

SENATE BILL 487

P2
SB 832/20 – EHE

5lr2860

By: **Senators Jennings and Hester**
Introduced and read first time: January 22, 2025
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Major Information Technology Development Projects**

3 FOR the purpose of requiring the Secretary of Information Technology to conduct a certain
4 risk assessment of certain major information technology development projects under
5 certain circumstances; authorizing the Secretary to recommend an increase in a
6 certain limitation of liability amount under certain circumstances; requiring the
7 Chief Procurement Officer to review a certain recommendation; authorizing the
8 Chief Procurement Officer to approve a certain change to a certain limitation of
9 liability; requiring a procurement contract for a major information technology
10 development project to include certain terms and conditions; requiring the Chief
11 Procurement Officer and the Secretary to study certain procurement processes of
12 major information technology development projects with certain stakeholders and
13 make certain recommendations; and generally relating to procurement and major
14 information technology development projects.

15 BY repealing and reenacting, without amendments,
16 Article – State Finance and Procurement
17 Section 3.5–301(a), (e), (h), and (k)
18 Annotated Code of Maryland
19 (2021 Replacement Volume and 2024 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – State Finance and Procurement
22 Section 3.5–308 and 3.5–309(n)
23 Annotated Code of Maryland
24 (2021 Replacement Volume and 2024 Supplement)

25 BY adding to
26 Article – State Finance and Procurement
27 Section 13–228
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



(2021 Replacement Volume and 2024 Supplement)

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

Article – State Finance and Procurement

3.5–301.

(a) In this subtitle the following words have the meanings indicated.

(e) (1) “Development” means all expenditures for a new information technology system or an enhancement to an existing system including system:

(i) planning;

(ii) creation;

(iii) installation;

(iv) testing; and

(v) initial training.

(2) “Development” does not include:

(i) ongoing operating costs, software or hardware maintenance, routine upgrades, or modifications that merely allow for a continuation of the existing level of functionality; or

(ii) expenditures made after a new or enhanced system has been legally accepted by the user and is being used for the business process for which it was intended.

(h) “Information technology” means all electronic information processing, including:

(1) maintenance;

(2) networking;

(3) telecommunications;

(4) hardware;

(5) software and applications; and

1 (6) associated services.

2 (k) (1) “Major information technology development project” means any
3 information technology development project that meets one or more of the following
4 criteria:

5 (i) except as provided in paragraph (2) of this subsection, the
6 estimated total cost of development equals or exceeds \$5,000,000;

7 (ii) the project is undertaken to support a critical business function
8 associated with the public health, education, safety, or financial well-being of the residents
9 of Maryland; or

10 (iii) the Secretary determines that the project requires the special
11 attention and consideration given to a major information technology development project
12 due to:

13 1. the significance of the project’s potential benefits or risks;

14 2. the impact of the project on the public or local
15 governments;

16 3. the public visibility of the project; or

17 4. other reasons as determined by the Secretary.

18 (2) “Major information technology development project” does not include:

19 (i) technology that is reoccurring, standard operating technology as
20 determined by the Secretary and submitted to the Legislative Policy Committee for a
21 30-day review and comment period; or

22 (ii) a project with an estimated total cost of development that is:

23 1. less than \$5,000,000 and is funded with money set aside
24 for expedited projects in the Fund; or

25 2. more than \$5,000,000 and is funded with the money set
26 aside for expedited projects in the Fund if the Secretary determines that:

27 A. the unit of State government has sufficient
28 implementation resources, including human capital, subject matter expertise, and
29 technological infrastructure, or has the means to obtain these resources before project
30 initiation;

31 B. there is no sufficient alternative within the State’s
32 information technology inventory; and

1 C. the project will result in a comprehensive solution
2 designed to meet a cohesive set of business and technological objectives.

3 3.5–308.

4 (a) This section does not apply to a public institution of higher education.

5 (b) Before submitting its information technology project requests, a unit of State
6 government shall submit information in support of the request required by the Secretary
7 for review and determination consistent with § 3.5–301(k) of this subtitle.

8 (c) In reviewing information technology project requests, the Secretary may
9 change a unit's designation of a major information technology development project.

10 (d) **(1)** The Secretary shall review and, with the advice of the Secretary of
11 Budget and Management, approve major information technology development projects and
12 specifications for consistency with all statewide plans, policies, and standards, including a
13 systems development life cycle plan.

