

# HOUSE BILL 1588

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CF SB 832

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By: **Delegate Kipke**

Introduced and read first time: February 13, 2020

Assigned to: Rules and Executive Nominations

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## 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; requiring the risk assessment to consider certain factors;  
6 authorizing the Secretary to recommend an increase in a certain limitation of  
7 liability amount under certain circumstances; requiring a certain recommendation  
8 to be made in a certain manner and include certain information; requiring the Chief  
9 Procurement Officer to review a certain recommendation; authorizing the Chief  
10 Procurement Officer to approve a certain change to a certain limitation of liability;  
11 requiring a procurement contract for a major information technology development  
12 project to include certain terms and conditions; requiring a certain limitation of  
13 liability to be reasonable and not exceed a certain amount; prohibiting a certain  
14 contract provision from limiting the liability of a contractor for certain acts; limiting  
15 the application of certain provisions of law; requiring a certain annual report  
16 submitted by the Secretary to include certain information, beginning with a certain  
17 annual report; requiring the Chief Procurement Officer and the Secretary to study  
18 certain procurement processes of major information technology development projects  
19 with certain stakeholders, make certain recommendations, and report to the General  
20 Assembly on or before a certain date; and generally relating to procurement and  
21 major information technology development projects.

22 BY repealing and reenacting, without amendments,  
23 Article – State Finance and Procurement  
24 Section 3A–301(a), (b), (d), and (f)  
25 Annotated Code of Maryland  
26 (2015 Replacement Volume and 2019 Supplement)

27 BY repealing and reenacting, with amendments,  
28 Article – State Finance and Procurement  
29 Section 3A–308 and 3A–309(m)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2015 Replacement Volume and 2019 Supplement)

3 BY adding to  
4 Article – State Finance and Procurement  
5 Section 13–228  
6 Annotated Code of Maryland  
7 (2015 Replacement Volume and 2019 Supplement)

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

10 **Article – State Finance and Procurement**

11 3A–301.

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

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

15 (i) planning;

16 (ii) procurement;

17 (iii) creation;

18 (iv) installation;

19 (v) testing; and

20 (vi) initial training.

21 (2) “Development” does not include:

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

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

28 (d) “Information technology” means all electronic information processing  
29 hardware and software, including:

30 (1) maintenance;

1 (2) telecommunications; and

2 (3) associated consulting services.

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

5 (1) the estimated total cost of development equals or exceeds \$1,000,000;

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

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

11 (i) the significance of the project’s potential benefits or risks;

12 (ii) the impact of the project on the public or local governments;

13 (iii) the public visibility of the project; or

14 (iv) other reasons as determined by the Secretary.

15 3A-308.

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

17 (b) In submitting its information technology project requests, a unit of State  
18 government shall designate projects which are major information technology development  
19 projects.

20 (c) In reviewing information technology project requests, the Secretary may  
21 change a unit’s designation of a major information technology development project.

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

26 (2) (I) IF, AFTER A REVIEW UNDER PARAGRAPH (1) OF THIS  
27 SUBSECTION, THE SECRETARY BELIEVES A MAJOR INFORMATION TECHNOLOGY  
28 DEVELOPMENT PROJECT MAY PRESENT AN EXCEPTIONAL RISK TO THE STATE, THE  
29 SECRETARY SHALL CONDUCT A RISK ASSESSMENT PRIOR TO APPROVING THE  
30 MAJOR INFORMATION TECHNOLOGY DEVELOPMENT PROJECT.

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

4                   **(III) IF THE RISK ASSESSMENT CONCLUDES THAT THE MAJOR**  
5 **INFORMATION TECHNOLOGY DEVELOPMENT PROJECT PRESENTS AN EXCEPTIONAL**  
6 **RISK TO THE STATE AND THE LIMITATION OF LIABILITY AMOUNT PROVIDED UNDER**  
7 **§ 13–228 OF THIS ARTICLE IS NOT ADEQUATE TO PROTECT THE INTEREST OF THE**  
8 **STATE, THE SECRETARY MAY RECOMMEND THE UNIT INCREASE THE LIMITATION OF**  
9 **LIABILITY AMOUNT.**

