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REPORT ON HOUSE BILL 1
(Third Reading File Copy)

STATE FINANCE AND PROCUREMENT ARTICLE

I. GENERAL STRUCTURE AND HISTORY OF STATE FINANCE AND PROCUREMENT ARTICLE.

The proposed State Finance and Procurement Article Division II (proposed Division II) completes the stylistic revision of the State Finance and Procurement Article. Proposed Division II concerns law dealing with State procurement. Division I, concerning law dealing with State finance, was enacted by Ch. 11, Acts of 1985.

A separate and unnumbered hardbound volume containing both stylistically revised Divisions I and II will be published after proposed Division II is passed. Division I comprises Titles 1 through 10, and, Division II will comprise Titles 11 through 17. Conforming to the organization, form, and numbering system used in previously revised articles, the volume will continue to be cited as the State Finance and Procurement Article. See Article I, § 25 of the Code.

II. PURPOSE AND SCOPE OF CODE REVISION.

Proposed Division II of the State Finance and Procurement Article is a product of the continuing revision of the Annotated Code of Maryland by the Division of Statutory Revision of the Department of Legislative Reference. The first revised articles were enacted at the First Extraordinary Session of 1973, and, to date, 16 revised articles and part of a 17th have become law: Agriculture, Commercial Law, Corporations and Associations, Courts and Judicial Proceedings, Education, Estates and Trusts, Family Law, Financial Institutions, Health-Environmental (now Environment), Health-General, Health Occupations, Natural Resources, Real Property, State Government, Tax-Property, Transportation, and the State Finance Division of State Finance and Procurement. The Tax-General Article (Ch. 2) becomes effective January 1, 1989.

Until 1985, article preparation was supervised by the Commission to Revise the Annotated Code. Since then, this work has been performed by several article review committees, which determine the material to be included in each article as well as the method of organization and specific language of each article.

Each article proposed by an article review committee is a formal bulk revision, as mandated by the guidelines established in 1970, including improvement of organization, elimination of obsolete and unconstitutional provisions, resolution of inconsistencies and conflicts in the law, correction of unintended gaps or omissions in the law, deletion of repetitive or otherwise superfluous language, and general improvement of language and expression.

The basic thrust of the Division's work is formal; the primary purpose of its work is modernization and clarification, not policy-making. Nonetheless, at some points in its work, the Division finds it necessary to touch on the substance of the law. In revising each of these sections, every reasonable effort has been made to ensure that the revision conforms as nearly as possible to the intent of the General Assembly, and all these revisions are highlighted in the appropriate revisor's notes. In other instances, the Division has noted fundamental policy issues that are beyond the purview of the revision process. In these cases, the Division has made no attempt to resolve the policy problems except to call them to the attention of the General Assembly through the revisor's notes, for possible action. The significant issues in both of these categories encountered by the Division in preparing the proposed State Finance and Procurement Article are highlighted in Section VII of this report.

The general rule of construction that the courts apply to a bulk revision was stated in Welch v. Humphrey, 200 Md. 410, 417 (1952):

> "It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code."

See also Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143 (1974); Baltimore Tank Lines v. Public Service Commission, 215 Md. 125 (1957); Welsh v. Kuntz, 196 Md. 86 (1950); Crow v. Hubard, 62 Md. 560 (1884); and Matter of Anderson, 20 Md. App. 31 (1974).

III. FORM OF REVISOR'S NOTES.

In Section 2 of House Bill 1, which enacts Proposed Division II of the State Finance and Procurement Article, the statutory text is printed in all capital letters as though the language is entirely new. However, in many instances, a comparison of the revised law with the present law (described in the revisor's notes as the "former" law) will reveal that the proposed changes are merely stylistic improvements.

Each section or, in some instances, subsection of the revised law is followed by a revisor's note that identifies the present law that the new section or subsection replaces. These revisor's notes also explain all significant changes made in the revision process and, thus, provide a link between the present law and the revised law that replaces it by explaining, in detail, the relationship of the old law and the new.

The revisor's notes, although not part of the law, serve an important function in preserving the intent and substance of the present law. In Murray v. State, 27 Md. App. 404 (1975), the Court of Special Appeals recognized the importance of revisor's notes not only as a statement of the revisor's intent, but as a statement of legislative intent as well:

> "These notes were part of the legislation enacting the revisions explaining to the legislators not only what changes were effected but what their expressed intention was in changing the wording." Murray v. State, 27 Md. App. at 409 (Emphasis in original).

In light of their importance as recognizable elements of legislative history, the revisor's notes that the publisher of the Annotated Code includes will differ from those in the Third Reading File Copy as little as practicable.

In some instances, revisor's notes may be rendered obsolete by separate legislation enacted during this Session. The Division staff will update these notes, which the Michie Company will publish under the heading of "Special Revisor's Notes".

