

HOUSE BILL 343

P2

6lr1248

By: **Delegates K. Young, Lam, Morales, Barve, Carr, Cullison, Ebersole, Gilchrist, Hixson, Jalisi, Kelly, Krimm, Lierman, Lisanti, Luedtke, McIntosh, A. Miller, Moon, Pena-Melnyk, Platt, Reznik, S. Robinson, Smith, and Tarlau**

Introduced and read first time: January 27, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Equal Pay Certificates – Requirement**

3 FOR the purpose of prohibiting a unit from awarding a procurement contract to a certain
4 contractor unless the contractor has a certain equal pay certificate or a certain
5 written exemption; requiring a certain contractor to apply for an equal pay certificate
6 by submitting to the Commissioner of Labor and Industry a certain application fee
7 and a certain statement; requiring the Commissioner to issue a certain written
8 exemption under certain circumstances; requiring that a certain statement be signed
9 by a certain individual and state certain information; requiring the Commissioner to
10 take certain action regarding an application for an equal pay certificate within a
11 certain time period; authorizing the Commissioner to reject an application only
12 under certain circumstances; specifying that an equal pay certificate is valid for a
13 certain time period; authorizing the Commissioner to revoke or suspend an equal
14 pay certificate under certain circumstances; requiring the Commissioner to take
15 certain action before revoking or suspending an equal pay certificate; authorizing a
16 contractor to request an administrative hearing under certain provisions of law by
17 filing a certain request within a certain time period; authorizing a unit to abridge or
18 terminate a procurement contract under certain circumstances; authorizing the
19 Commissioner to take certain action if a procurement contract is awarded to a
20 contractor that does not have an equal pay certificate; requiring the Commissioner
21 to provide certain technical assistance and submit a certain report in certain years
22 to the Governor and certain committees of the General Assembly; authorizing the
23 Commissioner to audit certain contractors to determine whether the contractor is in
24 compliance with certain provisions of law; requiring a certain contractor to provide
25 certain information to the Commissioner under certain circumstances; requiring the
26 Commissioner to establish a certain anonymous tip line; providing that certain data
27 submitted to the Commissioner is not subject to disclosure under the Public
28 Information Act; requiring certain revenues to be distributed to a special fund to be

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 used only for a certain purpose; requiring a custodian of public records to deny the
 2 inspection of the part of a public record that contains certain data related to equal
 3 pay certificates; applying certain provisions of this Act to certain procurements and
 4 units of State government that are generally excluded from State procurement law;
 5 defining certain terms; providing for the application of this Act; and generally
 6 relating to equal pay certificates.

7 BY adding to

8 Article – General Provisions

9 Section 4–356

10 Annotated Code of Maryland

11 (2014 Volume and 2015 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article – State Finance and Procurement

14 Section 11–203

15 Annotated Code of Maryland

16 (2015 Replacement Volume)

17 BY adding to

18 Article – State Finance and Procurement

19 Section 17–801 through 17–809 to be under the new subtitle “Subtitle 8. Equal Pay
 20 Certificate Requirements”

21 Annotated Code of Maryland

22 (2015 Replacement Volume)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – General Provisions**

26 **4–356.**

27 **A CUSTODIAN SHALL DENY INSPECTION OF THE PART OF A PUBLIC RECORD**
 28 **THAT CONTAINS DATA RELATED TO EQUAL PAY CERTIFICATES THAT IS SUBMITTED**
 29 **TO THE COMMISSIONER OF LABOR AND INDUSTRY UNDER TITLE 17, SUBTITLE 8 OF**
 30 **THE STATE FINANCE AND PROCUREMENT ARTICLE.**

31 **Article – State Finance and Procurement**

32 11–203.