14 **(2) (I) IF, AFTER A REVIEW UNDER PARAGRAPH (1) OF THIS**
15 **SUBSECTION, THE SECRETARY BELIEVES A MAJOR INFORMATION TECHNOLOGY**
16 **DEVELOPMENT PROJECT MAY PRESENT AN EXCEPTIONAL RISK TO THE STATE, THE**
17 **SECRETARY SHALL CONDUCT A RISK ASSESSMENT PRIOR TO APPROVING THE**
18 **MAJOR INFORMATION TECHNOLOGY DEVELOPMENT PROJECT.**

19 **(II) A RISK ASSESSMENT CONDUCTED UNDER SUBPARAGRAPH**
20 **(I) OF THIS PARAGRAPH SHALL CONSIDER THE NATURE, PROCESSING, AND USE OF**
21 **SENSITIVE OR PERSONALLY IDENTIFIABLE INFORMATION.**

22 **(III) IF THE RISK ASSESSMENT CONCLUDES THAT THE MAJOR**
23 **INFORMATION TECHNOLOGY DEVELOPMENT PROJECT PRESENTS AN EXCEPTIONAL**
24 **RISK TO THE STATE AND THE LIMITATION OF LIABILITY AMOUNT PROVIDED UNDER**
25 **§ 13–228 OF THIS ARTICLE IS NOT ADEQUATE TO PROTECT THE INTEREST OF THE**
26 **STATE, THE SECRETARY MAY RECOMMEND THE UNIT INCREASE THE LIMITATION OF**
27 **LIABILITY AMOUNT.**

28 **(IV) A RECOMMENDATION MADE UNDER SUBPARAGRAPH (III)**
29 **OF THIS PARAGRAPH SHALL:**

30 1. BE IN WRITING;

31 2. DESCRIBE THE RISKS TO THE STATE;

32 3. EXPLAIN THE REASONS THAT THE LIMITATIONS

1 **REQUIRED UNDER § 13–228 OF THIS ARTICLE ARE NOT ADEQUATE TO MITIGATE THE**
2 **RISKS DESCRIBED; AND**

3 **4. RECOMMEND A REASONABLE MAXIMUM**
4 **ALTERNATIVE LIMITATION OF LIABILITY AMOUNT, CALCULATED AS A MULTIPLE OF**
5 **THE CONTRACT VALUE.**

6 **(3) THE CHIEF PROCUREMENT OFFICER:**

7 **(I) SHALL REVIEW A RECOMMENDATION MADE UNDER**
8 **PARAGRAPH (2) OF THIS SUBSECTION; AND**

9 **(II) MAY APPROVE A CHANGE TO THE LIMITATION OF LIABILITY**
10 **REQUIRED UNDER § 13–228 OF THIS ARTICLE.**

11 (e) The Secretary shall be responsible for overseeing the implementation of major
12 information technology development projects, regardless of fund source.

13 (f) (1) With the advice of the Secretary of Budget and Management,
14 expenditures for major information technology development projects shall be subject to the
15 approval of the Secretary who shall approve expenditures only when those projects are
16 consistent with statewide plans, policies, and standards.

17 (2) The Secretary shall make a recommendation to the Secretary of Budget
18 and Management that project funds, regardless of fund source, be withheld if:

19 (i) a unit of State government is not consistently reporting on the
20 status of a project or projects to the Department in the form and manner required by the
21 Department; or

22 (ii) the Department determines that project implementation issues
23 exist, including project timeline delays, significant cost increases, vendor nonperformance,
24 decreased agency capacity, or other issues that indicate issues of concern that could
25 jeopardize successful implementation.

26 (g) (1) The Secretary shall approve funding for major information technology
27 development projects, expedited projects, and other expenditures from the Fund only when:

28 (i) the major information technology development projects or the
29 expedited projects are in compliance with statewide plans, policies, and standards, as
30 determined by the Secretary; and

31 (ii) the major information technology development projects are
32 supported by an approved systems development life cycle plan.

1 (2) An approved systems development life cycle plan shall include
2 submission of:

3 (i) a project planning request that details initial planning for the
4 project, including:

5 1. the project title, appropriation code, and summary;

6 2. a description of:

7 A. the business and technology outcomes to be achieved by
8 the project;

9 B. the features available to the end user on completion,
10 including user acceptance testing and accessibility plans;

11 C. the potential risks associated with the project;

12 D. possible alternatives; and

13 E. the scope and complexity of the project; and

14 3. an estimate of:

15 A. the total costs required to complete through planning; and

16 B. the fund sources available to support planning costs; and

17 (ii) a project implementation request to begin full design,
18 development, and implementation of the project after the completion of planning, including:

19 1. the project title, appropriation code, and summary;

20 2. a description of:

21 A. the business and technology outcomes to be achieved by
22 the project and the metrics by which the success of those outcomes will be measured;

23 B. the features available to the end user on completion,
24 including user acceptance testing and accessibility plans;

25 C. the potential risks associated with the project;

26 D. possible alternatives;

27 E. the scope and complexity of the project; and

1 F. how the project meets the goals of the statewide master
2 plan; and

3 3. an estimate of:

4 A. the total project cost, by phase; and

5 B. the fund sources to be utilized.

6 (3) The Secretary may approve funding incrementally, consistent with the
7 systems development life cycle plan.

