



**CE – CONTRACTUAL WORKERS
APPENDIX B –
SAMPLE CONTRACTS AND FORMS**

supervisor, as frequently as the Department requires, such methods of time reporting as required by the Department.

- E. The Department shall withhold from all compensation paid to the Contractual Employee state and federal Taxes and Employee Social Security contributions required by law.

ARTICLE V CONTRACTUAL EMPLOYEE NOT AN AGENT

The Contractual Employee is not an agent of the State or the Department, and may not commit the State or the Department to any expenditure of funds or enter into any contractual obligation on behalf of the State or the Department.

ARTICLE VI TRAVEL REIMBURSEMENT

A. COMMUTING (CHECK ONE)

- 1. The Contractual Employee will not be reimbursed for commuting mileage.
 - 2. The Contractual Employee will be reimbursed for commuting mileage as calculated using the following formula: (_____ round trip miles minus 20 miles) times _____ cents per mile) plus _____ tolls = _____ for each day that the Contractual Employee provides services to the Department.
- B. The Contractual Employee shall be reimbursed by the Department for such travel expenses as are incurred while rendering the services described in Article III and as are authorized by the Department. The Contractual Employee shall be reimbursed under the State travel regulations.
 - C. In order to obtain travel reimbursement, the Contractual Employee shall be required to submit such documentation of the expenses incurred as is required under the State travel regulations.

ARTICLE VII FRINGE BENEFITS

- A. The Department shall, as required by law, match the Social Security contributions made by the Contractual Employee.
- B. The Contractual Employee may elect to authorize the Department to make any or all of the following voluntary deductions:
 - 1. Deferred Compensation Plan
 - 2. U.S. Saving Bond Plan
 - 3. Charitable contributions to organizations, such as the United Charity Campaign, with whom the Department has an agreement to allow such deductions.

- C. Unless the Department is not required by law to cover the Contractual Employee, the Contractual Employee shall be covered by Worker's Compensation and Unemployment Insurance through the Department.
- D. The Contractual Employee shall not be eligible for any fringe benefits other than those stated in this Article VII of this contract.

ARTICLE VIII LAWS

- A. The provisions of Title VII of the Civil Rights Act of 1964 and Article 49B, Sections 14 and 16 of the Annotated Code of Maryland, which concern discrimination in employment, shall apply to this contract.
- B. This contract shall be governed by the laws of the State of Maryland.

ARTICLE IX MODIFICATIONS AND AMENDMENTS

This contract may be amended as the Department and the Contractual Employee mutually agree in writing subject to such approval as required by law. Except for a specific provision of the contract which is thereby amended, the contract shall remain in full force and effect after such amendment subject to the same laws, obligations, conditions, provisions, rules and regulations as it was prior to the amendment.

ARTICLE X COPYRIGHTS, PATENTS AND ROYALTIES

All records, documents, reports, drawings, studies, specifications, computations, programs, code, mechanicals, artwork and other work products developed by the Contractual Employee in the performance of the services described in Article III of the contract shall be the exclusive property of, and available to the Department for its use, without the payment of any royalty or additional cost, and may not be the subject of an application for a copyright, patent, or trademark registration by or on behalf of the Contractual Employee.

ARTICLE XI RESPONSIBILITY OF CONTRACTUAL EMPLOYEE

- A. The Contractual Employee shall comply with all federal, state and local laws and regulations applicable to the performance of services under this contract.
- B. The Contractual Employee shall comply with the Department's rules, regulations, policies and procedures, including the Department's Standards of Conduct. Violation of the Department's rules, regulations, policies and procedures, including the Department's Standards of Conduct, by the Contractual Employee is sufficient cause for the Department to terminate this contract without prior notice.
- C. The Contractual Employee shall perform the services with the standard of care, skill, and diligence normally provided by an employee in the performance of services similar to the services specified here. The Contractual Employee shall produce work that meets the standard of the trade,

standards set forth in the contract, and professional standards of quality and methodology.

- D. The Department may screen the Contractual Employee for security purposes. Such screening may consist of fingerprinting, investigation by the Maryland State Police and credit checking.

ARTICLE XII TERMINATION

- A. The Department may terminate this contract at any time for the convenience of the Department or if the funds appropriated by the General Assembly of the State of Maryland for such a contract are no longer available.
- B. The Department shall give the Contractual Employee two weeks written notice of its intent to terminate this contract unless the Contractual Employee violates the terms of this contract in which case the contract may be terminated without prior notice.
- C. In the event that this contract is terminated, the Contractual Employee shall be paid for the services rendered in accordance with Article IV of this contract up to the date of the termination of the contract.

ARTICLE XIII SET-OFF

The Department may deduct from and set off any amounts due and payable to the Contractual Employee any amounts that are due and payable to the Department by the Contractual Employee.