10                   **(IV) A RECOMMENDATION MADE UNDER SUBPARAGRAPH (III)**  
11 **OF THIS PARAGRAPH SHALL:**

12                           **1. BE IN WRITING;**

13                           **2. DESCRIBE THE RISKS TO THE STATE;**

14                           **3. EXPLAIN THE REASONS THAT THE LIMITATIONS**  
15 **REQUIRED UNDER § 13–228 OF THIS ARTICLE ARE NOT ADEQUATE TO MITIGATE THE**  
16 **RISKS DESCRIBED; AND**

17                           **4. RECOMMEND A REASONABLE MAXIMUM**  
18 **ALTERNATIVE LIMITATION OF LIABILITY AMOUNT, CALCULATED AS A MULTIPLE OF**  
19 **THE CONTRACT VALUE.**

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

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

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

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

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

31           (g)     (1)    The Secretary shall approve funding for major information technology

1 development projects only when those projects are supported by an approved systems  
2 development life cycle plan.

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

5 (i) a project planning request that details initial planning for the  
6 project, including:

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

8 2. a description of:

9 A. the needs addressed by the project;

10 B. the potential risks associated with the project;

11 C. possible alternatives; and

12 D. the scope and complexity of the project; and

13 3. an estimate of:

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

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

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

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

19 2. a description of:

20 A. the needs addressed by the project;

21 B. the potential risks associated with the project;

22 C. possible alternatives;

23 D. the scope and complexity of the project; and

24 E. how the project meets the goals of the statewide master  
25 plan; and

26 3. an estimate of:

1 A. the total project cost; and

2 B. the fund sources available.

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

5 **(H) IN THE ANNUAL REPORT SUBMITTED IN ACCORDANCE WITH §**  
6 **3A-309(M) OF THIS SUBTITLE, BEGINNING WITH THE ANNUAL REPORT SUBMITTED**  
7 **IN 2021, THE SECRETARY SHALL PUBLISH A LIST OF RECOMMENDATIONS MADE**  
8 **UNDER SUBSECTION (D)(2) OF THIS SECTION AND THE OUTCOME OF THE**  
9 **RECOMMENDATION REVIEW CONDUCTED UNDER SUBSECTION (D)(3) OF THIS**  
10 **SECTION DURING THE PRECEDING FISCAL YEAR.**

11 3A-309.

12 (m) (1) On or before November 1 of each year, the Secretary shall report to the  
13 Governor, the Secretary of Budget and Management, and to the budget committees of the  
14 General Assembly and submit a copy of the report to the General Assembly, in accordance  
15 with § 2-1257 of the State Government Article.

16 (2) The report shall include:

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

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

22 (iii) for each project receiving money from the Fund in the preceding  
23 fiscal year and for each major information technology development project receiving  
24 funding from any source other than the Fund in the preceding fiscal year:

25 1. the status of the project;

26 2. a comparison of estimated and actual costs of the project;

27 3. any known or anticipated changes in scope or costs of the  
28 project;

29 4. an evaluation of whether the project is using best  
30 practices; and

31 5. a summary of any monitoring and oversight of the project  
32 from outside the agency in which the project is being developed, including a description of

1 any problems identified by any external review and any corrective actions taken; AND

2 (IV) THE LIST OF RECOMMENDATIONS AND REVIEW OUTCOMES  
3 REQUIRED UNDER § 3A-308(H) OF THIS SUBTITLE.

4 13-228.

5 (A) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION AND §  
6 3A-308(D)(2)(III) OF THIS ARTICLE, EACH PROCUREMENT CONTRACT FOR A MAJOR  
7 INFORMATION TECHNOLOGY DEVELOPMENT PROJECT SHALL INCLUDE TERMS AND  
8 CONDITIONS GOVERNING THE INDEMNIFICATION OBLIGATIONS AND LIMITATION OF  
9 LIABILITY OF THE CONTRACTOR WHICH ARE REASONABLE AND MAY NOT EXCEED IN  
10 AGGREGATE TWICE THE VALUE OF THE CONTRACT.

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

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

15 (2) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO  
16 REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE  
17 NEGLIGENCE OF THE CONTRACTOR OR AN EMPLOYEE OF THE CONTRACTOR.

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

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

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

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

27 (ii) how the associated time frames impact the allocation of  
28 personnel within companies bidding on major information technology development  
29 projects;

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

1                   (3)    on or before December 1, 2021, shall report to the General Assembly, in  
2 accordance with § 2-1257 of the State Government Article, on the study and  
3 recommendations conducted under this section.

4           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2020.