8 (h) The Department, in consultation with the Modernize Maryland Commission
9 established under § 3.5–316 of this subtitle, shall:

10 (1) develop standards for units of State government to assist in identifying
11 legacy systems that require modernization projects appropriate to be financed as an
12 expedited project through the Fund;

13 (2) adopt an Information Technology Investment Maturity Model that
14 includes:

15 (i) criteria to inform and prioritize investment decisions;

16 (ii) processes to develop the information required to evaluate
17 investment proposals against the criteria under item (i) of this item; and

18 (iii) management processes to monitor the implementation of
19 approved modernization projects; and

20 (3) develop a State Modernization Plan.

21 **(I) IN THE ANNUAL REPORT SUBMITTED IN ACCORDANCE WITH §**
22 **3.5–309(N) OF THIS SUBTITLE, BEGINNING WITH THE ANNUAL REPORT SUBMITTED**
23 **IN 2026, THE SECRETARY SHALL PUBLISH A LIST OF RECOMMENDATIONS MADE**
24 **UNDER SUBSECTION (D)(2) OF THIS SECTION AND THE OUTCOME OF THE**
25 **RECOMMENDATION REVIEW CONDUCTED UNDER SUBSECTION (D)(3) OF THIS**
26 **SECTION DURING THE PRECEDING FISCAL YEAR.**

27 3.5–309.

28 (n) (1) On or before November 1 of each year, the Secretary shall report to the
29 Governor and the Secretary of Budget and Management and, in accordance with § 2–1257
30 of the State Government Article, to the Senate Budget and Taxation Committee, the Senate
31 Committee on Education, Energy, and the Environment, the House Appropriations

1 Committee, the House Health and Government Operations Committee, and the Joint
2 Committee on Cybersecurity, Information Technology, and Biotechnology.

3 (2) The report shall include:

4 (i) the financial status of the Fund and a summary of its operations
5 for the preceding fiscal year;

6 (ii) an accounting for the preceding fiscal year of all money from each
7 of the revenue sources specified in subsection (e) of this section, including any expenditures
8 made from the Fund; [and]

9 (iii) for each project receiving money from the Fund in the preceding
10 fiscal year and for each major information technology development project or expedited
11 project receiving funding from any source other than the Fund in the preceding fiscal year:

- 12 1. the status of the project and project funding decisions;
- 13 2. a comparison of estimated and actual costs of the project;
- 14 3. any known or anticipated changes in scope or costs of the
15 project;
- 16 4. an evaluation of whether the project is using best
17 practices; and
- 18 5. a summary of any monitoring and oversight of the project
19 from outside the agency in which the project is being developed, including a description of
20 any problems identified by any external review and any corrective actions taken; AND

21 (IV) THE LIST OF RECOMMENDATIONS AND REVIEW OUTCOMES
22 REQUIRED UNDER § 3.5–308(I) OF THIS SUBTITLE.

23 13–228.

24 (A) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION AND §
25 3.5–308(D)(2)(III) OF THIS ARTICLE, EACH PROCUREMENT CONTRACT FOR A MAJOR
26 INFORMATION TECHNOLOGY DEVELOPMENT PROJECT SHALL INCLUDE TERMS AND
27 CONDITIONS GOVERNING THE INDEMNIFICATION OBLIGATIONS AND LIMITATION OF
28 LIABILITY OF THE CONTRACTOR THAT ARE REASONABLE AND MAY NOT EXCEED IN
29 AGGREGATE TWICE THE VALUE OF THE CONTRACT.

30 (B) A CONTRACT PROVISION ADOPTED IN ACCORDANCE WITH SUBSECTION
31 (A) OF THIS SECTION MAY NOT LIMIT THE LIABILITY OF A CONTRACTOR FOR:

1 **(1) INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD, OR**
2 **RECKLESSNESS OF THE CONTRACTOR OR AN EMPLOYEE OF THE CONTRACTOR; OR**

3 **(2) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO**
4 **REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE**
5 **NEGLIGENCE OF THE CONTRACTOR OR AN EMPLOYEE OF THE CONTRACTOR.**

6 **(C) NOTHING IN THIS SECTION PROHIBITS A UNIT FROM AGREEING TO A**
7 **LIMITATION OF LIABILITY THAT IS LESS THAN TWICE THE VALUE OF THE CONTRACT.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Chief Procurement Officer
9 in the Department of General Services and the Secretary of Information Technology shall:

10 (1) together with appropriate stakeholders, examine the procurement
11 processes for major information technology development projects, including:

12 (i) the time frames for competitive sealed procurements for major
13 information technology development projects, from issuing the request for proposal through
14 evaluation and contract award; and

15 (ii) how the associated time frames impact the allocation of
16 personnel within companies bidding on major information technology development
17 projects;

18 (2) make recommendations on adjusting the procurement process and
19 associated timeline for major information technology development projects to ensure
20 personnel with required expertise are available to work on an awarded contract; and

21 (3) on or before December 1, 2026, report to the General Assembly, in
22 accordance with § 2-1257 of the State Government Article, on the examination and
23 recommendations conducted under this section.

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