ARTICLE XIV CONTRACT MONITOR

The Contract Monitor for this contract shall be

_____	_____
Supervisor's Name	Supervisor's Title

or his/her designee. All problems or disputes arising under this contract shall be referred to this person for resolution.

ARTICLE XV ANTI-BRIBERY AFFIDAVIT

By signing this contract I, the Contractual Employee, hereby declare and affirm under the penalties of perjury that I have not been convicted of or have not pleaded nolo contendere to a charge of or admitted in writing or under oath acts or omissions that constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government.

I acknowledge that this affidavit is to be furnished to the Department, to the Secretary of Budget and Management, and, where appropriate, to the Board of Public Works and the Attorney General. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Department may terminate this contract and take any appropriate action.

ARTICLE XVI SIGNATURES

A. _____ B. _____
Witness Contractual Employee Signature Date

C. _____ D. _____
Witness Appointing Authority/Designee Date

E. This contract form has been approved for form and legal sufficiency in accordance with COMAR 17.04.03.13.G, by Michele J. McDonald, Assistant Attorney General on the 10th day of June, 2004. Any substantive modification or alteration must be approved by an Assistant Attorney General.

DEPARTMENT OF *Department name*
PERSONAL SERVICES CONTRACT
with

THIS CONTRACT, entered into as of this day of is between the *Department name* and whose address is , whose Social Security Number is ("CONTRACTOR").

ARTICLE I: NATURE OF CONTRACT

This Contract establishes an employer-employee relationship between and the Contractor, with the contractor employed as a contractual employee pursuant to the State Personnel and Pensions Article, Title 13 of the Annotated Code of Maryland.

The Contractor is not a Maryland State Employee, and is not entitled to the benefits afforded employees such as retirement, paid holidays, other employer-paid or shared benefits, salary increments, etc., nor is the contractor covered by the Merit system of the State Personnel and Pensions Article, Title 12 of the Annotated Code of Maryland or any other similar rights or protection afforded to employees of the State.

ARTICLE II: TERM

The term of this contract is from through .

ARTICLE III: SCOPE OF WORK

During the term of this Contract, the Contractor agrees to perform duties as

ARTICLE IV: CONSIDERATION AND METHOD OF PAYMENT

Department name shall pay the Contractor at the rate of _____ per hour/day. The contractor's pay is equivalent to a Grade _____, Step _____.

Department name shall pay the contractor on a bi-weekly basis and shall be responsible for withholding taxes and Social Security payments due as a result of such compensation.

ARTICLE V: TRAVEL DISBURSEMENT

If expenses are approved in advance by *Department name*, the Contractor may be reimbursed for travel expenses incurred in the performance of this Contract in accordance with the Standard Travel Regulations.

ARTICLE VI: CONDUCT AND SUPERVISION

Department name will supply the Contractor with all materials, equipment and supplies necessary to the satisfactory performance of services under the Contract. The Contractor will work in the offices of the *Department name* at *Address*, which shall be her principal place of employment.

ARTICLE VII: PAYMENT FOR JURY DUTY

The Contractor may receive the Contractor's regular hourly rate of pay for jury service and only when the Contractor's jury service occurs on the Contractor's scheduled workday. A Contractor who receives a notice to appear for jury service shall notify the appointing authority without delay. If, after reporting for jury duty, the Contractor is dismissed for the day, the Contractor shall return to work if time permits. This payment will be prorated based on the Contractor's percentage of employment. An individual employed less than 50 percent of the workweek will not receive payment for jury service.

ARTICLE VIII: NOT AGENT FOR *Department name*

The Contractor is not an agent of the State of Maryland or *Department name*, and cannot commit the State or *Department name* to any expenditure of funds or enter into any contractual obligation on her behalf.

ARTICLE IX: MODIFICATIONS WITH SCOPE OF WORK

Department name shall have the right, in its discretion, to alter or modify the services required by the Contract, provided that such alterations or modifications are within the general scope of work of the Contract.

ARTICLE X: TERMINATION FOR CONVENIENCE

The performance of work under this Contract may be terminated by *Department name* in whole, or in part, whenever *Department name* shall determine that such termination is in the best interest of the State.

ARTICLE XI: RIGHTS IN DATA

Department name shall at all times be considered the owner of all research, notes, data, computations, estimates or other information produced or obtained by the Contractor during the performance of this Contract, and of any memoranda, reports or other work products resulting therefrom.

ARTICLE XII: MULTI-YEAR RESTRICTION

If the term of this Contract extends into future fiscal years of the State, this Contract shall terminate automatically upon the failure of the General Assembly to appropriate funds for such future performance. Termination shall be effective as of the beginning of the fiscal year for which funds were not appropriated.

ARTICLE XIII: LAW APPLICABLE

This Contract is governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any question arising hereunder.