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IV. CONTENT AND ORGANIZATION OF PROPOSED DIVISION II.

In the 1986 session, the General Assembly enacted Ch. 840, which substantially changed the general procurement laws of the State, then codified as Division II of the State Finance and Procurement Article (1985). Ch. 840 had a delayed effective date and, thus, became law on July 1, 1987.

During the same 1986 session, numerous other laws were enacted, effective July 1, 1986. Except in one instance, these laws made no reference to Ch. 840, particularly the extensive renumbering effected by that Chapter. Nonetheless, it was apparent that these laws were intended to be of more than limited duration. Therefore, the publishers of the Code have integrated these laws into the provisions enacted by Ch. 840. This consolidation, as evidenced in the 1987 Supplement to the State Finance and Procurement Article, has been used as the basis for this revision.

Title 11 contains definitions and provisions that apply to procurement by a unit of the Executive Branch of the State government. Title 12 contains provisions authorizing the Board of Public Works to supervise procurement and to delegate its authority over procurement. Title 13 contains provisions authorizing specific methods of source selection for specific procurement needs, the general procedures for procurement, and selection of architectural and engineering services. Title 14 contains preferences for purchases from small businesses, minority business enterprises, and resident bidders, purchases of recycled paper and low noise equipment, and sanctions against the Republic of South Africa. Title 15 contains provisions on the administration of procurement contracts by units of the Executive Branch of the State government and the resolution of contract disputes under the Board of Contract Appeals. Title 16 contains provisions on the debarment of contractors from procurement contracts with Executive units for committing certain statutory offenses and provisions on the debarment of contractors from any contract with the State or a political subdivision for committing bribery or offenses related to bribery. Title 17 contains provisions on security required for construction contracts, prevailing wage rates, and steel procurement for public works.

V. PREPARATION OF PROPOSED DIVISION II.

Each title of proposed Division II was prepared initially by the staff of the Division of Statutory Revision assigned to the Procurement Revision Review Committee. Donna B. Imhoff, Esquire, was the Revision Supervisor. Other staff members who drafted portions of the Division were Andrew M. Lantner, Esquire, and Leslie D. Gradet, Esquire, who served as Revision Supervisor at the beginning of the project. Additional staff members whose efforts contributed to proposed Division II were Mr. Jeffery Meyers, Ms. Phyllis Helmick, Ms. Earline Johnson, Mrs. Angela Hampe, Mrs. Irene Martelli, and Mrs. Frances Pyle. Each draft portion of the proposed Division II was presented to and thoroughly reviewed by the Procurement Revision Review Committee, with the Honorable Alan M. Wilner serving as Chairman. Other members of that Committee were Lewis J. Baker, Esquire, Allan B. Blumberg, Esquire, Judson P. Garrett, Jr., Esquire, and the Honorable William S. James.

In preparing proposed Division II, the Procurement Revision Review Committee received help from numerous assistant attorneys general, officials and employees of State, county and municipal agencies, and others from the private sector. These individuals explained provisions, advised about administrative practices, provided valuable insights, reviewed drafts, and participated in Committee meetings. Although space does not permit listing the names of all of them, the Committee and its staff are indebted to these individuals and thank them.

VI. NECESSARY MODIFICATION.

The following is a representative sample of the changes proposed by the Committee as part of the enactment of proposed Division II of the State Finance and Procurement Article. Except as otherwise provided, references to page numbers in House Bill 1 refer to the Third Reading File copy of the bill.

A. Unnecessary provisions.

Some current statutory language is surplusage. Such language includes unused definitions and provisions that are redundant. An example of a definition that is deleted as surplusage is existing SF § 11-101(bb), which defines "procurement agency head" as "the head of a procurement agency".

B. Obsolete provisions.

Some statutory language becomes obsolete with time, and where appropriate, the Committee has changed it to conform to current use. For example, present SF § 11-210(b) refers to the "State Law Department". As the Revisor's Note to proposed § 11-205 explains, this reference has been changed to "the Office of the Attorney General".

In other instances, the obsolete language need not be retained. Thus, SF § 11-136.2, which provides for escrow accounts for the Department of Transportation, is deleted since, by operation of law, the provision expires before the effective date of the proposed revision.

C. Unintentionally vague or ambiguous provisions.

Some existing language is troublesome because it is vague or ambiguous. An example of such language can be found in present SF § 11-142(c)(1), where a reference is made to "the above-mentioned institutions". As the Revisor's Note to proposed § 14-107 explains, the Committee substituted a more accurate reference to the vague existing language.

D. Gaps and omissions.

Occasionally, the Committee encountered gaps in the existing law created by unintended omissions and filled them in a manner consistent with apparent legislative intent. For example, present SF § 12-313, which creates an Advisory Council on Prevailing Wage Rate, states that members shall serve 3-year terms, but neglects to provide for the period between the time that a member's term expires and a successor is appointed and qualifies. As the Revisor's Note to proposed § 17-203 explains, the Committee added the provision that "[a]t the end of a term, a member continues to serve until a successor is appointed and qualifies" to avoid gaps in membership.

