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By: **Delegates Trueschler and Barkley**  
 Introduced and read first time: February 10, 2006  
 Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Procurement - Public Facility Construction - Delayed Completion Damages**  
3                                   **Formula**

4 FOR the purpose of authorizing a procurement contract for construction of a public  
5 facility to include a clause that specifies an amount of delayed completion  
6 damages calculated using a certain formula; requiring the formula and certain  
7 information relating to the formula to be stated in the procurement contract if  
8 the formula is used to calculate the delayed completion damages; establishing  
9 that delayed completion damages clauses are material and significant terms of  
10 the contract that shall be strictly enforced; establishing that the delayed  
11 completion damages shall be in addition to other recognized actual damages;  
12 defining certain terms; and generally relating to delayed completion damages in  
13 procurement contracts for public facility construction.

14 BY adding to  
15 Article - State Finance and Procurement  
16 Section 13-227  
17 Annotated Code of Maryland  
18 (2001 Replacement Volume and 2005 Supplement)

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

21                                   **Article - State Finance and Procurement**

22 13-227.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
24 INDICATED.

25 (2) (I) "PUBLIC FACILITY" MEANS A BUILDING, STRUCTURE, OR SITE  
26 IMPROVEMENT THAT IS OWNED OR LEASED BY THE STATE OR A POLITICAL  
27 SUBDIVISION OF THE STATE.

28 (II) "PUBLIC FACILITY" INCLUDES:

- 1                                   1.       PUBLIC SCHOOLS, COLLEGES, AND UNIVERSITIES;
- 2                                   2.       PUBLIC HOSPITALS, MEDICAL FACILITIES, AND HEALTH
- 3 CLINICS;
- 4                                   3.       A PUBLIC MASS TRANSPORTATION ACCOMMODATION,
- 5 SUCH AS A TERMINAL OR STATION, THAT IS SUPPORTED BY PUBLIC FUNDS;
- 6                                   4.       A BUILDING OR AN IMPROVEMENT OF A PUBLIC AREA
- 7 USED FOR GATHERING OR AMUSEMENT, INCLUDING A PUBLIC PARK, RECREATION
- 8 CENTER, SENIOR CENTER, LIBRARY, MUSEUM, OR ANY SIMILAR GATHERING OR
- 9 AMUSEMENT AREA; AND
- 10                                  5.       A BUILDING USED TO PROVIDE GOVERNMENT SERVICES
- 11 TO THE PUBLIC INCLUDING COURT BUILDINGS, CITY AND TOWN HALLS, THE STATE
- 12 HOUSE AND THE CORRESPONDING OFFICE BUILDINGS, OR ANY SIMILAR
- 13 GOVERNMENT BUILDING.

14                                  (III)    "PUBLIC FACILITY" DOES NOT INCLUDE:

- 15                                  1.       HIGHWAYS OR ROADS;
- 16                                  2.       PUBLIC UTILITIES THAT ARE OUTSIDE THE BOUNDARIES
- 17 OF AN IMPROVED SITE; AND
- 18                                  3.       BUILDINGS, STRUCTURES, AND SITE IMPROVEMENTS
- 19 THAT ARE NOT OPEN TO THE PUBLIC.

20                                  (3)     "TOTAL DESIGN AND CONSTRUCTION COSTS" MEANS THE TOTAL

21 DESIGN FEES INCURRED UP TO THE DATE THE PROJECT IS BID PLUS THE ARCHITECT

22 OR ENGINEER'S ESTIMATE OF CONSTRUCTION COSTS.

23                                  (4)     "SITE IMPROVEMENT" INCLUDES GRADING, UTILITIES WITHIN THE

24 BOUNDARIES OF THE IMPROVED SITE, PAVEMENTS, CURBS, WALLS, FENCES, WATER

25 FEATURES, LANDSCAPING, SITE AMENITIES, AND SITE FURNISHINGS.

26                                  (5)     "SUBSTANTIAL COMPLETION" MEANS EITHER:

27                                       (I)     THE WORK REQUIRED BY THE CONTRACT HAS BEEN

28 COMPLETED EXCEPT FOR WORK HAVING A CONTRACT PRICE OF LESS THAN 1% OF

29 THE TOTAL CONTRACT PRICE; OR

30                                       (II)    SUBSTANTIALLY ALL OF THE WORK HAS BEEN COMPLETED

31 AND OPENED TO PUBLIC USE EXCEPT FOR MINOR INCOMPLETE OR

32 UNSATISFACTORY WORK ITEMS THAT DO NOT MATERIALLY IMPAIR THE

33 USEFULNESS OF THE WORK REQUIRED BY THE CONTRACT.

34                                  (B)     A PROCUREMENT CONTRACT FOR CONSTRUCTION OF A PUBLIC FACILITY

35 MAY INCLUDE A CLAUSE THAT SPECIFIES AN AMOUNT OF DELAYED COMPLETION

36 DAMAGES CALCULATED USING THE FOLLOWING FORMULA:

1 (1) TOTAL DESIGN AND CONSTRUCTION COSTS OF THE PUBLIC  
2 FACILITY; AND

3 (2) MULTIPLIED BY 0.0005.

4 (C) IF A PROCUREMENT CONTRACT CONTAINS A DELAYED COMPLETION  
5 DAMAGES CLAUSE BASED ON THE FORMULA IN SUBSECTION (B) OF THIS SECTION,  
6 THE CLAUSE SHALL STATE:

7 (1) THE FORMULA;

8 (2) THE TOTAL DESIGN AND CONSTRUCTION COSTS; AND

9 (3) THE TOTAL DELAYED COMPLETION DAMAGES FOR EACH DAY AFTER  
10 THE CONTRACT COMPLETION DATE THAT THE PUBLIC FACILITY IS NOT  
11 SUBSTANTIALLY COMPLETE.

12 (D) DELAYED COMPLETION DAMAGES CLAUSES IN PUBLIC FACILITY  
13 CONTRACTS ARE MATERIAL AND SIGNIFICANT TERMS OF THE CONTRACT THAT  
14 SHALL BE STRICTLY ENFORCED.

15 (E) THE DELAYED COMPLETION DAMAGES SPECIFIED IN SUBSECTION (B) OF  
16 THIS SECTION SHALL BE IN ADDITION TO OTHER RECOGNIZED ACTUAL DAMAGES.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2006.