ARTICLE XIV : WARRANTY

The Contractor agrees to prosecute all work under this Contract continuously and diligently.

ARTICLE XV: MERGER

This Contract embodies the whole agreement of the parties. There are no promises, terms,

conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Contract by causing the same to be signed as of the day and year first above written.

CONTRACTOR:

Witness

By _____

DEPARTMENT OF

Witness

By _____
Appointing Authority

MARYLAND STATE DEPARTMENT OF HEALTH AND MENTAL HYGIENE
CONTRACTUAL EMPLOYEE AGREEMENT (DHMH 1242-2 Rev. 7/2003) PAGE 1 OF 5
(PAYMENT VIA SPECIAL PAYMENTS PAYROLL)

This agreement is made by and between the Department of Health and Mental Hygiene (Local Health Department, Institution, or Headquarters Administration) (hereinafter called "Department") and _____ (hereinafter called "Employee"). The Contract Monitor for this agreement is (name) _____ (title) _____ (phone) _____.

1. Hiring and Duties

The Department does hereby hire the Employee indicated above to perform the temporary function of _____ (e.g. Social Worker, Clerk-Typist) at the _____ (Institution, County or Agency where the work is to be performed), at a salary rate of \$ _____ per hour/day, not to exceed a total of \$ _____, beginning _____ and terminating _____. The Employee's Social Security Number is _____. The Employee's duties shall include, but not be limited to the following:

_____ during the following hours and/or days: _____

2. General Conditions

- A. The Employee shall be paid only for hours and days that he/she actually worked, with the exception of Jury Duty. The employee may receive the regular hourly rate of pay for jury service and only when the employee's jury service occurs on the employee's scheduled workday. An employee who receives a notice to appear for jury service shall notify the appointing authority without delay. If, after reporting for jury duty, the employee is dismissed for the day, the employee shall return to work if time permits. This payment will be prorated based on the employee's percentage of employment. An individual employed less than 50 percent of the workweek will not receive payment for jury service. The Appointing Authority shall maintain positive time reports of actual hours worked, and jury duty served.
- B. Any reimbursable travel expenses will be in accordance with existing standard travel regulations, providing for the same manner of payment and rates as for other employees.
- C. The Employee shall be covered by Workmen's Compensation and unemployment insurance, unless excluded by law, and standard deductions for State and Federal taxes to include Social Security will be made as required by law. Voluntary deductions are not permitted except Deferred Compensation, Savings Bonds and authorized Charitable Contributions such as United Way/CICHA. Any other fringe benefits are not permitted.

Contractual Employee Agreement

Page 2 OF 5 (DHMH 1242-2 Rev. 07/2003)

- D. Shift differential payments, if applicable, will be made in the same manner and at the same rates as for other employees. This shall not be included in the rate of pay, however, the cost will be included in the contract maximum.
- E. Overtime payments, if applicable, will be made in the same manner and at the same rates as for other State employees. This shall not be included in the rate of pay; however, the cost will be included in the contract maximum.
- F. If the Employee is subsequently appointed to a permanent position in State service, credit for service in the contractual position for determination of pay grade step, annual leave earnings, seniority rights, membership in the State's pension plan and the Employee's probationary status in the permanent position will be governed by the provisions of Title 13 of the State Personnel and Pensions Article and COMAR Title 17 in effect at the time of the appointment.
- G. **Contract amendments are not permitted. If a subsequent change to the terms of employment are necessary, this contract shall be terminated and a new contract shall be issued to reflect the new contract terms.**
- H. The provisions of this contract shall be governed by the laws of Maryland.
- I. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance of the contract for any fiscal period of the contract succeeding the first fiscal period, the contract shall be automatically canceled as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; however, this will not affect either the Department's rights or the Employee's rights under any termination clause of the contract. The effect of termination of the contract will be to discharge both the Employee and the Department from future performance of the contract, but not from their obligations existing at the time of termination. The employee shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services delivered under the contract. The Department shall notify the Employee within 90 days prior to the commencement of each fiscal period succeeding the first fiscal period, or as soon thereafter as the Department has knowledge that the funds are not available for the continuation of the contract for such succeeding fiscal periods.
- J. The Department will maintain and retain all records and other documents relating to this contract for a period of five (5) years from the date of final payment under the contract, and will make

the documents available for inspection and audit by authorized State and/or Federal officials.