33 (a) Except as provided in subsection (b) of this section, this Division II does not
 34 apply to:

35 (1) procurement by:

1 (i) the Blind Industries and Services of Maryland;

2 (ii) the Maryland State Arts Council, for the support of the arts;

3 (iii) the Maryland Health and Higher Educational Facilities
4 Authority, if no State money is to be spent on a procurement contract;

5 (iv) the Maryland Industrial Training Program or the Partnership
6 for Workforce Quality Program in the Department of Economic Competitiveness and
7 Commerce, for training services or programs for new or expanding businesses or industries
8 or businesses or industries in transition;

9 (v) the Maryland Food Center Authority, to the extent the Authority
10 is exempt under Title 10, Subtitle 2 of the Economic Development Article;

11 (vi) the Maryland Public Broadcasting Commission:

12 1. for services of artists for educational and cultural
13 television productions;

14 2. when planning for or fulfilling the obligations of grants or
15 cooperative agreements that support the educational and cultural activities of the
16 Commission; or

17 3. for procurement contracts needed to implement the
18 repackaging requirements of the federal Spectrum Act;

19 (vii) public institutions of higher education, for cultural,
20 entertainment, and intercollegiate athletic procurement contracts;

21 (viii) the Maryland State Planning Council on Developmental
22 Disabilities, for services to support demonstration, pilot, and training programs;

23 (ix) the Maryland Historical Trust for:

24 1. surveying and evaluating architecturally, archeologically,
25 historically, or culturally significant properties; and

26 2. other than as to architectural services, preparing historic
27 preservation planning documents and educational material;

28 (x) the University of Maryland, for University College Overseas
29 Programs, if the University adopts regulations that:

30 1. establish policies and procedures governing procurement
31 for University College Overseas Programs; and

1 2. promote the purposes stated in § 11–201(a) of this subtitle;

2 (xi) the Department of Economic Competitiveness and Commerce, for
3 negotiating and entering into private sector cooperative marketing projects that directly
4 enhance promotion of Maryland and the tourism industry where there will be a private
5 sector contribution to the project of not less than 50% of the total cost of the project, if the
6 project is reviewed by the Attorney General and approved by the Secretary of Commerce or
7 the Secretary’s designee;

8 (xii) the Rural Maryland Council;

9 (xiii) the Maryland State Lottery and Gaming Control Agency, for
10 negotiating and entering into private sector cooperative marketing projects that directly
11 enhance promotion of the Maryland State Lottery and its products, if the cooperative
12 marketing project:

13 1. provides a substantive promotional or marketing value
14 that the lottery determines acceptable in exchange for advertising or other promotional
15 activities provided by the lottery;

16 2. does not involve the advertising or other promotion of
17 alcohol or tobacco products; and

18 3. is reviewed by the Attorney General and approved by the
19 Maryland Lottery Director or the Director’s designee;

20 (xiv) the Maryland Health Insurance Plan established under Title 14,
21 Subtitle 5 of the Insurance Article;

22 (xv) the Maryland Energy Administration, when negotiating or
23 entering into grants or cooperative agreements with private entities to meet federal
24 specifications or solicitation requirements related to energy conservation, energy efficiency,
25 or renewable energy projects that benefit the State;

26 (xvi) the Maryland Developmental Disabilities Administration of the
27 Department of Health and Mental Hygiene for family and individual support services, and
28 individual family care services, as those terms are defined by the Department of Health
29 and Mental Hygiene in regulation;

30 (xvii) the Department of General Services for the renovation of a
31 structure that:

32 1. was built during the 18th or 19th century; and

33 2. is listed in or eligible for listing in the National Register of
34 Historic Places; and

1 (xviii) the Department of Natural Resources, for negotiating or entering
2 into grants, agreements, or partnerships with nonprofit entities related to conservation
3 service opportunities;

4 (2) procurement by a unit from:

5 (i) another unit;

6 (ii) a political subdivision of the State;

7 (iii) an agency of a political subdivision of the State;

8 (iv) a government, including the government of another state, of the
9 United States, or of another country;

10 (v) an agency or political subdivision of a government; or

11 (vi) a bistate, multistate, bicounty, or multicounty governmental
12 agency; or

13 (3) procurement in support of enterprise activities for the purpose of:

14 (i) direct resale; or

15 (ii) remanufacture and subsequent resale.