VII. GENERAL ISSUES.

A. Governmental units.

The present law contains numerous lists such as "departments, boards, commissions, and other units" or uses terms such as "State agencies" to encompass the listed entities. Throughout proposed Division II, the word "unit" is substituted as a general term for a governmental organization and, where appropriate, an entity in the Executive Branch of the State government.

B. Regulations.

Throughout proposed Division II, the word "regulation" is substituted for "rule" or "rules and regulations" in the context of units of the Executive Branch. The term "rule" appears in the context of legislative or judicial rules.

C. Article 1.

The rules of interpretation contained in Article 1 of the Annotated Code have been followed throughout proposed Division II. These rules include definitions of "county", "includes", "including", and "may not".

D. Boards, Committees, and Councils.

If existing law allows, statutes creating units such as boards, committees, and councils have been revised to reflect uniformity in organization and language. Any qualifying or unique provision of the existing law, however, has been retained in the revision.

VIII. DISCUSSION OF TITLES 11 THROUGH 17.

A. Title 11. Definitions; General Provisions.

1. Subtitle 1 — Definitions.

This first subtitle of proposed Division II contains 21 definitions that apply throughout the Division unless the context clearly requires a different meaning or a different definition is provided for a particular title or provision. Nine present definitions have been deleted as unnecessary. See the Revisor's Note to § 11-101 at page 19, lines 2 through 46.

2. Subtitle 2 — General Provisions.

Title 11, Subtitle 2 contains the statutes that relate to the purposes and scope of the general procurement law, the types of procurements that do not fall under this law, penalties for noncompliance with the general procurement law, liability for fraud in procurement, the application of procurement regulations to procurement contracts, and the requirements for determinations.

The Procurement Revision Review Committee noted that a provision of present SF § 11-103(a) is ambiguous. The provision requires the application of the general procurement law to certain procurements at a State transportation facility or State higher education facility "to the extent required by the Board [of Public Works]". Since these words could be interpreted to mean that the general procurement law applies to the specified services only if the Board expressly requires the general procurement law to apply, the Procurement Revision Review Committee substituted the words "unless exempted by the Board". See the Revisor's Note in the First Reading File Copy, beginning at page 21, line 40 through page 22, line 9.

By amendment, the House of Delegates struck the words "unless exempted" and substituted the words "as required". See page 22, lines 4 and 5, and the Revisor's Note at lines 19 through 24.

B. Title 12. Organization and Supervision of State Procurement.

1. Subtitle 1 — State Procurement Organization.

Title 12, Subtitle 1 of proposed Division II contains the statutes that relate to the general authority of the Board of Public Works, its advisory bodies and staff, procurement contracts outside the United States, and the procurement authority of the State Treasurer, the Department of Budget and Fiscal Planning, the Department of General Services, the Department of Transportation, and the University of Maryland.

Present SF § 11-105(b)(1)(i) and (3) grants the Board "authority to control all procurement" and allows the Board to exercise "any control authority conferred on a department". The Procurement Revision Review Committee had changed the latter reference to read "any authority over procurement", to clarify that the Board has power over debarment proceedings as well as the power to control (i.e., supervise, regulate, command, approve, or disapprove) procurement. See the Revisor's Note in the First Reading File Copy, at page 30, lines 12 through 37.

By amendment, the House of Delegates reorganized Title 12, Subtitle 1 of proposed Division II. Under proposed § 12-101(b)(1) and (5), the Board "may control procurement by State units" and "may exercise any control authority conferred on a primary procurement unit". See page 30, line 22, and page 31, lines 2 and 3.

Present SF §§ 11-105(b)(1)(ii), 11-110(b)(2)(iii), 11-128, 11-148(b)(4), 11-205(c)(1), 11-207(b), and 12-402(b) allow the Board to adopt regulations "in accordance with Title 10, Subtitle 1 of the State Government Article". The Procurement Revision Review Committee noted that it may be more efficient to amend Title 10, Subtitle 1 of the State Government Article to state expressly that the subtitle applies to regulations adopted by the Board of Public Works.

Present SF § 11-105(b)(1)(iii) requires the Board to ensure that regulations of the "procurement departments" provide procedures that are consistent with Division II. The Procurement Revision Review Committee noted that the current law defines "procurement agency" and "department", but not "procurement department". See the Revisor's Note, in the First Reading File Copy, at page 33, lines 4 through 18. The term "primary procurement unit" has been substituted for the term "procurement department" since the provision seems to refer to the 5 units within the definition of "department" in the present law. See page 30, line 31.

Present SF § 11-106(a) provides for a member of the general public to serve on the Procurement Advisory Council. The Procurement Revision Review Committee noted that the present law does not specify who appoints this member. See page 35, line 1, and the Revisor's Note at lines 33 through 36.