- K. The performance of work under this contract may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the State. The Department will pay all reasonable costs associated with this contract that the Employee has incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the Employee shall not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Two weeks advance notice of the contract termination will be provided by the Department, unless circumstances dictate that no notice be given.
- L. All records, documents, reports and other work papers and work products developed in the performance of this contract shall be the property of and available to the State for its use without payment of royalty or additional cost and shall not be the subject of an application for a copyright or patent by, or on behalf of, the contractual employee.
- M. The Employee, by signature on this contract, makes an affidavit that he has not been disqualified, and to the best of his/her knowledge is not subject to disqualification from entering into a contract with the State or any other subdivision of the State under Article 21, Section 3-405 of the Annotated Code of Maryland by virtue of a conviction of bribery, attempted bribery, or conspiracy to bribe under the laws of any State or Federal government involving the obtaining of contracts with the State, or any county or other subdivision of the State.
- N. The provisions of Section 2-302 of the State Personnel and Pensions Article and its requirements are hereby included in this contract, especially to the end that all personnel actions regarding this employment shall be made without regard to age; ancestry; color; creed; marital status; mental or physical ability; national origin; race; religious affiliation, belief or opinion; or sex, unless an action with regard to age, sex, or disability to the extent that age, sex, or physical or mental qualification is required by law or is a bona fide occupational qualification.
- O. If funds to support this contractual employment agreement are not appropriately identified in the budget of the Appointing Authority, the approval of the Department of Budget and Management may be necessary before the contract becomes effective.
- P. Contracts not meeting an approved exemption according to the State

Personnel and Pensions Article, Title 13, Subtitle 3, Annotated Code of Maryland and Title 17 of COMAR will require the prior approval of the Department of Budget and Management, Office of Personnel Services and Benefits before the contract becomes effective.

- Q. Under emergency circumstances, payroll advancements may be made if the Employee has a newly approved contract and did not receive a regular paycheck. In order to be eligible, the Employee must have worked 10 days within the pay period and submitted a completed Special Payments Payroll Voucher to the Payroll Office on schedule. Emergency checks are processed the Friday after payday.
- R. Health Insurance is available to the Special Payments Payroll employee. It is the Employee's responsibility to contact the Contract Administrator for additional information regarding enrollment.
- S. It is the responsibility of the Employee to submit a completed and approved Special Payments Payroll Voucher by the due dates listed on the Special Payments Payroll Pay Schedule.

T. _____ (*Employee's Initials*) By entering into this contract, the employee acknowledges his/her understanding that health care providers and other individuals who are excluded from participating in Medicare, Medicaid, or other Federal health care benefits programs may not contract with the Department to provide health care or other services that are reimbursed by Federal funds. The employee affirmatively declares that he/she has not been excluded from participating in Medicare, Medicaid or other Federal programs, and to the best of his/her knowledge is not at the time of executing of this contract subject to exclusion by the Department of Health and Human Services (DHHS). The employee agrees further that he/she will immediately notify the appointing authority if he/she is excluded or if any exclusion action is proposed to be taken against him/her by the DHHS.

The employee, if he/she is a health care provider, certifies that he/she is properly licensed or certified by the appropriate health regulatory body as set forth in Health - Occupations Article, Annotated Code of Maryland, and agrees to maintain such licensing or certification in good standing during the term of this contract.

- U. THE SIGNING OF THIS CONTRACT IS NOT INTENDED TO GUARANTEE EMPLOYMENT UNDER THE TERMS AS LISTED. THIS CONTRACT WILL BE SUBMITTED TO THE APPROPRIATE CONTROL AGENCIES FOR REVIEW AND

APPROVAL. THE CONTRACT IS NOT EFFECTIVE UNTIL ALL APPROVALS ARE RECEIVED AND THE EMPLOYEE HEREIN NAMED HAS BEEN ADVISED VIA A COMMITMENT LETTER THAT EMPLOYMENT CAN BEGIN.

Employee's Signature

Name, Title

Date

Appointing Authority's Signature

Name, Title

Date

(Original - Contracts Unit, PSA)
DHMH 1242-2 (Rev. 07/2003)

(Copies: Employing Unit, Employee)