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

18 (i) § 11–205 of this subtitle (“Collusion”);

19 (ii) § 10–204 of this article (“Approval for designated contracts”);

20 (iii) Title 12, Subtitle 2 of this article (“Supervision of Capital
21 Expenditures and Real Property Leases”);

22 (iv) § 13–219 of this article (“Required clauses – Nondiscrimination
23 clause”);

24 (v) § 13–221 of this article (“Disclosures to Secretary of State”);

25 (vi) Title 12, Subtitle 4 of this article (“Policies and Procedures for
26 Exempt Units”);

27 (vii) Title 16 of this article (“Suspension and Debarment of
28 Contractors”); and

1 (viii) Title 17 of this article (“Special Provisions – State and Local
2 Subdivisions”).

3 (2) Except for procurement under subsection (a)(1)(i) and (xi) and (2)(i) and
4 (vi) of this section, the provisions of Title 14, Subtitle 3 of this article (“Minority Business
5 Participation”) shall apply to each procurement enumerated in subsection (a) of this
6 section.

7 (3) A procurement by an entity listed in subsection (a)(1)(i) through (xiii)
8 and (xvii) of this section shall be made under procedures that promote the purposes stated
9 in § 11–201(a) of this subtitle.

10 (4) (i) A unit that procures human, social, or educational services from
11 an entity enumerated in subsection (a)(2) of this section shall publish in eMaryland
12 Marketplace notice of a procurement contract or an extension or renewal of a procurement
13 contract if:

14 1. the procurement contract, extension, or renewal costs
15 more than \$25,000; and

16 2. the procurement is made for 3rd party clients described in
17 § 13–106 of this article.

18 (ii) The notice required under this paragraph shall be published not
19 more than 30 days after the execution and approval of the procurement contract or the
20 extension or renewal of the procurement contract.

21 (5) The purchase of advisory services from the General Selection Board or
22 the Transportation Selection Board under § 13–305 of this article shall be governed by the
23 Maryland Architectural and Engineering Services Act.

24 (c) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article
25 **AND EXCEPT FOR TITLE 17, SUBTITLE 8 OF THIS ARTICLE**, this Division II does not
26 apply to the Maryland Stadium Authority.

27 (d) Except as provided in Title 12, Subtitle 4 [and], Title 14, Subtitle 3, **AND**
28 **TITLE 17, SUBTITLE 8** of this article, this Division II does not apply to the Board of
29 Trustees of the State Retirement and Pension System for:

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

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

1 (3) services related to the administration of the optional retirement
2 program under Title 30 of the State Personnel and Pensions Article; and

3 (4) services related to the administration of the Postretirement Health
4 Benefits Trust Fund.

5 (e) (1) In this subsection, “University” means the University System of
6 Maryland, Morgan State University, or St. Mary’s College of Maryland.

7 (2) Except as otherwise provided in this subsection, this Division II does
8 not apply to the University System of Maryland, Morgan State University, or St. Mary’s
9 College of Maryland.

10 (3) (i) A procurement by a University shall comply with the policies and
11 procedures developed by the University and approved by the Board of Public Works and
12 the Administrative, Executive, and Legislative Review Committee of the General Assembly
13 in accordance with § 12–112 of the Education Article for the University System of
14 Maryland, § 14–109 of the Education Article for Morgan State University, or § 14–405(f) of
15 the Education Article for St. Mary’s College of Maryland.

16 (ii) 1. The review and approval of the Board of Public Works
17 shall be required for the following types of contracts with a value that exceeds \$1,000,000:

18 A. capital improvements;

19 B. services; and

20 C. dispositions of personal property subject to § 10–305 of
21 this article, except for dispositions of personal property that was purchased with the
22 proceeds of a general obligation loan.

23 2. In its review of a contract for services or capital
24 improvements with a value that exceeds \$1,000,000, the Board of Public Works may request
25 the comments of the appropriate agencies, including the Department of Budget and
26 Management and the Department of General Services.

27 (4) A University’s policies shall:

28 (i) to the maximum extent practicable, require the purchasing of
29 supplies and services in accordance with Title 14, Subtitle 1 of this article; and

30 (ii) promote the purposes of the regulations adopted by the
31 Department of General Services governing the procurement of architectural and
32 engineering services.