Present SF § 11-105(d)(2)(iii) and (3)(ii) refers to the authority of the Department of Budget and Fiscal Planning to control "leases and rentals of automobiles" and the exclusion of "automobile leases" from the authority of the Department of General Services. The term "motor vehicle" has been substituted for the words "automobile" and "automobiles" for consistency with Title 3, Subtitle 5 of the State Finance and Procurement Article. See page 36, lines 32 and 33, and page 37, lines 1 through 3, and the Revisor's Note beginning page 38, line 45 through page 39, line 7.

Present SF § 11-105(d) authorizes the Department of Transportation, the Maryland Transportation Authority, and the University of Maryland to "procure"; the Department of Budget and Fiscal Planning to "control" procurement; and the State Treasurer and the Department of General Services to "procure" and "control" procurement. In the revised language, "engage in procurement" is substituted for "procure", to use the defined term. See beginning at page 36, line 18 through page 38, line 5. The Procurement Revision Review Committee noted that the intended distinction in authority to "procure" and "control" is not clear. See the Revisor's Note at page 39, lines 8 through 17.

The Procurement Revision Review Committee noted that present SF § 11-105(e)(1) is ambiguous. The provision states that "the departments, subject to the approval of the Board, shall adopt regulations to implement all of the provisions of this Division II." It is unclear whether a regulation is valid unless it is disapproved by the Board or not valid until it is approved by the Board. See the Revisor's Note, in the First Reading File Copy, at page 33, lines 19 through 24. A separate bill would resolve this ambiguity. See page 39, lines 34 through 37.

Present SF § 11-105(e) allows 5 units, referred to in the revision as the primary procurement units, to adopt regulations. The Procurement Revision Review Committee noted that new language has been added that reflects the practice of these units to send a copy of each proposed regulation to the Board of Public Works. See page 39, lines 38 and 39, and the Revisor's Note at page 40, lines 1 through 5.

2. Subtitle 2 -- Supervision of Capital Expenditures and Real Property Leases.

Title 12, Subtitle 2 contains statutes that relate to capital expenditures and to leases of real property.

The Procurement Revision Review Committee noted that present SF §§ 11-205(c)(2) and 11-208(b)(2) apparently conflict with present SF § 11-105(b)(2). Present SF § 11-208(b)(2) conditions adoption of regulations to delegate power of the Board of Public Works on "approval by the Joint Committee on Administrative, Executive, and Legislative Review", and SF § 11-205(c)(2) states that regulations allowing a unit to execute or renew a lease "are subject to approval by the General Assembly, or, during the interim between sessions of the General Assembly, the Legislative Policy Committee". Present SF § 11-105(b)(2), however, grants the Board of Public Works unqualified authority to delegate power. A separate bill would make these provisions consistent. See the Revisor's Notes at page 43, lines 8 through 29, and page 44, lines 41 through 45.

C. <u>Title 13. Source Selection - State Procurement Contracts.</u>

1. Subtitle 1 -- Methods of Source Selection.

Title 13, Subtitle 1 contains definitions and the statutes that relate to the 7 methods of source selection by a unit: competitive sealed bids, competitive sealed proposals, noncompetitive negotiation, sole source procurement, emergency procurement, expedited procurement, and small procurement.

Present SF § 11-110(d) states that, if a revenue contract is awarded under the procedures for competitive sealed bids, any references, in those procedures, to "'lowest bid price' or 'lowest evaluated bid price' shall be deemed to mean the bid most favorable to the State." The Procurement Revision Review Committee had added the word "financially" to modify the word "favorable" since the Committee believed that, at this point in considering bids, a procurement officer is concerned about the fiscal impact of the bid rather than other aspects that can be considered in determining whether the bid is responsive or the bidder is responsible. By amendment, the House of Delegates struck the word "financially". See page 47, line 36, page 50, line 11, page 51, line 21, and page 53, line 24.

The reference to "competitive sealed proposals" as the preferred method for selecting contracts for the lease of real property has been substituted for the references in present SF §§ 11-109(b)(3) and 11-111(g) to "competitive negotiation" to conform to the language adopted by the General Assembly under Ch. 840, Acts of 1986. See the Revisor's Note at page 58, lines 15 through 21.

Also, the vague language of present SF § 11-111(g)(5)(ii), which states that "[i]f the request for proposals notifies all offerors, negotiations by the procurement officer need not be conducted", is replaced with more specific language. See beginning at page 56, line 39 through page 57, line 3 and the Revisor's Note at page 58, lines 10 through 14.

2. Subtitle 2 -- Procedural Requirements.

Title 13, Subtitle 2 contains the statutes that relate the mandatory and discretionary procedures that a unit follows in awarding a procurement contract. Subtitle 2 is divided into 3 parts.