Contractual Conversions

- A. Scope. This guideline applies to all units in the executive branch of State government which are part of the State Personnel Management System (SPMS).
- B. Effective October 1, 1998 an employee in a contractual position may be transferred to a budgeted position if the following conditions are met and documented by the agency with the appropriate forms and attachments as listed:
1. The employee meets the minimum qualifications for the classification of the budgeted position (as certified by the MS 310 - Box 45); AND the employee has a minimum of 6 continuous months of satisfactory service in the contractual position;
 2. There is a continuing need for the function to be performed as certified in the agency's cover memorandum;
 3. The agency can document a competitive hiring process as certified in the agency's cover memorandum. A competitive hiring process means that the recruitment and selection process used when the agency initially filled the contractual position adhered to the following principles:
 - (a) Reasonable effort was made to publicly solicit applicants for the contractual position through outside advertisement (e.g. newspaper, Office of Personnel Services and Benefits (OPSB Website) and/or distribution of a job announcement (at least program-wide within an agency) at least two weeks prior to the application deadline;
OR
the agency considered candidates from a current skilled or professional services eligibility list in a manner consistent with the State Personnel and Pensions Article, Section 7-209 (i.e., notified at least 25 persons, and/or interviewed at least three individuals)
OR
the agency notified all individuals certified on a registry;
 - (b) The criteria applied to the screening and selection of applicants, including minimum and /or selective qualifications were fair, objective, and applied consistently; all factors considered were job-related; and
 - (c) All personnel transactions related to recruitment and selection for the contractual position were made in accordance with the provisions cited in State Personnel and Pensions Article, Section 2-302, which relates to fair employment practices and equal employment opportunity in Maryland State government; and
 4. The budgeted position replacing the contractual position was not available at the time the contractual employee was hired as certified in the agency's cover memorandum.
- C. The required agency cover memorandum for contractual conversion, MS 310 form, Position Selection Plan (Lite) and contract documentation must be submitted to the Office of Personnel Services and Benefits, Department of Budget and Management for approval.
- D. A sample agency cover memorandum is provided to assist agencies in certifying the required information. However, any format is acceptable if it contains the following elements:
- agency
 - PIN
 - classification code and title
 - salary grade and step
 - name of contractual employee and social security number
 - statement of justification (see # 2 above)
 - statement that the agency followed a competitive hiring process when the individual was hired on contract

(see # 3 above)

-statement that the budgeted position was not available when the contractual employee was hired (see # 4 above)

-signatures of the Appointing Authority and the EEO Officer

-name of contact person and telephone number

E. An employee who is transferred from a contractual position to a budgeted position in accordance with section B (3) of this guideline shall be given service credit for the time spent in the contractual position for the purpose of establishing steps in the applicable pay grade, the rate at which annual leave is earned, and seniority rights. The appointing authority may request an appointment above minimum pursuant to Salary Rule 3.A. A contractual employee who is transferred to a budgeted position becomes a member of the Employees' Pension System of the State of Maryland on the date of transfer to the budgeted position (State Personnel and Pensions Article, Section 13-304).

F. There is no requirement that an agency consider hiring an employee who has been laid off or is pending layoff prior to transferring a contractual employee to a budgeted position. This was not a requirement prior to the enactment of HB 767 (Chapter 510, Acts of 1998) and the intent of this revision was not to impose additional requirements under State Personnel and Pensions Article, Section 13-302. Agencies are encouraged, however, to solicit interest from among employee(s) who have been laid off or are pending layoff when initiating a competitive recruitment and hiring process to fill a contractual position.

G. The agency will retain sufficient documentation on file to demonstrate that the provisions of State Personnel and Pensions Article, Section 13-304 have been met for audit and reviewing purposes consistent with the agency's records retention schedule and the Department of Budget and Management's Procedure for Monitoring Personnel Transactions for Equal Opportunity Employment Purposes (9/18/97).

H. In accordance with COMAR 17.04.03.17.B(2) a contractual employee who transfers to a budgeted position does not serve a probationary period upon transfer.

I. Agencies may request the Recruitment and Examination Division to evaluate any special employment programs or recruitment procedures used in hiring contractual employees to determine whether procedures are sufficient in meeting the requirements for a competitive hiring process or to consider alternatives in meeting the agency's staffing needs (e.g. request for examination, special recruitment, consultation).

Statutory Authority: State Personnel and Pensions Article, Title 13 - Subtitles 1, 2, and 3; and State Personnel and Pensions Article, Section 4-106(a).

Should you have any questions regarding this guideline, its interpretation, or application, please contact the Recruitment and Examination Division, Office of Personnel Services and Benefits, Department of Budget and Management, at 410-767-4846.

SAMPLE COVER MEMORANDUM FOR
CONTRACTUAL CONVERSION TRANSFER

TO: Personnel Transactions/Reviewing Office of Personnel Services and Benefits (OPSB)
FROM: _____
(State Agency Personnel Office)
RE: Contractual Transfer, _____
(Name of Employee) Social Security # _____
DATE: _____

This is to provide certification for the transfer of the above-named contractual employee to PIN #_____. The employee will be transferred to this _____skilled, _____professional, _____management service, or _____special appointment (check one) position effective (date) in the classification (title, class code, salary)_____.

As required in State Personnel and Pensions Article, Section 13-302, we certify that all necessary provisions have been met and offer the following statement of justification:

1. This employee meets the minimum qualification requirements for this job classification, as specified on the attached MS 310 form. Any personal services contracts necessary to demonstrate six continuous months of satisfactory employment, and to calculate service credit, are attached.
2. There is a continuing need for this function to be performed in our agency. The employee will be employed as: (State the main purpose of the position as indicated on the MS 22 form to include program/division/unit.)
3. A competitive hiring process, as defined in this guideline, was followed when the employee was hired on contract with the agency.
4. The budgeted position replacing the contractual position was not available at the time the contractual employee was hired.