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

- 1 1. § 11–205 of this subtitle (“Collusion”);
- 2 2. § 11–205.1 of this subtitle (“Falsification, concealment,
3 etc., of material facts”);
- 4 3. § 13–219 of this article (“Required clauses
5 – Nondiscrimination clause”);
- 6 4. § 13–225 of this article (“Retainage”);
- 7 5. Title 14, Subtitle 3 of this article (“Minority Business
8 Participation”);
- 9 6. Title 15, Subtitle 1 of this article (“Procurement Contract
10 Administration”);
- 11 7. § 15–226 of this article (“Policy established; timing of
12 payments; notice upon nonpayment; disputes; appeals”); [and]
- 13 8. Title 16 of this article (“Suspension and Debarment of
14 Contractors”); **AND**
- 15 **9. TITLE 17, SUBTITLE 8 OF THIS ARTICLE (“EQUAL PAY
16 CERTIFICATE”).**

17 (ii) If a procurement violates the provisions of this subsection or
18 policies adopted in accordance with this subsection, the procurement contract is void or
19 voidable in accordance with the provisions of § 11–204 of this subtitle.

20 (6) (i) The State Board of Contract Appeals shall have authority over
21 contract claims related to procurement contracts awarded by:

- 22 1. the University System of Maryland before July 1, 1999;
23 and
- 24 2. Morgan State University before July 1, 2004.

25 (ii) At the election of the Board of Regents of the University System
26 of Maryland and subject to the approval of the Board of Public Works, the State Board of
27 Contract Appeals shall have authority over contract claims related to procurement
28 contracts awarded by the University after June 30, 1999.

29 (iii) At the election of the Board of Regents of Morgan State
30 University and subject to the approval of the Board of Public Works, the State Board of
31 Contract Appeals shall have authority over contract claims related to procurement
32 contracts awarded by the University after June 30, 2004.

1 (iv) At the election of the Board of Trustees of St. Mary's College of
2 Maryland and subject to the approval of the Board of Public Works, the State Board of
3 Contract Appeals shall have authority over contract claims related to procurement
4 contracts awarded by St. Mary's College of Maryland after June 30, 2006.

5 (7) Paragraphs (3), (4), and (5) of this subsection do not apply to:

6 (i) procurement by a University from:

- 7 1. another unit;
- 8 2. a political subdivision of the State;
- 9 3. an agency of a political subdivision of the State;
- 10 4. a government, including the government of another state,
11 of the United States, or of another country;

12 5. an agency or political subdivision of a government; or

13 6. a bistate, multistate, bicounty, or multicounty
14 governmental agency;

15 (ii) procurement by a University in support of enterprise activities
16 for the purpose of:

- 17 1. direct resale;
- 18 2. remanufacture and subsequent resale; or
- 19 3. procurement by the University for overseas programs; or

20 (iii) procurement by the University System of Maryland for:

21 1. services of managers to invest, in accordance with the
22 management and investment policies adopted by the Board of Regents of the University
23 System of Maryland, gift and endowment assets received by the University System of
24 Maryland in accordance with § 12-104(e) of the Education Article; or

25 2. expenditures to manage, maintain, and enhance, in
26 accordance with the management and investment policies adopted by the Board of Regents
27 of the University System of Maryland, the value of gift and endowment assets received by
28 the University System of Maryland in accordance with § 12-104(e) of the Education Article.

1 (f) Except as provided in Title 12, Subtitle 4 [and], Title 14, Subtitle 3, AND
2 **TITLE 17, SUBTITLE 8** of this article, this Division II does not apply to the College Savings
3 Plans of Maryland for:

4 (1) services of managers to invest the assets of the Maryland Prepaid
5 College Trust in accordance with the comprehensive investment plan adopted by the
6 College Savings Plans of Maryland Board under § 18–1906 of the Education Article; and

7 (2) expenditures to manage, maintain, and enhance the value of the assets
8 of the Maryland Prepaid College Trust in accordance with the comprehensive investment
9 plan adopted by the College Savings Plans of Maryland Board under § 18–1906 of the
10 Education Article.

11 (g) This Division II does not apply to a contract or grant awarded by a unit of
12 State government to the Chesapeake Bay Trust for a project involving the restoration or
13 protection of the Chesapeake Bay and other aquatic and land resources of the State.

14 (h) (1) Except as provided in paragraph (2) of this subsection, this division does
15 not apply to a public–private partnership under Title 10A of this article.

