

# HOUSE BILL 438

P2

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CF SB 343

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By: **Delegates Ready, Kipke, Krebs, Pena–Melnyk, and Reznik**

Introduced and read first time: January 28, 2013

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Lower–Cost Goods and Services**

3 FOR the purpose of providing that when a primary procurement unit makes a certain  
4 determination concerning its participation in a certain intergovernmental  
5 cooperative purchasing agreement, the determination will include a statement  
6 that the agreement will allow an entity whose procurement is managed by the  
7 primary procurement unit to withdraw the entity’s participation under the  
8 agreement under certain circumstances; and generally relating to an entity’s  
9 withdrawal from an intergovernmental cooperative purchasing agreement.

10 BY repealing and reenacting, with amendments,  
11 Article – State Finance and Procurement  
12 Section 13–110  
13 Annotated Code of Maryland  
14 (2009 Replacement Volume and 2012 Supplement)

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

17 **Article – State Finance and Procurement**

18 13–110.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) “Cooperative entity” means one or more State or local entities that  
21 enter into an agreement for the cooperative or joint administration of programs.

22 (3) “Governmental entity” means:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) the federal government or an agency or other  
2 instrumentality of the federal government;

3 (ii) another state or an agency or other instrumentality of  
4 another state;

5 (iii) a bistate or multistate agency;

6 (iv) a county, municipal corporation, or other political  
7 subdivision of the State or of another state, or an agency or other instrumentality of  
8 the political subdivision;

9 (v) a bicounty or multicounty agency;

10 (vi) a primary procurement unit; or

11 (vii) an affiliation, alliance, consortium, or group composed solely  
12 of governmental entities that is established for purposes of promoting  
13 intergovernmental cooperative purchasing.

14 (4) "Intergovernmental cooperative purchasing agreement" means a  
15 contract:

16 (i) 1. entered into by at least one governmental entity and a  
17 person selected in a manner that is consistent with the purposes set forth under §  
18 11–201 of this article;

19 2. that is available for use by the governmental entity  
20 entering the contract and at least one additional governmental entity which may, but  
21 need not be, an original party to the contract; and

22 3. that is intended to promote efficiency and savings  
23 that can result from intergovernmental cooperative purchasing; or

24 (ii) between a primary procurement unit and a person who, at  
25 the time the intergovernmental cooperative purchasing agreement is awarded, has a  
26 contract with the federal government or an agency or other instrumentality of the  
27 federal government, and who agrees to provide the unit with identical prices, terms,  
28 and conditions as stipulated in the federal contract.

29 (5) (i) "Local entity" means a county, municipal corporation,  
30 bicounty or multicounty agency, public authority, special taxing district, or other  
31 political subdivision or unit of a political subdivision of this State.

32 (ii) "Local entity" includes boards of education and library  
33 boards that receive funding from the State.

1           (6) “Not-for-profit entity” means a corporation incorporated in the  
2 State, or otherwise qualified to do business in the State that has been determined by  
3 the Internal Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6)  
4 of the Internal Revenue Code.

5           (7) “State entity” means a department, board, commission, agency, or  
6 a subunit in the Executive branch of State government.

7           (b) (1) Subject to § 12-107 of this article, whenever a primary  
8 procurement unit procurement officer determines that it is in the best interest of the  
9 State to sponsor or participate in an intergovernmental cooperative purchasing  
10 agreement, with the approval of the unit head and subject to any other approval  
11 required by law, the primary procurement unit may become a party to or participate  
12 under the agreement.

13           (2) A determination under this subsection shall be in writing and  
14 include a statement that the intergovernmental cooperative purchasing agreement:

15                   (i) will provide cost benefits to the State, promote  
16 administrative efficiencies, or promote intergovernmental cooperation; [and]

17                   **(II) WILL ALLOW AN ENTITY WHOSE PROCUREMENT IS**  
18 **MANAGED BY THE PRIMARY PROCUREMENT UNIT TO WITHDRAW ITS**  
19 **PARTICIPATION UNDER THE AGREEMENT FOR SPECIFIC SUPPLIES OR SERVICES**  
20 **ON A SHOWING BY THE ENTITY THAT THE ENTITY CAN OBTAIN THE SUPPLY OR**  
21 **SERVICE FROM A LOCAL VENDOR MORE EFFICIENTLY AND AT SUBSTANTIAL**  
22 **SAVINGS WHEN COMPARED TO THE PRICE TO BE PAID UNDER THE AGREEMENT;**  
23 **AND**

24                   [(ii)] **(III)** is not intended to evade the purposes of this Division  
25 II.

26           (3) If a primary procurement unit sponsors an intergovernmental  
27 cooperative purchasing agreement:

28                   (i) the contract shall be awarded in the same manner as the  
29 contract would be awarded under this Division II if the unit was the sole participant  
30 under the contract; and

31                   (ii) all procedures under this Division II, including procedures  
32 governing contract claims and protests, shall apply.

33           (4) If a primary procurement unit participates in an  
34 intergovernmental cooperative purchasing agreement, any protest or contract claim  
35 involving the agreement shall be handled in accordance with the terms of the  
36 agreement.

1 (c) (1) Except as provided in paragraph (2) of this subsection, each  
2 procurement contract for supplies or services entered into by a State or local entity  
3 shall include a provision that facilitates other State and local entities and  
4 not-for-profit entities to participate in the contract.

5 (2) (i) This subsection does not apply to:

6 1. a procurement for a capital facility, improvement, or  
7 other unique purchase; or

8 2. a procurement with a projected value of less than  
9 \$100,000.

10 (ii) This subsection does not apply if the State or local entity  
11 determines that including the provision would:

12 1. undermine the desired timing or effect of the  
13 procurement;

14 2. interfere with the State or local entity's ability to  
15 meet:

16 A. the minority business enterprise goals provided under  
17 § 14-302 of this article or any other minority business enterprise program sponsored  
18 by the local entity; or

19 B. the Small Business Reserve Program requirements  
20 under § 14-502 of this article or any other small business procurement program  
21 sponsored by the local entity; or

22 3. not be in the best interest of the entity.

23 (d) (1) A State or local entity may enter into an agreement for the  
24 cooperative or joint administration of programs with one or more other State or local  
25 entities.

26 (2) A cooperative entity established under this section may administer  
27 the programs and exercise the powers and duties specifically delegated to the  
28 cooperative entity by the agreement that established the cooperative entity.

29 (3) An agreement described under this subsection does not relieve a  
30 State or local entity or other participant of the agreement from any obligation or  
31 responsibility imposed on the entity by law.

1 (e) Notwithstanding any other law, a local entity may participate in an  
2 existing State or local contract drafted in accordance with this section, if the governing  
3 body of the entity determines that participation would:

4 (1) provide a cost savings in purchase price or administrative burden;  
5 or

6 (2) further other policy goals including operational and  
7 energy–efficiency goals related to the purchase, operation, or maintenance of the  
8 supply or service.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2013.