Signatures Required:
Appointing Authority: _____
Print Name Signature Date
EEO Officer: _____
Print Name Signature Date
Contact Person: _____
Print Name Date Telephone Number
OPSB STAFF: Date Rec'd: _____ Approved By/Date: _____

**SAMPLE COVER MEMORANDUM FOR
CONTRACTUAL CONVERSION TRANSFER**

TO: Personnel Transactions/Reviewing
Office of Personnel Services and Benefits (OPSB)

FROM: _____
(State Agency Personnel Office)

RE: Contractual Transfer, _____
(Name of Employee)

Social Security #: _____

DATE: _____

This is to provide certification for the transfer of the above-named contractual employee to PIN # _____. The employee will be transferred to this _____ skilled, _____ professional, _____ management service, or _____ special appointment (*check one*) position effective _____ (date) in the classification (*title, class code, salary*) _____.

As required in State Personnel and Pensions Article, Section 13-302, we certify that all necessary provisions have been met and offer the following statement of justification:

1. This employee meets the minimum qualification requirements for this job classification, as specified on the attached MS 310 form. Any personal services contracts necessary to demonstrate six continuous months of satisfactory employment, and to calculate service credit, are attached.
2. There is a continuing need for this function to be performed in our agency. The employee will be employed as: (*State the main purpose of the position as indicated on the MS 22 form to include program/division/unit.*)
3. A competitive hiring process, as defined in this guideline, was followed when the employee was hired on contract with the agency.
4. The budgeted position replacing the contractual position was not available at the time the contractual employee was hired.

Signatures Required:

Appointing Authority: _____
Print Name Signature Date

EEO Officer: _____
Print Name Signature Date

Contact Person: _____
Print Name Date Telephone Number

***Signatures of Appointing Authority and EEO Officer must be original signatures. If not, please check the box below and explain.**

OPSB STAFF: Date Rec'd: _____ Approved By _____ Date: _____

**DEPARTMENT OF BUDGET AND MANAGEMENT
TEST SECURITY AGREEMENT**

**FOR INDIVIDUALS PARTICIPATING IN THE DEVELOPMENT, REVIEW, OR REVISION
OF EXAMINATION CONTENT.**

POLICY:

In compliance with the statutory requirements of the Maryland merit system law and stipulations in contractual agreements with suppliers of tests and/or test materials, the Department of Budget and Management of the State of Maryland is required to establish security procedures to assure the maintenance of the integrity and confidentiality of the test.

The statutory requirements of Maryland merit system law prohibiting persons from willfully giving any information about a competitive examination that is not generally available to all competitors for the examination in order to "improve or harm the individual's rating for appointment" (SPPA §15-105) will be complied with fully. Penalty and prosecution imposed for violations of Section 15-105 are provided in Section 15-201. Additional disciplinary action can also be taken by the individual's employing agency.

A Test Security Agreement must be signed by all individuals (who will be referred to as Subject Matter Experts) who participate in the review, revision, or development of examination content for the Department of Budget and Management. Copies of the signed Test Security Agreement will be maintained by the Recruitment and Examination Division of the Department of Budget and Management.

Read and initial each of the following rules:

- _____ 1. Subject Matter Experts will not participate in the review, revision, or development of an examination for a job classification in which they will compete.
- _____ 2. The review, revision, or development of examination content by Subject Matter Experts will take place in the presence of an authorized representative of the Department of Budget and Management.
- _____ 3. No test questions and/or answers or notes which would be equivalent to making an outline of test subject matter coverage will be written down by Subject Matter Experts.
- _____ 4. Subject Matter Experts will maintain the confidentiality of all matters relating to examination development, content, and scoring.
- _____ 5. Any directions or instructions relating to the review, revision, or development of examination content given to Subject Matter Experts will be followed in the manner requested by authorized staff of the Department of Budget and Management.
- _____ 6. Subject matter experts will not allow any unauthorized persons to see test materials and shall not give written or verbal instructions, coaching, advice, or assistance relating in any way to the examination to any unauthorized person or test candidate.

I have read and agree to comply with the letter and spirit of the security procedures as stated above during my review of examinations and/or examination materials.

EXAMINATION TITLE:

NAME OF REVIEWER:

(Please Print)

REVIEWER'S JOB TITLE:

REVIEWER'S TELEPHONE :

REVIEWER'S E-MAIL:

REVIEWER'S SIGNATURE:

DATE:



**CE – CONTRACTUAL WORKERS
APPENDIX C - LEGAL CONSIDERATIONS**

Article - State Personnel and Pensions

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§13-101.

