

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 63
(Senator McCray)
Budget and Taxation

State Procurement - Construction and Services - Contract Modification

This bill requires that State procurement contracts for construction and security services valued at more than \$2,000,000 and lasting three years or longer include a clause that *requires* a contract modification – subject to approval by the Chief Procurement Officer (CPO) – for the equitable adjustment of a contract as a result of statutory changes that increase required compensation or benefits. For security service contracts meeting the same thresholds, the requirement for a contract modification also applies when increased compensation or benefit costs result from collective bargaining.

Fiscal Summary

State Effect: Potential significant increase in procurement costs (all funds) beginning in FY 2027 due to contract modifications for higher labor costs resulting from changes in law or collective bargaining, but a reliable estimate is not feasible, as discussed below. Procurement units may require additional staff to process more contract modifications, but a reliable estimate is not feasible, as discussed below. Revenues are not affected.

Local Effect: The bill does not materially affect local governmental finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Contract Modifications

A contract modification is defined as a written alteration that (1) affects specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of a procurement contract, and (2) is accomplished by mutual action of the parties to a procurement contract. “Equitable adjustment” refers to a change to a contract price or provision to compensate a contractor for additional costs.

State law requires that any contract modification for an emergency contract that, by itself or in combination with prior modifications, exceeds the small procurement amount, must be reported to the Board of Public Works (BPW) and any appropriate control agency within 15 days of the award being made. Apart from this provision, State law does not regulate contract modifications. However, the Code of Maryland Regulations requires approval from BPW for any modifications with a value of \$50,000 or more.

Required Clauses

Every State procurement contract must have clauses covering:

- termination for default;
- termination wholly or partly by the State for its convenience if the head of the primary procurement unit determines that termination is appropriate;
- variations that occur between estimated and actual quantities of work in a procurement contract;
- liquidated damages, as appropriate;
- specified excuses for nonperformance;
- except for real property leases, the unilateral right of the State to order in writing: (1) changes in the work, if the changes are within the scope of the procurement contract and (2) a temporary stop or delay in performance;
- the obligation of the contractor to comply with the political contribution reporting requirements under State election law to which the contractor may be subject; and
- nonvisual access for information technology.

Additionally, procurement contracts for construction must include (1) a clause providing for contract modification if the condition of a site differs from the condition described in the specifications and (2) a clause covering the requirements for notice of contract claims, submission of contract claims and resolution of contract claims.

State Expenditures: Beginning in fiscal 2027, the bill transfers risks associated with applicable State contracts for construction and security services entirely to the State, making the State solely responsible, without recourse or negotiation, for compensating a contractor for additional costs that the contractor incurs resulting from (1) a change in law regarding required compensation or benefits or (2) when specified, collective bargaining. As the definition of contract modification suggests, it is usually executed by mutual agreement of the State and a contractor. By requiring the State to approve a contract modification for specified costs incurred by a contractor, the bill removes any discretion or autonomy on the State's part and makes it liable for costs for which it may not be responsible (the bill is not limited to legislation enacted by the State, and the State is not a party to collective bargaining negotiations affecting its contractors).

Thus, the bill likely results in an increase in contract modifications that increase the cost of contracts resulting from a change in law or, when applicable, collective bargaining. As a result, the cost of contracting for applicable construction and security services likely increases beginning in fiscal 2027, but these costs cannot be quantified, as the State cannot accurately predict the results of future legislative initiatives or collective bargaining negotiations.

Beginning in fiscal 2027, the bill likely results in an increase in the number of contract modifications that procurement units must develop and present to the CPO and BPW for approval, when specified. The requirement for approval from the CPO, along with existing oversight authority by BPW, would likely increase project timelines and delay contract execution, which could in turn increase project costs. It cannot be known how many contracts meet the bill's criteria in future years, or how many may require contract modifications based on statutory changes or collective bargaining. However, if the increase in the number of contract modifications is significant, procurement units (especially the Department of General Services and the Maryland Department of Transportation) may require additional staff to process those modifications beginning in fiscal 2027, but a reliable estimate is not feasible.

Small Business Effect: Small businesses that enter into contracts with the State for construction or security services lasting three years or longer and valued at more than \$2.0 million could receive increased compensation for existing and future contracts that experience cost increases due to legislation or, for security services contracts, collective bargaining.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 403 and HB 1499 of 2025.

Designated Cross File: HB 74 (Delegate S. Johnson) - Government, Labor, and Elections.

Information Source(s): University System of Maryland; Department of Budget and Management; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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