Part I contains a section that defines terms applicable throughout the subtitle. Part II contains the general procedures that apply to the various methods of source selection. Part III contains provisions on contract formation, including pricing, cost-reimbursement contracts, security for payment and performance, multi-year procurement contracts, required contract clauses, and required disclosures.

Present SF § 11-125(a) prohibits a cost-reimbursement contract unless it is otherwise impracticable to obtain the "supplies, services, construction related services, architectural services, engineering services, or construction". The Procurement Revision Review Committee substituted the defined term "procurement" for that enumeration but noted that the substituted term includes a lease of property and that the General Assembly might wish to add a specific prohibition against cost-reimbursement contracts for leases if, in fact, the omission of leases in the current law is intended to suggest such a prohibition. See the Revisor's Note, in the First Reading File Copy, at page 73, lines 9 through 21. By amendment, the House of Delegates inserted the words "except for leases of real property" in proposed § 13-215(a)(2). See page 74, line 14.

Present SF § 11-122(a)(2) allows termination of a procurement contract for the convenience of the State when the "department head" determines termination to be appropriate. The Procurement Revision Review Committee noted that the authority to make the determination is not limited to the head of the "department" -- revised as the "primary procurement unit" -- that has jurisdiction over the procurement or, as is sometimes the practice, to the head of the unit that entered into the procurement contract. See page 78, lines 27 through 29, and the Revisor's Note beginning at page 79, line 39 through page 80, line 9.

Present SF § 11-209(b) provides that failure to include a nondiscrimination clause in a contract renders the contract "void ab initio at the election of the State". The Procurement Revision Review Committee had substituted the words "voidable by the State". By amendment, the House of Delegates provided that "[t]he State may delcare the contract to be void". See page 81, lines 4 and 5.

Present SF § 11-214(a) requires a business to disclose information, including the name and address of each officer of a business, after entering into contracts with the State that entitle the business to receive $100,000 or more. The Procurement Revision Review Committee noted that the word "officer" is not broad enough to include a partner in a partnership. See page 86, line 8, and the Revisor's Note at lines 30 through 35.

3. Subtitle 3 -- Architectural and Engineering Services.

Title 13, Subtitle 3 contains definitions and other statutory provisions that relate to the organization and function of the General Professional Services Selection Board and the Transportation Professional Services Selection Board.

Present SF §§ 11-152(c)(2) and 11-170(c)(2) prohibit a member of either selection board from participating in a matter before the board if the member has been "associated with" a person who has an interest in a matter before the board. That language may be inconsistent with the Maryland Public Ethics Law. See the Revisor's Notes at page 91, lines 10 through 36, and beginning at page 93, line 38 through page 94, line 2.

Present SF §§ 11-155(b) and 11-173(c) require certification that "in-house resources" are insufficient to provide requested architectural or engineering services feasibly or economically. The Procurement Revision Review Committee had substituted references to resources of the Department of General Services or the Department of Transportation or transportation unit. In the First Reading File Copy, see page 92, lines 21 through 26, and the Revisor's Note at page 93, lines 16 through 26, and also page 93, lines 34 through 37, and the Revisor's Note at page 94, lines 17 through 21, for General Services and page 96, lines 36 through 41, and the Revisor's Note at page 97, lines 28 through 32, for transportation. By amendment, the House of Delegates reinstated the word "in-house resources". See page 96, line 24, and page 99, line 26.

Present SF §§ 11-157(b)(1)(ii) and 11-175(b)(1)(ii) require a waiver of certain procedures for selecting architectural or engineering services after the occurrence of a natural disaster in which public health and safety are endangered. This thought seems to be implicit in §§ 11-157(b)(iii) and 11-175(b)(1)(iii), which require a waiver when the Governor declares an emergency. A separate bill deleting revised § 13-314(a)(3) would resolve this redundancy. See page 104, lines 7 through 9 and the Revisor's Note at page 105, lines 10 through 21.

Present SF § 11-158(a) and 11-176(a) require both selection boards to send their recommendations on contractors to the Board of Public Works. The Procurement Committee noted that the law fails to delineate the authority of the Board with respect to a recommendation. A separate bill enabling the Board to approve, reject, or remand a recommendation would fill this gap. See the Revisor's Note at page 106, lines 32 through 39.

Present SF § 11-137(g) provides the procedure for appeals from recommendations by either selection board to the Board of Public Works. The word "shall" has been substituted for the word "may" to clarify that the Board of Public Works is required to either approve a recommendation, disapprove the recommendation, or remand the matter to the selection board. See page 107, lines 6 through 9, and the Revisor's Note at lines 14 through 18.

D. Title 14. Preferences.

1. Subtitle 1 — Preferences to Benefit Disadvantaged Individuals.

Title 14, Subtitle 1 contains the statutes that relate to the priority of preferences used by the State and State aided or controlled entities and the creation and authority of the Blind Industries and Services of Maryland Pricing Committee and the Pricing and Selection Committee for Rehabilitation and Employment Programs.

