

HOUSE BILL 188

P2

5lr0927

HB 894/24 – HGO

(PRE-FILED)

By: **Delegates Chisholm, Grammer, Hornberger, Schmidt, and Szeliga**

Requested: September 24, 2024

Introduced and read first time: January 8, 2025

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Scrutinized Entities – Prohibition**

3 FOR the purpose of prohibiting an entity owned, operated, or controlled by the government
4 of certain countries subject to an embargo under the International Traffic in Arms
5 Regulations from participating in any procurement with the State, a local
6 government in the State, a public instrumentality in the State, or any governmental
7 unit in the State; requiring the Board of Public Works to make certain
8 determinations and maintain and publish a certain list of scrutinized entities;
9 requiring a person to make a certain certification when making a bid or offer to
10 provide goods and services, or when entering or renewing a procurement contract;
11 authorizing certain remedies and penalties for making a false certification; providing
12 for the preemption of any local ordinance, rule, or regulation that conflicts with this
13 Act; and generally relating to scrutinized entities and procurement in the State.

14 BY adding to

15 Article – State Finance and Procurement

16 Section 17–7A–01 through 17–7A–06 to be under the new subtitle “Subtitle 7A.

17 Procurement With Scrutinized Entities”

18 Annotated Code of Maryland

19 (2021 Replacement Volume and 2024 Supplement)

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

21 That the Laws of Maryland read as follows:

22 **Article – State Finance and Procurement**

23 **SUBTITLE 7A. PROCUREMENT WITH SCRUTINIZED ENTITIES.**

24 **17–7A–01.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(B) "PUBLIC BODY" MEANS:

(1) THE STATE;

(2) A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION;

(3) A PUBLIC INSTRUMENTALITY; OR

(4) ANY GOVERNMENTAL UNIT AUTHORIZED TO AWARD A CONTRACT.

(C) (1) "SCRUTINIZED ENTITY" MEANS ANY ENTITY OWNED, OPERATED, OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY SUBJECT TO AN EMBARGO UNDER THE FEDERAL INTERNATIONAL TRAFFIC IN ARMS REGULATIONS AND LISTED UNDER 22 C.F.R. § 126.1(D)(1) OR (2).

(2) "SCRUTINIZED ENTITY" INCLUDES:

(I) A NATURAL PERSON, SOLE PROPRIETOR, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR GROUP;

(II) A GOVERNMENTAL ENTITY OR INSTRUMENTALITY OF A GOVERNMENT, INCLUDING A MULTILATERAL DEVELOPMENT INSTITUTION, AS DEFINED BY THE FEDERAL INTERNATIONAL FINANCIAL INSTITUTIONS ACT, 22 U.S.C. § 262R(C)(3); AND

(III) ANY PARENT, SUCCESSOR, SUBUNIT, OR DIRECT OR INDIRECT SUBSIDIARY OF, OR ANY ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH, AN ENTITY DESCRIBED IN ITEM (I) OR (II) OF THIS PARAGRAPH.

17-7A-02.

A PERSON THAT, AT THE TIME OF BID OR PROPOSAL FOR A NEW CONTRACT OR RENEWAL OF AN EXISTING CONTRACT, IS IDENTIFIED ON A LIST CREATED BY THE BOARD UNDER § 17-7A-03 OF THIS SUBTITLE AS A SCRUTINIZED ENTITY IS INELIGIBLE TO AND MAY NOT BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A CONTRACT WITH A PUBLIC BODY FOR GOODS OR SERVICES.

1 17-7A-03.

2 (A) (1) ON OR BEFORE DECEMBER 31, 2025, THE BOARD SHALL USE
3 CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC TO CREATE A LIST OF ANY
4 PERSONS THAT THE BOARD DETERMINES TO BE SCRUTINIZED ENTITIES.

5 (2) THE BOARD SHALL UPDATE THE LIST AT LEAST EVERY 180 DAYS.

6 (3) BEFORE THE BOARD INCLUDES A PERSON ON THE LIST, THE
7 BOARD SHALL PROVIDE THE PERSON WITH 90 DAYS' WRITTEN NOTICE THAT:

8 (I) THE BOARD INTENDS TO INCLUDE THE PERSON ON THE
9 LIST; AND

10 (II) INCLUSION ON THE LIST WOULD MAKE THE PERSON
11 INELIGIBLE TO BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A
12 CONTRACT WITH A PUBLIC BODY FOR GOODS OR SERVICES.

13 (4) THE NOTICE REQUIRED UNDER PARAGRAPH (3) OF THIS
14 SUBSECTION SHALL SPECIFY THAT IF THE PERSON CEASES TO BE A SCRUTINIZED
15 ENTITY, THE PERSON MAY BECOME ELIGIBLE FOR A FUTURE CONTRACT OR
16 CONTRACT RENEWAL WITH A PUBLIC BODY FOR GOODS OR SERVICES ON REMOVAL
17 FROM THE LIST.

18 (B) (1) THE BOARD SHALL PROVIDE A PERSON WITH AN OPPORTUNITY
19 TO COMMENT IN WRITING TO THE BOARD THAT THE PERSON IS NOT A SCRUTINIZED
20 ENTITY.

21 (2) IF THE PERSON DEMONSTRATES TO THE BOARD THAT THE
22 PERSON IS NOT A SCRUTINIZED ENTITY, THE BOARD MAY NOT INCLUDE THE PERSON
23 ON THE LIST.

24 (C) THE BOARD SHALL REMOVE A PERSON FROM THE LIST IF THE PERSON
25 DEMONSTRATES TO THE BOARD THAT THE PERSON IS NO LONGER A SCRUTINIZED
26 ENTITY.

