
By: **Delegates Trueschler and Barkley**

Introduced and read first time: February 10, 2006

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Public Facility Construction - Liquidated Damages -**
3 **Reduction Prohibited**

4 FOR the purpose of requiring that each procurement contract for construction of a
5 public facility include a clause that specifies an amount of liquidated damages;
6 prohibiting a court from reducing the amount of liquidated damages unless the
7 court finds that the amount of liquidated damages is so arbitrary and
8 unreasonable as to be a taking of property without due process of law;
9 establishing that the liquidated damages are in addition to other recognized
10 actual damages; defining a certain term; and generally relating to liquidated
11 damages in procurement contracts for public facility construction.

12 BY repealing and reenacting, without amendments,
13 Article - State Finance and Procurement
14 Section 13-218(a) and (b)
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2005 Supplement)

17 BY adding to
18 Article - State Finance and Procurement
19 Section 13-218.1
20 Annotated Code of Maryland
21 (2001 Replacement Volume and 2005 Supplement)

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

24 **Article - State Finance and Procurement**

25 13-218.

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

27 (1) termination for default;

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

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

5 (4) liquidated damages, as appropriate;

6 (5) specified excuses for nonperformance;

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

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

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

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

15 (8) nonvisual access for information technology as required under §
16 3-412 of this article.

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

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

21 (2) a clause covering the requirements for notice of contract claims,
22 submission of contract claims, and resolution of contract claims under § 15-219 of this
23 article.

24 13-218.1.

25 (A) (1) IN THIS SECTION, "PUBLIC FACILITY" MEANS A BUILDING,
26 STRUCTURE, OR SITE IMPROVEMENT THAT IS OWNED OR LEASED BY THE STATE OR A
27 POLITICAL SUBDIVISION OF THE STATE.

28 (2) "PUBLIC FACILITY" INCLUDES:

29 (I) PUBLIC SCHOOLS, COLLEGES, AND UNIVERSITIES;

30 (II) PUBLIC HOSPITALS, MEDICAL FACILITIES, AND HEALTH
31 CLINICS;

32 (III) A PUBLIC MASS TRANSPORTATION ACCOMMODATION, SUCH AS
33 A TERMINAL OR STATION, THAT IS SUPPORTED BY PUBLIC FUNDS;

1 (IV) A BUILDING OR AN IMPROVEMENT OF A PUBLIC AREA USED
2 FOR GATHERING OR AMUSEMENT, INCLUDING A PUBLIC PARK, RECREATION
3 CENTER, SENIOR CENTER, LIBRARY, MUSEUM, OR ANY SIMILAR GATHERING OR
4 AMUSEMENT AREA; AND

5 (V) A BUILDING USED TO PROVIDE GOVERNMENT SERVICES TO
6 THE PUBLIC INCLUDING COURT BUILDINGS, CITY AND TOWN HALLS, THE STATE
7 HOUSE AND THE CORRESPONDING OFFICE BUILDINGS, OR ANY SIMILAR
8 GOVERNMENT BUILDING.

9 (3) "PUBLIC FACILITY" DOES NOT INCLUDE:

10 (I) HIGHWAYS OR ROADS;

11 (II) PUBLIC UTILITIES THAT ARE OUTSIDE THE BOUNDARIES OF AN
12 IMPROVED SITE; AND

13 (III) BUILDINGS, STRUCTURES, AND SITE IMPROVEMENTS THAT
14 ARE NOT OPEN TO THE PUBLIC.

15 (B) (1) EACH PROCUREMENT CONTRACT FOR CONSTRUCTION OF A PUBLIC
16 FACILITY SHALL INCLUDE A CLAUSE THAT SPECIFIES AN AMOUNT OF LIQUIDATED
17 DAMAGES.

18 (2) THE AMOUNT OF LIQUIDATED DAMAGES UNDER PARAGRAPH (1) OF
19 THIS SUBSECTION MAY NOT BE REDUCED BY A COURT UNLESS THE COURT FINDS
20 THAT THE AMOUNT OF LIQUIDATED DAMAGES IS SO ARBITRARY AND
21 UNREASONABLE AS TO BE CONSIDERED A TAKING OF PROPERTY WITHOUT DUE
22 PROCESS OF LAW.

23 (C) THE LIQUIDATED DAMAGES SPECIFIED IN SUBSECTION (B) OF THIS
24 SECTION SHALL BE IN ADDITION TO OTHER RECOGNIZED ACTUAL DAMAGES.

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