

# HOUSE BILL 368

P4, P2

3lr0854  
CF SB 9

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By: **Delegate Cullison**

Introduced and read first time: January 26, 2023

Assigned to: Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 2023

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Personnel – Executive Branch Service Contracts – ~~Policy, Certification,~~**  
3 **~~and Notification~~**

4 FOR the purpose of ~~altering State policy regarding the preference to use State employees~~  
5 ~~to perform State functions in State-operated facilities by repealing the requirement~~  
6 ~~that State employees perform the functions in State-operated facilities;~~ authorizing  
7 the Board of Public Works to approve certain service contracts if the Board receives  
8 a certain certification; requiring the Department of Budget and Management to send  
9 a copy of a certain certification to a certain exclusive representative; and generally  
10 relating to service contracts in the Executive Branch.

11 ~~BY repealing and reenacting, without amendments,~~  
12 ~~Article – State Finance and Procurement~~  
13 ~~Section 11–101(d), (u), and (y) and 13–218.1~~  
14 ~~Annotated Code of Maryland~~  
15 ~~(2021 Replacement Volume and 2022 Supplement)~~

16 BY repealing and reenacting, without amendments,  
17 Article – State Personnel and Pensions  
18 Section 13–401(a) and (b)  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2022 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article – State Personnel and Pensions

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### 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 Section ~~13-401, 13-402, and 13-403~~  
 2 Annotated Code of Maryland  
 3 (2015 Replacement Volume and 2022 Supplement)

4 ~~BY repealing and reenacting, without amendments,~~  
 5 ~~Article State Personnel and Pensions~~  
 6 ~~Section 13-404~~  
 7 ~~Annotated Code of Maryland~~  
 8 ~~(2015 Replacement Volume and 2022 Supplement)~~

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

11 ~~Article State Finance and Procurement~~

12 ~~11-101.~~

13 ~~(d) "Board" means the Board of Public Works.~~

14 ~~(u) (1) Except as provided in paragraph (3) of this subsection, "services"~~  
 15 ~~means:~~

16 ~~(i) the labor, time, or effort of a contractor; and~~

17 ~~(ii) any product or report necessarily associated with the rendering~~  
 18 ~~of a service.~~

19 ~~(2) "Services" includes services provided by attorneys, accountants,~~  
 20 ~~physicians, consultants, and other professionals who are independent contractors.~~

21 ~~(3) "Services" does not include:~~

22 ~~(i) construction related services;~~

23 ~~(ii) architectural services;~~

24 ~~(iii) engineering services; or~~

25 ~~(iv) energy performance contract services.~~

26 ~~(y) (1) "Unit" means an officer or other entity that is in the Executive Branch~~  
 27 ~~of the State government and is authorized by law to enter into a procurement contract.~~

28 ~~(2) "Unit" does not include:~~

29 ~~(i) a bistate, multistate, bicounty, or multicounty governmental~~  
 30 ~~agency; or~~

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

~~13-218.1.~~

~~(a) In this section, "service contract" has the meaning stated in § 13-401 of the State Personnel and Pensions Article.~~

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

~~(i) written notice of:~~

~~1. work that is being proposed for contracting; and~~

~~2. contracting procedures, requirements, timetables, and employee rights as provided in Title 13, Subtitle 4 of the State Personnel and Pensions Article; and~~

~~(ii) a reasonable opportunity to meet and discuss alternatives to the proposed service contract.~~

~~(2) (i) 1. Except as provided in subsubparagraph 2 of this subparagraph, this paragraph applies to a solicitation for a service contract for janitorial services.~~

~~2. This paragraph does not apply to a service contract for janitorial services under Title 14, Subtitle 1 of this article.~~

~~(ii) In consultation with the Department of General Services, the Board shall adopt regulations concerning a solicitation for a service contract for janitorial services to require that a bidder or offeror delineate its costs by category, including:~~

~~1. labor;~~

~~2. cleaning supplies; and~~

~~3. projected man hours to satisfactorily complete the service.~~

~~(e) A violation of this section does not constitute grounds to challenge or appeal an award of a procurement or the process through which the procurement was conducted.~~

1 13-401.