27 (D) THE BOARD SHALL MAKE EVERY REASONABLE EFFORT TO AVOID
28 ERRONEOUSLY INCLUDING A PERSON ON THE LIST.

29 (E) THE BOARD SHALL PUBLISH THE LIST REQUIRED UNDER THIS SECTION
30 ON THE INTERNET.

31 17-7A-04.

ON OR AFTER JANUARY 1, 2026, A PUBLIC BODY SHALL REQUIRE A PERSON THAT SUBMITS A BID OR PROPOSAL TO THE PUBLIC BODY FOR A CONTRACT FOR GOODS OR SERVICES, OR OTHERWISE PROPOSES TO ENTER INTO OR RENEW A CONTRACT FOR GOODS OR SERVICES WITH THE PUBLIC BODY, TO CERTIFY AT THE TIME THE BID IS SUBMITTED OR THE CONTRACT IS RENEWED THAT THE PERSON IS NOT IDENTIFIED ON THE LIST CREATED BY THE BOARD AS A SCRUTINIZED ENTITY.

17-7A-05.

(A) (1) IF A PUBLIC BODY, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, DETERMINES THAT A PERSON HAS SUBMITTED A FALSE CERTIFICATION UNDER § 17-7A-04 OF THIS SUBTITLE, THE PUBLIC BODY SHALL PROVIDE WRITTEN NOTICE TO THE PERSON AND AN OPPORTUNITY FOR THE PERSON TO DEMONSTRATE IN WRITING THAT THE PERSON IS NOT A SCRUTINIZED ENTITY.

(2) IF THE PERSON FAILS TO DEMONSTRATE TO THE PUBLIC BODY WITHIN 90 DAYS AFTER THE PUBLIC BODY PROVIDES NOTICE UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE PERSON IS NOT A SCRUTINIZED ENTITY, THE PUBLIC BODY SHALL REPORT TO THE BOARD AND THE ATTORNEY GENERAL:

(I) THE NAME OF THE PERSON DETERMINED TO HAVE SUBMITTED A FALSE CERTIFICATION; AND

(II) THE INFORMATION ON WHICH THE PUBLIC BODY MADE ITS DECISION.

(B) (1) THE ATTORNEY GENERAL MAY INSTITUTE AN ACTION AGAINST A PERSON DETERMINED TO HAVE SUBMITTED A FALSE CERTIFICATION UNDER § 17-7A-04 OF THIS SUBTITLE.

(2) AN ACTION BROUGHT UNDER THIS SECTION SHALL BE BROUGHT WITHIN 3 YEARS AFTER THE DATE THE CERTIFICATION IS MADE.

(C) IF, IN AN ACTION BROUGHT UNDER THIS SECTION, A COURT DETERMINES THAT A PERSON SUBMITTED A FALSE CERTIFICATION:

(1) THE PERSON SHALL PAY ALL REASONABLE COSTS AND FEES INCURRED IN THE CIVIL ACTION, INCLUDING:

(I) ANY COSTS INCURRED BY THE PUBLIC BODY FOR THE INVESTIGATION THAT LED TO THE FINDING OF THE FALSE CERTIFICATION; AND

(II) ALL REASONABLE COSTS AND FEES INCURRED BY THE ATTORNEY GENERAL IN BRINGING THE ACTION;

1 **(2) THE COURT MAY IMPOSE A CIVIL PENALTY EQUAL TO THE**
2 **GREATER OF \$250,000 OR TWICE THE AMOUNT OF THE CONTRACT FOR WHICH THE**
3 **FALSE CERTIFICATION WAS SUBMITTED;**

4 **(3) THE PUBLIC BODY SHALL TERMINATE THE CONTRACT FOR WHICH**
5 **THE FALSE CERTIFICATION WAS SUBMITTED; AND**

6 **(4) THE PERSON IS INELIGIBLE TO BID ON A CONTRACT WITH A**
7 **PUBLIC BODY FOR THE LATER OF:**

8 **(I) A PERIOD OF 3 YEARS AFTER THE DATE OF THE COURT**
9 **ORDER; OR**

10 **(II) THE TIME AT WHICH THE PERSON CEASES TO BE A**
11 **SCRUTINIZED ENTITY.**

12 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
13 **AN UNSUCCESSFUL BIDDER OR ANY OTHER PERSON MAY NOT PROTEST THE AWARD**
14 **OF A CONTRACT OR CONTRACT RENEWAL ON THE BASIS OF A FALSE CERTIFICATION.**

15 **(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT PROHIBIT A**
16 **PUBLIC BODY FROM FILING A PROTEST OBJECTING TO THE AWARD OF A CONTRACT**
17 **OR CONTRACT RENEWAL ON THE BASIS OF A FALSE CERTIFICATION.**

18 **(E) THIS SUBTITLE DOES NOT CREATE OR AUTHORIZE A PRIVATE RIGHT OF**
19 **ACTION.**

20 **17-7A-06.**

21 **THIS SUBTITLE PREEMPTS ANY LAW, ORDINANCE, RULE, OR REGULATION OF**
22 **ANY LOCAL GOVERNING BODY INVOLVING PROCUREMENT CONTRACTS FOR GOODS**
23 **OR SERVICES WITH A PERSON WHO IS A SCRUTINIZED ENTITY.**

24 **SECTION 2. AND BE IT FURTHER ENACTED, That:**

25 **(a) This Act shall remain in effect until federal law no longer authorizes the states**
26 **to adopt and enforce provisions of the type authorized under this Act.**

27 **(b) The Board of Public Works shall notify the Department of Legislative Services**
28 **within 5 days after the federal government enacts a law described in subsection (a) of this**
29 **section and, as of the date the law becomes effective, this Act, with no further action**
30 **required by the General Assembly, shall be abrogated and of no further force and effect.**

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2025.