

HOUSE BILL 767

P2

EMERGENCY BILL

2lr2783

By: ~~Delegate Rosenberg~~ **Delegates Rosenberg, Bagnall, Bhandari, Carr, Cullison, Hill, Johnson, Kelly, Kerr, Landis, R. Lewis, Pena-Melnyk, Pendergrass, Sample-Hughes, and K. Young**

Introduced and read first time: February 3, 2022

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2022

CHAPTER _____

1 AN ACT concerning

2 **Emergency Procurement – Contracts – Term Length and Renewal**

3 FOR the purpose of requiring a procurement officer to limit the contract term for an
4 emergency procurement to a certain period of time; prohibiting a procurement officer
5 from renewing a contract for an emergency procurement except under certain
6 circumstances; requiring a procurement officer to use certain procurement methods
7 to award a new contract under certain circumstances; and generally relating to
8 emergency procurement contracts.

9 BY repealing and reenacting, without amendments,
10 Article – State Finance and Procurement
11 Section 13–108(a) and (b)(1) and (2)
12 Annotated Code of Maryland
13 (2021 Replacement Volume)
14 (As enacted by Section 2 of Chapters 4 and 8 of the Acts of the General Assembly of
15 the 2021 Special Session)

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 13–108(b)(3)
19 Annotated Code of Maryland
20 (2021 Replacement Volume)

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.



(As enacted by Section 2 of Chapters 4 and 8 of the Acts of the General Assembly of the 2021 Special Session)

BY adding to

Article – State Finance and Procurement

Section 13–108(b)(9)

Annotated Code of Maryland

(2021 Replacement Volume)

(As enacted by Section 2 of Chapters 4 and 8 of the Acts of the General Assembly of the 2021 Special Session)

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

Article – State Finance and Procurement

13–108.

(a) In this section, “emergency” means an occurrence or condition that creates an immediate and serious need for services, materials, or supplies that:

(1) cannot be met through normal procurement methods; and

(2) are required to avoid or mitigate serious damage to public health, safety, or welfare.

(b) (1) Except as provided in § 11–205 (“Collusion”), § 10–204 (“Approval for designated contracts”), § 13–219 (“Required clauses – Nondiscrimination clause”), § 13–221 (“Disclosures to Secretary of State”), Title 16 (“Suspension and Debarment of Contractors”), or Title 17 (“Special Provisions – State and Local Subdivisions”) of this article, with the approval of the head of a unit, its procurement officer may make an emergency procurement by any method that the procurement officer considers most appropriate to avoid or mitigate serious damage to public health, safety, or welfare.

(2) (i) Except when delaying a procurement by up to 48 hours would likely result in imminent harm, after obtaining the approval of the head of the unit and before making an emergency procurement, the procurement officer shall obtain approval of the use of emergency procurement procedures from the Chief Procurement Officer, or the Chief Procurement Officer’s designee.

(ii) Within 48 hours after receiving a request to use emergency procurement procedures, the Chief Procurement Officer or designee shall approve or disapprove the request.

(iii) If the Chief Procurement Officer or designee does not approve or disapprove the request to use emergency procurement procedures within 48 hours after receiving the request, the request shall be considered to be approved.

1 (3) The procurement officer shall:

2 (i) obtain as much competition as possible under the circumstances,
3 including by making reasonable efforts to solicit at least three oral quotes;

4 (ii) limit the emergency procurement to the procurement of only
5 those items, both in type and quantity, necessary to avoid or to mitigate serious damage to
6 public health, safety, or welfare;

7 **(III) LIMIT THE CONTRACT TERM FOR THE EMERGENCY**
8 **PROCUREMENT TO ~~6~~ 12 MONTHS;**

9 [(iii)] **(IV)** before awarding an emergency procurement contract to a
10 prospective contractor, evaluate the contractor's ability to perform the requirements of the
11 contract based on:

12 1. the length of time the contractor has been in business;

13 2. the contractor's level of experience providing the types and
14 amounts of supplies, services, maintenance, commodities, construction, or
15 construction-related services required under the contract; and

16 3. the contractor's history of successful procurement
17 contracts with the State and other jurisdictions;

18 [(iv)] **(V)** execute a written contract with the successful contractor
19 which includes the terms of the emergency procurement; and

20 [(v)] **(VI)** not more than 15 days after awarding the procurement
21 contract, submit to the Board a written report that gives the justification for use of the
22 emergency procurement procedure.

23 **(9) (I) A PROCUREMENT OFFICER MAY ~~NOT ONLY~~ RENEW A**
24 **CONTRACT EXECUTED UNDER PARAGRAPH (3) OF THIS SUBSECTION ~~AFTER BEYOND~~**
25 **THE EXPIRATION OF THE ~~6-MONTH~~ 12-MONTH CONTRACT TERM WITH APPROVAL**
26 **FROM THE BOARD.**

27 **(II) ~~TO~~ UNLESS A CONTRACT RENEWAL IS APPROVED BY THE**
28 **BOARD UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, TO MEET ANY NEED OF A**
29 **UNIT NOT FULFILLED IN THE ~~6-MONTH~~ 12-MONTH TERM OF A CONTRACT EXECUTED**
30 **UNDER PARAGRAPH (3) OF THIS SUBSECTION, A PROCUREMENT OFFICER SHALL**
31 **USE A PROCUREMENT METHOD LISTED UNDER ~~§ 13-102(A)(1) THROUGH (4) OR (6)~~**
32 **THROUGH (10) OF THIS SUBTITLE OTHER THAN EMERGENCY PROCUREMENT UNDER**
33 **THIS SUBSECTION TO AWARD A NEW CONTRACT.**

HOUSE BILL 767

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
2 measure, is necessary for the immediate preservation of the public health or safety, has
3 been passed by a yea and nay vote supported by three-fifths of all the members elected to
4 each of the two Houses of the General Assembly, and shall take effect from the date it is
5 enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.