

# SENATE BILL 358

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By: **Senators Salling, Rosapepe, and Bailey**  
Introduced and read first time: January 30, 2023  
Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 10, 2023

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## CHAPTER \_\_\_\_\_

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 or decrease  
5 in the price of materials required to complete the contract, according to prevailing  
6 average market prices and as determined by the unit, due to certain factors; and  
7 generally relating to contract modification for construction contracts.

8 BY repealing and reenacting, with amendments,  
9 Article – State Finance and Procurement  
10 Section 13–201 and 13–218  
11 Annotated Code of Maryland  
12 (2021 Replacement Volume and 2022 Supplement)

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 13–201.

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

18 (b) “Change order” means a written order that:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1           (1) is signed by the procurement officer; and

2           (2) directs the contractor to make changes that the procurement contract  
3 authorizes the procurement officer to order without the consent of the contractor.

4           (c) “Contract modification” means a written alteration that:

5           (1) affects specifications, delivery point, date of delivery, period of  
6 performance, price, quantity, or other provisions of a procurement contract; and

7           (2) is accomplished by mutual action of the parties to the procurement  
8 contract.

9           (d) “Cost-reimbursement contract” means a procurement contract under which  
10 the State reimburses a contractor for fees and other costs that are:

11           (1) recognized as allowable and allocable under the regulations of the  
12 Board on price and cost principles; and

13           (2) within a stated ceiling.

14           **(E) “SUBSTANTIAL” MEANS LARGE IN AMOUNT, SIZE, OR NUMBER.**

15 13–218.

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

17           (1) termination for default;

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

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

22           (4) liquidated damages, as appropriate;

23           (5) specified excuses for nonperformance;

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

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

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

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

4 (8) nonvisual access for information technology as required under §  
5 3A–312 of this article.

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

8 (1) **SUBJECT TO THE REQUIREMENTS OF SUBSECTION (E) OF THIS**  
9 **SECTION, A CLAUSE PROVIDING FOR CONTRACT MODIFICATION WHEN THERE IS A**  
10 **SUBSTANTIAL INCREASE OR DECREASE IN THE PRICE OF MATERIALS, UP TO A**  
11 **MAXIMUM OF 10%, REQUIRED TO COMPLETE THE CONTRACT, ACCORDING TO**  
12 **PREVAILING AVERAGE MARKET PRICES AND AS DETERMINED BY THE PROCURING**  
13 **UNIT, DUE TO:**

14 (I) **DELAYED NOTICE OF COMMENCEMENT BY THE UNIT FOR**  
15 **ANY REASON;**

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

17 (III) **CHANGES IN THE WORK OR THE SEQUENCING OF THE WORK**  
18 **ORDERED BY THE UNIT OR ARISING FROM THE DECISIONS OF THE UNIT THAT**  
19 **IMPACT THE TIME OF PERFORMANCE OF THE WORK;**

20 (IV) **ENCOUNTERING HAZARDOUS MATERIALS OR CONCEALED**  
21 **OR UNKNOWN CONDITIONS;**

22 (V) **DELAY AUTHORIZED BY THE UNIT PENDING DISPUTE**  
23 **RESOLUTION OR SUSPENSION BY THE UNIT; OR**

24 (VI) **FORCE MAJEURE EVENTS, INCLUDING AN EPIDEMIC OR A**  
25 **PANDEMIC;**

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

28 [(2)] (3) a clause covering the requirements for notice of contract claims,  
29 submission of contract claims, and resolution of contract claims under § 15–219 of this  
30 article.

31 (c) Each procurement contract shall include a clause that gives to the parties  
32 notice that preexisting regulations apply to the procurement contract in accordance with §  
33 11–206 of this article.

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

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

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

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

9 (ii) prior certification by the fiscal authority responsible for the unit  
10 about:

11 1. the availability of money; and

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

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

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

18 (ii) the scope of the project is adjusted to allow completion within the  
19 project budget.

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

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2023.