16 (2) To the extent otherwise required by law, the following provisions of this
17 division apply to a public–private partnership under Title 10A of this article:

18 (i) § 11–205 of this subtitle (“Collusion”);

19 (ii) § 11–205.1 of this subtitle (“Falsification, concealment, etc. of
20 material facts”);

21 (iii) Title 12, Subtitle 4 of this article (“Policies and Procedures for
22 Exempt Units”);

23 (iv) § 13–219 of this article (“Required clauses – Nondiscrimination
24 clause”);

25 (v) Title 17, Subtitle 1 of this article (“Security for Construction
26 Contracts”);

27 (vi) Title 17, Subtitle 2 of this article (“Prevailing Wage
28 Rates – Public Work Contracts”); [and]

29 **(VII) TITLE 17, SUBTITLE 8 OF THIS ARTICLE (“EQUAL PAY
30 CERTIFICATE”); AND**

31 [(vii)] **(VIII)** Title 18 of this article (“Living Wage”).

32 **SUBTITLE 8. EQUAL PAY CERTIFICATE REQUIREMENTS.**

1 17-801.

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND
5 INDUSTRY.

6 (C) "EEO-1 REPORT" MEANS THE EMPLOYER INFORMATION REPORT
7 EEO-1 FILED WITH THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

8 17-802.

9 (A) THIS SUBTITLE APPLIES ONLY TO A PROCUREMENT CONTRACT THAT IS
10 VALUED AT \$500,000 OR MORE.

11 (B) THIS SUBTITLE APPLIES ONLY TO A CONTRACTOR THAT EMPLOYS AT
12 LEAST 40 FULL-TIME EMPLOYEES IN THE STATE OR IN THE STATE WHERE THE
13 CONTRACTOR HAS ITS PRIMARY PLACE OF BUSINESS.

14 17-803.

15 (A) THE COMMISSIONER SHALL PROVIDE TECHNICAL ASSISTANCE TO A
16 CONTRACTOR THAT REQUESTS ASSISTANCE REGARDING THE REQUIREMENTS OF
17 THIS SUBTITLE.

18 (B) (1) ON OR BEFORE JANUARY 31, 2018, AND EVERY 2 YEARS
19 THEREAFTER, THE COMMISSIONER SHALL SUBMIT A REPORT TO THE GOVERNOR
20 AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE
21 SENATE FINANCE COMMITTEE AND THE HOUSE ECONOMIC MATTERS COMMITTEE.

22 (2) THE REPORT SUBMITTED UNDER PARAGRAPH (1) OF THIS
23 SUBSECTION SHALL INCLUDE:

24 (I) THE NUMBER OF EQUAL PAY CERTIFICATES ISSUED SINCE
25 THE LAST REPORT WAS SUBMITTED;

26 (II) THE NUMBER AND RESULTS OF ANY AUDITS CONDUCTED
27 UNDER SUBSECTION (C) OF THIS SECTION SINCE THE LAST REPORT WAS
28 SUBMITTED; AND

1 (III) THE PROCESSES USED BY CONTRACTORS TO ENSURE
2 COMPLIANCE WITH THIS SUBTITLE AND THE LAWS SPECIFIED IN § 17-807(B)(2)(I)
3 OF THIS SUBTITLE.

4 (C) (1) THE COMMISSIONER MAY AUDIT A CONTRACTOR TO DETERMINE
5 WHETHER THE CONTRACTOR IS IN COMPLIANCE WITH THIS SUBTITLE AND THE
6 LAWS SPECIFIED IN § 17-807(B)(2)(I) OF THIS SUBTITLE.