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

3 (b) "Service contract" means a procurement contract for services that:

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

5 ~~AND~~

6 (2) ~~will be performed within a State-operated facility; and~~

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

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

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

13 ~~13-402.~~

14 ~~The policy of this State is to use State employees to perform all State functions [in~~  
15 ~~State-operated facilities] in preference to contracting with the private sector to perform~~  
16 ~~those functions.~~

17 13-403.

18 (a) A service contract may be entered into only as approved by the Board of Public  
19 Works in accordance with this subtitle.

20 (b) (1) Except as provided in subsection (c) of this section, the Board of Public  
21 Works may approve a service contract for a unit only if the Board receives a certification  
22 from the Department that:

23 [(1)] (I) the service contract is exempt under § 13-404(b) of this subtitle;  
24 or

25 [(2)] (II) the unit has complied with the requirements of:

26 ~~1. § 13-404(e) of this subtitle; AND~~

27 ~~2. § 13-218.1(b) of the State Finance and~~  
28 ~~PROCUREMENT ARTICLE. § 13-404(c) of this subtitle.~~

1           **(2) IF A SERVICE CONTRACT THAT THE PROCUREMENT OFFICER**  
 2 **ESTIMATES WILL COST MORE THAN \$10,000,000 ANNUALLY IS CERTIFIED UNDER §**  
 3 **~~13-404(C) OF THIS SUBTITLE~~ PARAGRAPH (1) OF THIS SUBSECTION, THE**  
 4 **DEPARTMENT SHALL SEND A COPY OF THE CERTIFICATION ~~REQUIRED UNDER~~**  
 5 **~~PARAGRAPH (1) OF THIS SUBSECTION~~ TO THE EXCLUSIVE REPRESENTATIVE OF THE**  
 6 **AFFECTED EMPLOYEES.**

7           (c) If the General Assembly authorizes or requires that certain services be  
 8 performed by an independent contractor, the Board of Public Works may approve a service  
 9 contract for those services without the certification required by subsection (b) of this  
 10 section.

11 ~~13-404.~~

12           ~~(a) The Department may certify a service contract to the Board of Public Works~~  
 13 ~~as provided in this section.~~

14           ~~(b) The Department may certify a service contract as being exempt from the~~  
 15 ~~preference stated in § 13-402 of this subtitle if:~~

16           ~~(1) State employees are not available to perform the services;~~

17           ~~(2) a conflict of interest would result if a State employee were to perform~~  
 18 ~~the services;~~

19           ~~(3) the nature of the services meets the standards set by the Department~~  
 20 ~~for emergency appointments;~~

21           ~~(4) the services are incidental to the purchase or lease of personal property~~  
 22 ~~or real property, such as a service agreement that is part of the purchase or rental of~~  
 23 ~~computers or office equipment; or~~

24           ~~(5) a clear need exists to obtain an unbiased finding or opinion, such as an~~  
 25 ~~expert witness in litigation.~~

26           ~~(c) The Department may certify a service contract that is not exempt under~~  
 27 ~~subsection (b) of this section only if:~~

28           ~~(1) the unit that seeks to enter into the service contract has complied with~~  
 29 ~~§ 13-405 of this subtitle; and~~

30           ~~(2) the Department finds that:~~

31           ~~(i) the potential economic advantage of entering into the service~~  
 32 ~~contract is not outweighed by the preference stated in § 13-402 of this subtitle;~~

1 ~~(ii) the service contract does not adversely affect the affirmative~~  
2 ~~action efforts of this State;~~

3 ~~(iii) the service contract includes adequate control mechanisms to~~  
4 ~~ensure that the services will be performed in accordance with the service contract; and~~

5 ~~(iv) the service contract complies with all of the requirements of~~  
6 ~~Division II of the State Finance and Procurement Article.~~

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
8 1, 2023.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.