Present SF § 11-142(a) refers to supplies and services of "the Department of Public Safety and Correctional Services". References to "State Use Industries" have been substituted since the Department only provides supplies and services through State Use Industries. See page 115, lines 32 and 37, and the Revisor's Note at page 116, lines 28 through 35.

The Procurement Revision Review Committee noted that present SF §§ 11-141(c)(2)(iv) and 11-143 contain obsolete references to the "Executive Vice President" of Blind Industries and Services of Maryland. Since there is no such official, references to the "President of Blind Industries and Services of Maryland" have been substituted. See page 117, lines 13 and 14 and the Revisor's Note at page 118, lines 7 through 12, and also page 119, lines 21 and 22, and the Revisor's Note at page 120, lines 35 through 40.

Also, references to the "Maryland Rehabilitation and Employment Association, Inc." have been substituted for the obsolete references in present SF § 11-141(c)(2)(i) and (3) to the "Maryland Association of Workshops, [Inc.]". See page 119, lines 23 and 24, and the Revisor's Note beginning at page 120, line 41 through page 121, line 2 and also page 121, line 37, and the Revisor's Note at page 122, lines 4 through 8.

2. Subtitle 2 -- Small Business Preference Program.

Title 14, Subtitle 2 contains statutes that relate to the Small Business Preference Program for procurements by the Department of General Services, the Department of Transportation, and the University of Maryland. The subtitle includes the duties of the Department of Economic and Employment Development, percentage preferences, special procedures for source selection, and annual reports concerning the Program.

3. Subtitle 3 -- Minority Business Participation.

Title 14, Subtitle 3 contains definitions and other statutory provisions that relate to procurement from minority businesses, including required regulations, contents of annual reports by units under this subtitle, duties of the Governor's Office of Minority Affairs and of the Legislative Policy Committee, and prohibited acts and penalties.

Present SF § 11-148(b)(1) and (3) refers to procurement of "supplies, services, construction, construction related services, architectural services, and engineering services". Since these enumerations lists all procurements other than leases, the Procurement Revision Review Committee used the defined term "procurement" with an exception for "leases of real or personal property". By amendment, the House of Delegates struck the exception for leases of personal property. See page 130 at line 36 and page 131 at line 6 and the Revisor's Note at page 131, lines 35 through 45.

4. Subtitle 4 -- Miscellaneous Purchasing Preferences.

Title 14, Subtitle 4 contains statutes that relate to a reciprocal preference for resident bidders, preferences for recycled paper and low noise supplies, and use of coal.

Present SF § 11-148.6(c) requires a building or facility that is designed after July 1, 1986 and uses coal for heat to have a heating system that accommodates Maryland coal. The Procurement Revision Review Committee noted that it is unclear whether the law applies to a building or facility that was designed before July 1, 1986, but constructed after that date or to a building or facility for which a bid was accepted before July 1, 1986. A separate bill would resolve this ambiguity. See page 140, lines 1 through 7 and the Revisor's Note at lines 10 through 16.

5. Subtitle 5 -- Purchases from the Republic of South Africa.

Title 14, Subtitle 5 contains a definition and other statutory provisions that relate to restrictions applicable to bidders or offerors for State procurement contracts doing business with or in the Republic of South Africa.

Present SF § 11-148.5 requires the State to provide "ample" notice of the requirements of this subtitle. The Procurement Revision Review Committee deleted the word "ample", as meaningless and without legal effect. See page 143, lines 1 and 2, and the Revisor's Note at lines 9 through 13.

E. Title 15. Procurement Contract Administration and Dispute Resolution.

1. Subtitle 1 -- Procurement Contract Administration.

Title 15, Subtitle 1 contains a definition and other statutory provisions that relate to information required in invoices, payment by the State under procurement contracts, interest on late payments, escrow of retainage, inspections, audits, reports, and disputes among units.

Present SF § 11-136 requires the Governor to resolve disputes among units about responsibility for a delay in payment under a procurement contract. The Procurement Revision Review Committee noted that this section is meaningless since no sanction is imposed against the unit responsible for the delay. A separate bill that either repeals revised § 15-106 or adds a sanction would resolve this problem. See page 146, lines 34 through 36 and the Revisor's Note at page 147, lines 1 through 6.

Present SF § 11-131(a) requires each department -- now primary procurement units — to report to the Governor and the General Assembly on sole source, emergency, and expedited procurements. A report must describe the "supplies, services, construction, or construction related services procured or real property leased". Although the law does not make specific reference to "architectural" or "engineering" services, the omission seemed inadvertent. Thus the revised language requires the report to include a description of the "procurement". See page 150, line 3, and the Revisor's Note beginning at page 150, line 38 through page 151, line 10.