7 (2) IF THE COMMISSIONER AUDITS A CONTRACTOR UNDER
8 PARAGRAPH (1) OF THIS SUBSECTION, THE CONTRACTOR SHALL PROVIDE WITH
9 RESPECT TO EMPLOYEES EXPECTED TO PERFORM WORK OR WHO ARE PERFORMING
10 WORK IN EACH OF THE MAJOR JOB CATEGORIES IN THE EEO-1 REPORT UNDER
11 EACH PROCUREMENT CONTRACT AWARDED TO THE CONTRACTOR THE FOLLOWING
12 INFORMATION:

13 (I) THE NUMBER OF MALE EMPLOYEES;

14 (II) THE NUMBER OF FEMALE EMPLOYEES;

15 (III) THE AVERAGE ANNUALIZED SALARIES PAID TO MALE
16 EMPLOYEES AND TO FEMALE EMPLOYEES, IN THE MANNER MOST CONSISTENT WITH
17 THE CONTRACTOR'S COMPENSATION SYSTEM, WITHIN EACH MAJOR JOB CATEGORY;

18 (IV) IF REQUESTED BY THE COMMISSIONER, INFORMATION ON
19 PERFORMANCE PAYMENTS, BENEFITS, OR OTHER ELEMENTS OF COMPENSATION, IN
20 THE MANNER MOST CONSISTENT WITH THE CONTRACTOR'S COMPENSATION
21 SYSTEM;

22 (V) THE AVERAGE LENGTH OF EMPLOYMENT FOR MALE AND
23 FEMALE EMPLOYEES IN EACH MAJOR JOB CATEGORY; AND

24 (VI) ANY OTHER INFORMATION IDENTIFIED BY THE
25 CONTRACTOR OR BY THE COMMISSIONER NECESSARY TO DETERMINE WHETHER
26 THE INFORMATION INCLUDED IN THE EQUAL PAY COMPLIANCE STATEMENT
27 SUBMITTED BY THE CONTRACTOR UNDER § 17-807(A)(1) OF THIS SUBTITLE IS
28 CORRECT.

29 (D) THE COMMISSIONER SHALL ESTABLISH AN ANONYMOUS TIP LINE
30 THROUGH WHICH AN EMPLOYEE CAN REPORT A VIOLATION OF THIS SUBTITLE OR A
31 LAW SPECIFIED IN § 17-807(B)(2)(I) OF THIS SUBTITLE.

32 17-804.

1 ANY DATA SUBMITTED TO THE COMMISSIONER RELATED TO EQUAL PAY
2 CERTIFICATES IS NOT SUBJECT TO DISCLOSURE UNDER THE PUBLIC INFORMATION
3 ACT.

4 17-805.

5 THE REVENUES FROM THE APPLICATION FEE REQUIRED UNDER §
6 17-807(A)(1)(I) OF THIS SUBTITLE SHALL BE DISTRIBUTED TO A SPECIAL FUND, TO
7 BE USED ONLY FOR THE ADMINISTRATION OF THIS SUBTITLE.

8 17-806.

9 A UNIT MAY NOT AWARD A PROCUREMENT CONTRACT TO A CONTRACTOR
10 UNLESS THE CONTRACTOR HAS:

11 (1) AN EQUAL PAY CERTIFICATE ISSUED UNDER § 17-807(C) OF THIS
12 SUBTITLE; OR

13 (2) A WRITTEN EXEMPTION ISSUED UNDER § 17-807(A)(2) OF THIS
14 SUBTITLE.

15 17-807.

16 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
17 CONTRACTOR SHALL APPLY FOR AN EQUAL PAY CERTIFICATE BY SUBMITTING TO
18 THE COMMISSIONER:

19 (I) A \$150 APPLICATION FEE; AND

20 (II) AN EQUAL PAY COMPLIANCE STATEMENT.

21 (2) IF THE COMMISSIONER DETERMINES THAT COMPLIANCE WITH
22 PARAGRAPH (1) OF THIS SUBSECTION WOULD CAUSE AN UNDUE HARDSHIP TO A
23 CONTRACTOR, THE COMMISSIONER SHALL ISSUE A WRITTEN EXEMPTION TO THE
24 CONTRACTOR.

