required by this section.

11 (b) ~~{The} AT LEAST 60 DAYS BEFORE MAKING THE SUBMISSION UNDER~~
12 ~~SUBSECTION (A) OF THIS SECTION, THE~~ unit shall:

13 ~~(1) submit a demonstration TO THE EXCLUSIVE REPRESENTATIVE OF~~
14 ~~THE EMPLOYEES AFFECTED BY THE SERVICE CONTRACT~~ that the unit has taken formal
15 and positive steps to consider alternatives to the service contract, including reorganization,
16 reevaluation of service, and reevaluation of performance; ~~AND~~

17 ~~(2) PROVIDE THE EXCLUSIVE REPRESENTATIVE WITH A REASONABLE~~
18 ~~OPPORTUNITY TO MEET AND DISCUSS ALTERNATIVES TO THE PROPOSED SERVICE~~
19 ~~CONTRACT.~~

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

21 (i) compare the cost of the service contract with the cost of using
22 State employees; and

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

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

27 (i) direct costs, including fringe benefits;

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

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

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

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

9 (2) The plan of assistance shall include:

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

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

14 (iii) prior notification to affected employees in accordance with
15 § 13-218.1 of the State Finance and Procurement Article.

16 **(E) (1) (I) A SERVICE CONTRACT THAT IS NOT EXEMPT UNDER §
17 13-403(C) OR § 13-404(B) OF THIS SUBTITLE SHALL BE SUBJECT TO AN A
18 LEGISLATIVE AUDIT OF BOOKS, ACCOUNTS, OR RECORDS TO DETERMINE
19 COMPLIANCE WITH PROJECTED COST SAVINGS UNDER SUBSECTION (C) OF THIS
20 SECTION.**

21 **(II) THE LEGISLATIVE AUDIT REQUIRED UNDER**
22 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE COMPLETED PRIOR TO THE**
23 **EXPIRATION OF THE INITIAL TERM OF THE SERVICE CONTRACT.**

24 **(2) AUDIT FINDINGS FROM AN AUDIT CONDUCTED UNDER**
25 **PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE AVAILABLE TO THE PUBLIC.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That any unit in the Executive
27 Branch of State government with an independent personnel system shall adopt rules or
28 regulations similar to the provisions of Section 1 of this Act.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2015.