(a) In this title, “contractual employee” means an individual:

(1) who, under a written agreement, provides temporary personal services to the State for pay;

(2) who is not employed in a budgeted position; and

(3) who has an employer-employee relationship with the State in which the State:

(i) furnishes necessary tools and a place to work;

(ii) has the right to control and direct the details, means, and results of the performance of the services; and

(iii) has the right to discharge the individual from employment.

(b) “Contractual employee” does not include an individual who is employed as:

(1) an employee in the:

(i) skilled service;

(ii) professional service;

(iii) management service; or

(iv) executive service; or

(2) an emergency employee.

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Article - State Personnel and Pensions

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§13-201.

(a) This subtitle applies to all units in the Executive Branch of State government, except a unit with an independent personnel system.

(b) The Secretary may exempt specific types of contractual employees from the certification and other requirements of this subtitle.

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Article - State Personnel and Pensions

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§13-202.

(a) Except as otherwise authorized under § 13-201(b) of this subtitle, a unit may not execute or renew a contract for the employment of a contractual employee unless the Secretary issues to the unit a certification that:

(1) the employment of the contractual employee is for services that cannot be performed by assignment or hiring of any nontemporary employee;

(2) the rate of pay for the contractual employee is comparable to the rate paid to employees in positions that involve comparable duties, responsibilities, experience, and authority; and

(3) the services to be performed under the contract encompass functions that:

(i) are infrequent;

(ii) are needed for a limited time;

(iii) are unusual; or

(iv) need to be implemented quickly and for which there is no reasonable alternative.

(b) The Secretary may issue a certification for any effective period that does not exceed the period of the contract between the unit and the contractual employee.

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Article - State Personnel and Pensions

[Previous][Next][Another Article]

§13-203.

(a) The Secretary shall adopt guidelines for the recruitment and selection of contractual employees.

(b) These guidelines shall require a contracting unit:

(1) to make a reasonable effort to publicly solicit applicants for contractual employment;

(2) to make a reasonable effort to screen and select contractual employees by using methods and criteria that are uniformly applied to all applicants for a particular instance of contractual employment; and

(3) to use criteria to select contractual employees that:

(i) are based on the qualifications of the applicant; and

(ii) conform to subsection (c) of this section.

(c) (1) All personnel actions concerning a contractual employee shall be made in accordance with § 2-302 of this article.

(2) An action may be taken with regard to age, sex, or disability to the extent that age, sex, or disability involves a bona fide occupational qualification.

(d) To the extent feasible, a unit shall conduct the recruitment and selection of contractual employees according to the guidelines adopted under this section.

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Article - State Personnel and Pensions

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§13-204.

Except as authorized under § 13-303 of this title, the Secretary may not continue certification for any contractual employee if the Secretary determines that the services performed under the contract:

- (1) encompass permanent functions;
- (2) have no specific expiration date; and
- (3) regularly are performed on a basis that is at least equal to 50% of the work responsibility of a full-time permanent employee.

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Article - State Personnel and Pensions

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§13-205.

(a) The Secretary periodically shall audit a sample of instances of contractual employment in the various units to determine whether:

(1) justification exists in each instance to continue certification for the contractual employee; and

(2) the guidelines adopted under § 13-203 of this subtitle have been followed.

(b) (1) If, as a result of an audit, the Secretary determines that services performed by a contractual employee should be performed by a permanent employee, the Secretary shall:

(i) refuse to renew the certification for the contractual employee; and

(ii) recommend that a position for a permanent employee be established.

(2) If, as a result of an audit, the Secretary determines that a unit has not complied with the guidelines adopted under § 13-203 of this subtitle, the Secretary shall:

(i) advise the unit of the nature of the noncompliance; and

(ii) suggest alternate criteria or methods that would have complied with the guidelines.

[Previous][Next][Another Article]

HOUSE BILL 767

Unofficial Copy
P4

1998 Regular Session
(8lr2315)

ENROLLED BILL
-- Appropriations/Finance --

Introduced by **Delegates Poole and McKee**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **State Personnel - Contractual Employees - ~~Limitation on Certification~~**
3 **Transfers**

4 FOR the purpose of ~~prohibiting the Secretary of Budget and Management from~~
5 ~~continuing the certification of a contractual State employee if continuation of~~
6 ~~certification would result in the contractual employee remaining in a~~
7 ~~contractual position for a certain period of time; providing a certain exception~~
8 altering the circumstances under which a contractual employee, who is in a
9 contractual position that is replaced by a budgeted position, may transfer to the
10 budgeted position; and generally relating to renewals of certification for
11 authorized transfers of contractual State employees.