25 (B) THE EQUAL PAY COMPLIANCE STATEMENT REQUIRED UNDER
26 SUBSECTION (A)(1)(II) OF THIS SECTION SHALL:

27 (1) BE SIGNED BY THE CHIEF EXECUTIVE OFFICER OF THE
28 CONTRACTOR OR THE CHAIR OF THE BOARD OF DIRECTORS OF THE CONTRACTOR;

29 (2) STATE:

1 **(I) THAT THE CONTRACTOR IS IN COMPLIANCE WITH:**

2 1. **TITLE VII OF THE FEDERAL CIVIL RIGHTS ACT OF**
3 **1964;**

4 2. **THE FEDERAL EQUAL PAY ACT OF 1963;**

5 3. **TITLE 3, SUBTITLE 3 OF THE LABOR AND**
6 **EMPLOYMENT ARTICLE; AND**

7 4. **TITLE 20, SUBTITLE 6 OF THE STATE GOVERNMENT**
8 **ARTICLE;**

9 **(II) THAT THE AVERAGE COMPENSATION FOR FEMALE**
10 **EMPLOYEES IS NOT CONSISTENTLY BELOW THE AVERAGE COMPENSATION FOR**
11 **MALE EMPLOYEES WITHIN EACH OF THE MAJOR JOB CATEGORIES IN THE EEO-1**
12 **REPORT FOR WHICH AN EMPLOYEE IS EXPECTED TO PERFORM WORK UNDER A**
13 **PROCUREMENT CONTRACT, TAKING INTO ACCOUNT FACTORS INCLUDING LENGTH**
14 **OF SERVICE, REQUIREMENTS OF SPECIFIC JOBS, EXPERIENCE, SKILL, EFFORT,**
15 **RESPONSIBILITY, WORKING CONDITIONS, AND OTHER MITIGATING FACTORS;**

16 **(III) THAT THE CONTRACTOR DOES NOT RESTRICT EMPLOYEES**
17 **OF ONE SEX TO CERTAIN JOB CLASSIFICATIONS;**

18 **(IV) THAT THE CONTRACTOR MAKES RETENTION AND**
19 **PROMOTION DECISIONS WITHOUT REGARD TO SEX;**

20 **(V) THAT WAGE AND BENEFIT DISPARITIES ARE CORRECTED**
21 **WHEN IDENTIFIED TO ENSURE COMPLIANCE WITH THE LAWS SPECIFIED IN ITEM (I)**
22 **OF THIS ITEM AND WITH ITEM (II) OF THIS ITEM; AND**

23 **(VI) HOW OFTEN WAGES AND BENEFITS ARE EVALUATED TO**
24 **ENSURE COMPLIANCE WITH THE LAWS SPECIFIED IN ITEM (I) OF THIS ITEM AND**
25 **WITH ITEM (II) OF THIS ITEM;**

26 **(3) INDICATE WHETHER THE CONTRACTOR, IN SETTING**
27 **COMPENSATION AND BENEFITS, USES:**

28 **(I) A MARKET PRICING APPROACH;**

29 **(II) STATE PREVAILING WAGE OR UNION CONTRACT**
30 **REQUIREMENTS;**

1 (III) A PERFORMANCE PAY SYSTEM;

2 (IV) AN INTERNAL ANALYSIS; OR

3 (V) AN ALTERNATIVE APPROACH; AND

4 (4) IF THE CONTRACTOR INDICATES UNDER ITEM (3) OF THIS
5 SUBSECTION THAT THE CONTRACTOR USES AN ALTERNATIVE APPROACH IN
6 SETTING COMPENSATION AND BENEFITS, INCLUDE A DESCRIPTION OF THE
7 ALTERNATIVE APPROACH.

8 (C) (1) WITHIN 15 DAYS AFTER RECEIVING AN APPLICATION FOR AN
9 EQUAL PAY CERTIFICATE, THE COMMISSIONER SHALL:

10 (I) ISSUE THE EQUAL PAY CERTIFICATE; OR

11 (II) NOTIFY THE CONTRACTOR THAT ITS APPLICATION IS BEING
12 REJECTED AND THE BASIS FOR THE REJECTION.

13 (2) THE COMMISSIONER MAY REJECT AN APPLICATION ONLY IF:

14 (I) THE CONTRACTOR FAILED TO PAY THE REQUIRED
15 APPLICATION FEE; OR

16 (II) THE EQUAL PAY COMPLIANCE STATEMENT SUBMITTED BY
17 THE CONTRACTOR DID NOT MEET THE REQUIREMENTS OF SUBSECTION (B) OF THIS
18 SECTION.