2. Subtitle 2 — Dispute Resolution.

Title 15, Subtitle 2 contains the statutes that relate to appeal procedures and the Maryland State Board of Contract Appeals, which has jurisdiction to hear and decide appeals from decisions of units on protests and contract claims. This subtitle is divided into 3 parts. Part I contains definition and scope of subtitle sections. Part II contains the statutes that relate to the organization and functions of the Maryland State Board of Contract Appeals. Part III contains the statutes that relate to procedures for dispute resolution.

Present SF § 11-137(b)(1) refers to regulations for filing of protests as regulations "adopted by the appropriate department". Since, in practice, the Board of Public Works adopts regulations concerning the filing of protests, the Procurement Revision Review Committee had substituted the words "of the Board". See the Revisor's Note, in the First Reading File Copy, at page 155, lines 29 through 40. By amendment, the House of Delegates substituted the words "adopted by the primary procurement unit responsible for the procurement". See page 159, lines 5 and 6.

Present SF § 11-137(d)(2) reads, in part, that the reviewing authority may remand a complaint "with appropriate instructions, to the procurement officer who shall proceed ... ." The Procurement Revision Review Committee added the words "in accordance with those instructions" after the word "proceed" to clarify the manner in which the procurement officer must proceed. See page 160, linea 31 and 32, and the Revisor's Note at page 161, lines 29 through 35.

Present SF § 11-137(f)(2) expressly excepts "complaints relating to real property leases that have been entered into" from the time limit for filing an appeal. The Procurement Revision Review Committee revised this exception to state expressly what the present law only implies -- i.e, that the Appeals Board does not have jurisdiction over contract claims relating to real property leases. See page 155, lines 12 and 13, and the Revisor's Note at lines 31 through 36 and also page 163, lines 7 through 10, and the Revisor's Note at lines 21 through 32.

F. Title 16. Debarment of Contractors.

1. Subtitle 1 -- Debarment for Offenses Other Than Bribery.

Title 16, Subtitle 1 contains definitions and other statutory provisions that relate to grounds for debarment of contractors for certain statutory offenses.

The Procurement Revision Review Committee noted that Subtitle 1 contains no procedural provisions, while Subtitle 2 includes provisions for notice, investigation, and hearings for debarment for bribery-related offenses. The procedural provisions for debarment under Subtitle 1 are contained in regulations of the Board of Public Works. Since both subtitles provide for debarment, the same procedural provisions should apply to avoid confusion and inconsistent treatment of persons subject to debarment. A separate bill would provide for the same procedures for debarment under either subtitle. See the General Revisor's Note at page 181, lines 12 through 27.

Present SF § 11-211(i) imposes on each "State agency" a duty to forward to the Board information that relates to offenses for which contractors may be debarred. The Procurement Revision Review Committee noted that present SF § 11-101(jj) defines "State agency" but only for purposes of present §§ 11-101 through 11-184. Thus, technically, the definition is not applicable to present SF § 11-211(i). The Committee believed, however, that the term may have been used in present SF § 11-211(i) on the mistaken assumption that the definition applied. Therefore, the new defined term "unit" has been substituted for "State agency". See page 170, lines 33 through 36, and the Revisor's Note beginning page 170, line 40 on page 170 through page 171, line 8.

Present SF § 11-212 prohibits the State from awarding a procurement contract to a person found in contempt of court for failure to correct unfair labor practices. That section has been deleted in light of an opinion of the Attorney General that determined that it is unconstitutional. See the General Revisor's Note at page 172, lines 4 through 26.

2. Subtitle 2 -- Debarment from State and Local Contracts -- Bribery.

Title 16, Subtitle 2 contains the definitions and other statutory provisions that relate to debarment procedures for a person who has been convicted of bribery or offenses related to bribery.

Present SF § 12-109 prohibits a public body from entering into "any procurement contract" with persons debarred for bribery. The Procurement Revision Review Committee deleted the qualifying word "procurement" since, in the revision, the term is limited to contracts made by units of the Executive Branch of the State government. Under the present law, this limiting definition is not applicable, and the deletion avoids inadvertently limiting the scope of this provision. Present SF § 12-109 also refers to a contract for "supplies, services, or construction, of any kind or nature". Under the revision, definitions of "supplies", "services", and "construction" that, in the present law, apply only to §§ 11-101 through 11-184 have been made generally applicable throughout Division II. Since, however, the term "services" is defined to exclude "architectural services", "construction related services", and "engineering services", specific references to these types of services are added in proposed § 16-208 to retain the scope implicit in the present reference to "services ... of any kind or nature". By amendment, the House of Delegates added a reference to "leases of real property". See page 180, lines 14 through 19, and the Revisor's Note at lines 22 through 41.

G. Title 17. Special Provisions -- State and Local Subdivisions.

1. Subtitle 1 -- Security for Construction Contracts.

Title 17, Subtitle 1 contains definitions and other statutory provisions that relate to payment security and performance security required for certain construction contracts. This subtitle is cited as the Maryland Little Miller Act.

