

# SENATE BILL 507

P2

EMERGENCY BILL

2lr2248

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By: **Senators Salling, Bailey, and Ready**

Introduced and read first time: January 28, 2022

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Construction Contracts – Contract Modification Clause**

3 FOR the purpose of requiring a procurement contract for construction to include a clause  
4 providing for contract modification when there is a substantial increase in the price  
5 of materials required to complete the contract, as determined by the unit, due to  
6 certain factors; and generally relating to contract modifications for construction  
7 contracts.

8 BY repealing and reenacting, with amendments,  
9 Article – State Finance and Procurement  
10 Section 13–218  
11 Annotated Code of Maryland  
12 (2021 Replacement Volume)

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

15 **Article – State Finance and Procurement**

16 13–218.

17 (a) Each procurement contract shall include clauses covering:

18 (1) termination for default;

19 (2) termination wholly or partly by the State for its convenience if the head  
20 of the primary procurement unit determines that termination is appropriate;

21 (3) variations that occur between estimated and actual quantities of work  
22 in a procurement contract;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (4) liquidated damages, as appropriate;

2 (5) specified excuses for nonperformance;

3 (6) except for real property leases, the unilateral right of the State to order  
4 in writing:

5 (i) changes in the work, if the changes are within the scope of the  
6 procurement contract; and

7 (ii) a temporary stop or delay in performance;

8 (7) the obligation of the contractor to comply with the political contribution  
9 reporting requirements under Title 14 of the Election Law Article, to which the contractor  
10 may be subject as required under § 17–402 of this article; and

11 (8) nonvisual access for information technology as required under §  
12 3A–312 of this article.

13 (b) In addition to the clauses required under subsection (a) of this section, a  
14 procurement contract for construction shall include:

15 (1) **SUBJECT TO THE REQUIREMENTS OF SUBSECTION (E) OF THIS**  
16 **SECTION, A CLAUSE PROVIDING FOR CONTRACT MODIFICATION WHEN THERE IS A**  
17 **SUBSTANTIAL INCREASE IN THE PRICE OF MATERIALS REQUIRED TO COMPLETE THE**  
18 **CONTRACT, AS DETERMINED BY THE PROCURING UNIT, DUE TO:**

19 (I) **DELAYED NOTICE OF COMMENCEMENT BY THE UNIT FOR**  
20 **ANY REASON;**

21 (II) **ACTS OR OMISSIONS BY THE UNIT;**

22 (III) **CHANGES IN THE WORK OR THE SEQUENCING OF THE WORK**  
23 **ORDERED BY THE UNIT OR ARISING FROM DECISIONS OF THE UNIT THAT IMPACT**  
24 **THE TIME OF PERFORMANCE OF THE WORK;**

25 (IV) **ENCOUNTERING HAZARDOUS MATERIALS OR CONCEALED**  
26 **OR UNKNOWN CONDITIONS;**

27 (V) **DELAY AUTHORIZED BY THE UNIT PENDING DISPUTE**  
28 **RESOLUTION OR SUSPENSION BY THE UNIT; OR**

29 (VI) **FORCE MAJEURE EVENTS, INCLUDING AN EPIDEMIC OR A**  
30 **PANDEMIC;**

1           **(2)** a clause providing for contract modification if the condition of a site  
2 differs from the condition described in the specifications; and

3           ~~[(2)]~~ **(3)** a clause covering the requirements for notice of contract claims,  
4 submission of contract claims, and resolution of contract claims under § 15–219 of this  
5 article.

6           (c) Each procurement contract shall include a clause that gives to the parties  
7 notice that preexisting regulations apply to the procurement contract in accordance with §  
8 11–206 of this article.

9           (d) At any time after the parties enter into a procurement contract they may  
10 include additional clauses in the procurement contract, by consent, without consideration.

11           (e) A clause required under this section for contract modification of or change  
12 orders to a procurement contract for construction shall:

13           (1) make each contract modification or change order that affects the price  
14 of the procurement contract subject to:

15                   (i) prior written approval from the unit and any other person  
16 responsible for the procurement contract; and

17                   (ii) prior certification by the fiscal authority responsible for the unit  
18 about:

19                           1. the availability of money; and

20                           2. the effect of the contract modification or change order on  
21 the project budget or the total construction cost; and

22           (2) prohibit the contract modification or change order if the certification by  
23 the fiscal authority discloses that the contract modification or change order will increase  
24 the cost beyond budgeted and available money, unless:

25                   (i) sufficient additional money is made available; or

26                   (ii) the scope of the project is adjusted to allow completion within the  
27 project budget.

28           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
29 apply only prospectively and may not be applied or interpreted to have any effect on or  
30 application to any construction contract executed before the effective date of this Act.

31           SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
32 measure, is necessary for the immediate preservation of the public health or safety, has  
33 been passed by a ye and nay vote supported by three–fifths of all the members elected to

1 each of the two Houses of the General Assembly, and shall take effect from the date it is  
2 enacted.