19 (D) AN EQUAL PAY CERTIFICATE IS VALID FOR 4 YEARS FROM THE DATE OF
20 ISSUE UNLESS IT IS REVOKED OR SUSPENDED UNDER § 17-808(A) OF THIS
21 SUBTITLE.

22 17-808.

23 (A) (1) THE COMMISSIONER MAY REVOKE OR SUSPEND AN EQUAL PAY
24 CERTIFICATE IF A CONTRACTOR:

25 (I) FAILS TO MAKE A GOOD-FAITH EFFORT TO COMPLY WITH
26 THIS SUBTITLE;

27 (II) FAILS TO MAKE A GOOD-FAITH EFFORT TO COMPLY WITH
28 THE LAWS SPECIFIED IN § 17-807(B)(2)(I) OF THIS SUBTITLE; OR

1 (III) HAS AT LEAST TWO VIOLATIONS OF THIS SUBTITLE OR THE
2 LAWS SPECIFIED IN §17-807(B)(2)(I) OF THIS SUBTITLE.

3 (2) BEFORE REVOKING OR SUSPENDING AN EQUAL PAY CERTIFICATE
4 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL:

5 (I) SEEK TO RESOLVE THE ISSUE OF ANY WAGES AND BENEFITS
6 DUE TO THE CONTRACTOR'S EMPLOYEES; AND

7 (II) NOTIFY THE CONTRACTOR AND EACH UNIT WITH WHOM THE
8 CONTRACTOR HAS A PROCUREMENT CONTRACT OF REVOCATION OR SUSPENSION.

9 (3) A CONTRACTOR MAY REQUEST AN ADMINISTRATIVE HEARING
10 UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE BEFORE THE
11 REVOCATION OR SUSPENSION OF THE CONTRACTOR'S EQUAL PAY CERTIFICATE
12 BECOMES EFFECTIVE BY FILING A WRITTEN REQUEST WITHIN 20 DAYS AFTER THE
13 COMMISSIONER NOTIFIES THE CONTRACTOR OF THE REVOCATION OR SUSPENSION.

14 (B) (1) IF THE COMMISSIONER REVOKES OR SUSPENDS THE EQUAL PAY
15 CERTIFICATE OF THE CONTRACTOR UNDER SUBSECTION (A) OF THIS SECTION, A
16 UNIT MAY ABRIDGE OR TERMINATE A PROCUREMENT CONTRACT.

17 (2) A CONTRACTOR MAY REQUEST AN ADMINISTRATIVE HEARING
18 UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE BEFORE THE
19 ABRIDGEMENT OR TERMINATION OF THE PROCUREMENT CONTRACT UNDER
20 PARAGRAPH (1) OF THIS SUBSECTION BECOMES EFFECTIVE BY FILING A WRITTEN
21 REQUEST WITHIN 20 DAYS AFTER THE UNIT NOTIFIES THE CONTRACTOR OF THE
22 ABRIDGEMENT OR TERMINATION.

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24 (A) IF A PROCUREMENT CONTRACT IS AWARDED TO A CONTRACTOR THAT
25 DOES NOT HAVE AN EQUAL PAY CERTIFICATE, THE COMMISSIONER MAY:

26 (1) (I) NOTIFY THE CONTRACTOR THAT THE CONTRACTOR IS IN
27 VIOLATION OF THIS SUBTITLE; AND

28 (II) REQUIRE THAT THE CONTRACTOR APPLY FOR AN EQUAL
29 PAY CERTIFICATE WITHIN 60 DAYS AFTER THE DATE OF THE NOTIFICATION; AND

1 **(2) VOID THE CONTRACT ON BEHALF OF THE STATE IF THE**
2 **COMMISSIONER DETERMINES THAT THE CONTRACTOR WILLFULLY AND KNOWINGLY**
3 **VIOLATED THIS SUBTITLE.**

4 **(B) THE COMMISSIONER SHALL NOTIFY THE UNIT THAT AWARDED THE**
5 **CONTRACT BEFORE THE COMMISSIONER VOIDS THE CONTRACT UNDER**
6 **SUBSECTION (A)(2) OF THIS SECTION.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
8 apply only prospectively and may not be applied or interpreted to have any effect on or
9 application to any procurement contract entered into or any invitation for bids or request
10 for proposals issued before the effective date of this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2016.