The Procurement Revision Review Committee noted that present SF § 12-201(a)(2) implies that a political subdivision may not require a performance or payment security for a construction contract if the price of the contract is $25,000 or less. At least 14 counties, however, do require security for contracts under $25,000. A separate bill expressly stating whether security may be required for contracts under $25,000 would resolve this ambiguity. See the Revisor's Note at page 184, lines 23 through 38.

2. Subtitle 2 -- Prevailing Wage Rates -- Public Work Contracts.

Title 17, Subtitle 2 contains the definitions and other statutory provisions that relate to the procedures for the determination, regulation, and appeal of prevailing wage rates.

This subtitle was reviewed extensively not only by the House Constitutional and Administrative Law Committee, to which H.B. 1 was referred, and its work group but also by the House Economic Matters Committee and a workgroup of that Committee.

This subtitle is divided into 3 parts. Part I contains the definitions and statutes related to the organization and general authority of the Advisory Council on Prevailing Wage Rates and the duties of the Commissioner of Labor and Industry. Part II contains statutes relating to the determination of prevailing wage rates, requirements for soliciting bids or proposals, review of prevailing wage rate determinations, and payment of prevailing wage rates. Part III contains statutes related to administrative and enforcement procedures.

Under the current law, 2 mechanisms may be used to set prevailing wage rates. Present SF § 12-304(d) requires annual determinations, while § 12-304(a) requires requests for determinations on a project. The annual determinations are effective "for a period of not more than nor less than one year from the date on which the determination becomes final". However, the current law does not state expressly the date of finality. By reference to the appeal procedures applicable to determinations, it seems that the date of finality must be the date on which the determination is made, unless an appeal is made. By amendment, the House of Delegates so provided. See page 206, at lines 7 through 10, and the Revisor's Note at lines 17 through 19. Similarly, the date of finality on a determination made on request, absent an appeal, is set forth. See page 208, at lines 31 through 33.

Present SF § 12-313(b) requires the Commissioner to submit an annual report "on or before the first day of January" covering activities "for the preceding calendar year". The Procurement Revision Review Committee noted that, if the reference to "the preceding calendar year" describes the year ending on the December 31 immediately before the date on which the report is due, the Commissioner should be given a reasonable time to prepare the report. See page 200, lines 13 and 14, and the Revisor's Note at lines 33 through 42.

3. Subtitle 3 -- Steel Procurement for Public Works.

Title 17, Subtitle 3 contains the definitions and other statutory provisions that relate to the purchase of steel. This subtitle is cited as the Maryland Buy American Steel Act.

The Procurement Revision Review Committee changed a reference, in present SF § 12-404, to a federal "regulation" to refer to a "federal law" to include Congressional legislation that affects a contract. See page 225, lines 19 and 20, and the Revisor's Note at lines 24 through 28.

Present SF § 12-403 states that payments made to a person who violates provisions of this subtitle may be recovered "to the full extent of the contract". The Procurement Revision Review Committee noted that this phrase is ambiguous, since it may be interpreted to mean that the State is entitled to recover payment even for the work under a contract that has been performed satisfactorily. See page 227, lines 28 and 29, and the Revisor's Note beginning at page 227, line 41 through page 228, line 11.

H. Miscellaneous Provisions.

Present SF § 11-206 requires the Board of Public Works to supervise expenditures for the acquisition of land. Present SF § 11-207 requires 2 independent appraisals before real property is acquired. Since the acquisition of real property does not constitute a "procurement", those 2 sections are transferred to Title 4, Subtitle 4, Part III of the State Finance and Procurement Article. Part III contains the statutes related to the Division of Land Acquisition of the Department of General Services. See beginning at page 7, line 26 through page 8, line 29.

Chapter 840, Acts of 1986, deleted the defined term "using agency" but failed to correct a cross-reference to that term in SF § 4-301(d). To correct the oversight, SF § 4-301(d) has been deleted, and the substance of the former definition has been incorporated in SF §§ 4-304(a)(1) and (2), 4-306(a) and (b)(1) and (2), 4-307, 4-310, 4-311, 4-312, 4-313, 4-314, and 4-315(a) by references such as "a unit that procures supplies under Division II of this article". See, e.g., the Revisor's Note beginning at page 3, line 28 through page 4, line 3.

That former definition also had been used, inadvertently, in SF § 4-412(b), although technically, the definition applied only to SF §§ 4-301 through 4-321 and was narrower than former Art. 78A, § 19A(a), from which § 4-412(b) was derived. To correct this error, references such as "unit of the State government" have been substituted for "using agency". See beginning at page 6, line 25 through page 7, line 3 and the Revisor's Note at page 7, lines 4 through 22.

Respectfully submitted,

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