12 BY repealing and reenacting, with amendments,
13 Article - State Personnel and Pensions
14 Section ~~13-204~~ 13-302
15 Annotated Code of Maryland
16 (1997 Replacement Volume)

1 ~~BY repealing and reenacting, without amendments,~~
 2 ~~Article - State Personnel and Pensions~~
 3 ~~Section 13-303~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(1997 Replacement Volume)~~

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

8 **Article - State Personnel and Pensions**

9 ~~13-204.~~

10 ~~Except as authorized under § 13-303 of this title, the Secretary may not~~
 11 ~~continue certification for any contractual employee if:~~

12 ~~(1) the Secretary determines that the services performed under the~~
 13 ~~contract:~~

14 ~~[(1)] (I) encompass permanent functions;~~

15 ~~[(2)] (II) have no specific expiration date; and~~

16 ~~[(3)] (III) regularly are performed on a basis that is at least equal to 50%~~
 17 ~~of the work responsibility of a full-time permanent employee; OR~~

18 ~~(2) CONTINUATION OF CERTIFICATION WOULD RESULT IN THE~~
 19 ~~CONTRACTUAL EMPLOYEE REMAINING IN A CONTRACTUAL POSITION FOR A PERIOD~~
 20 ~~OF TIME EXCEEDING 3 YEARS.~~

21 ~~13-303.~~

22 ~~To enable a contractual employee to participate in any required examination for~~
 23 ~~a budgeted position under this subtitle, the Secretary may certify the continuation of~~
 24 ~~the employee's contract for a maximum period of 1 year after the date on which the~~
 25 ~~budgeted position is created.~~

26 ~~13-302.~~

27 If a contractual position is replaced by a budgeted position, the A contractual
 28 employee in the contractual position may transfer to the budgeted position, if [the
 29 employee]:

30 (1) THE EMPLOYEE MEETS THE MINIMUM QUALIFICATIONS FOR THE
 31 BUDGETED POSITION AND has at least [24] 6 continuous months of satisfactory
 32 service as of the date on which the replacement occurs;

33 (2) THERE IS A CONTINUING NEED FOR THE FUNCTION TO BE
 34 PERFORMED; AND

HOUSE BILL 767

1 (3) THE AGENCY CAN DOCUMENT A COMPETITIVE HIRING PROCESS;
2 AND

3 (4) THE BUDGETED POSITION REPLACING THE CONTRACTUAL
4 POSITION WAS NOT AVAILABLE AT THE TIME THE CONTRACTUAL EMPLOYEE WAS
5 HIRED.

6 [(2) has received a favorable performance evaluation by the appointing
7 authority; and

8 (3) has passed the examination, if one is required, for the class in which
9 the budgeted position is placed.]

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 1998.

SENATE BILL 172

Unofficial Copy
P4

2000 Regular Session
0lr0087

By: **Chairman, Finance Committee (Departmental - Budget and Management)**

Introduced and read first time: January 24, 2000

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 25, 2000

CHAPTER _____

1 AN ACT concerning

2 **State Employees - Contractual Employees - Credit for Service**

3 FOR the purpose of providing that a contractual employee who is selected to fill
4 certain budgeted positions shall be given credit for service in the contractual
5 position for the purpose of establishing steps in the pay grade applicable to the
6 budgeted position, annual leave, and seniority rights and shall become a
7 member of the Employees' Pension System of the State of Maryland; providing
8 for the application of this Act; and generally relating to the rights of contractual
9 employees who are selected to fill budgeted positions.

10 BY repealing and reenacting, with amendments,
11 Article - State Personnel and Pensions
12 Section 13-304
13 Annotated Code of Maryland
14 (1997 Replacement Volume and 1999 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 Personnel and Pensions**

18 13-304.

19 (a) A contractual employee who transfers to a budgeted position under this
20 subtitle OR WHO IS SELECTED TO FILL A BUDGETED ~~SKILLED SERVICE,~~
21 ~~PROFESSIONAL SERVICE, MANAGEMENT SERVICE, EXECUTIVE SERVICE, INCLUDING~~
22 ~~A SPECIAL APPOINTMENT POSITION IN THOSE SERVICE CATEGORIES POSITION IN~~

SENATE BILL 172

1 THE STATE PERSONNEL MANAGEMENT SYSTEM, WITHOUT A BREAK IN SERVICE, IN
2 THE SAME PRINCIPAL UNIT THAT EMPLOYS THE CONTRACTUAL EMPLOYEE, shall be
3 given credit for service in the contractual position for the purpose of establishing:

- 4 (1) steps in the pay grade applicable to the budgeted position;
- 5 (2) annual leave; and
- 6 (3) seniority rights.

7 (b) A contractual employee who transfers to a budgeted position under this
8 subtitle OR WHO IS SELECTED TO FILL A BUDGETED POSITION shall become a
9 member of the Employees' Pension System of the State of Maryland.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
11 shall apply to a contractual employee who transfers to or is selected to fill a budgeted
12 position on or after ~~October 1, 1999~~ January 1, 1998.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 July 1, 2000.