

# **SB0507\_MarylandAGC\_FAV.pdf**

Uploaded by: Champe McCulloch

Position: FAV

**SB 507****Procurement – Construction Contracts – Contract Modification Clause****Budget and Taxation Committee****Position: Favorable**

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, regardless of labor policy. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms through a nationwide network of chapters. Maryland AGC supports SB 507 and respectfully requests the bill be given a favorable report.

SB 507 requires a procurement contract for construction to include a clause providing for contract modification when there is a substantial increase in the price of materials required to complete the contract, as determined by the unit, due to the following factors: (i) delayed notice of commencement by the unit for any reason; (ii) acts or omissions by the unit; (iii) changes in the work or the sequencing of the work ordered by the unit or arising from decisions of the unit that impact the time of performance of the work; (iv) encountering hazardous materials or concealed or unknown conditions; (v) delay authorized by the unit pending dispute resolution or suspension by the unit; or (vi) force majeure events, including an epidemic or a pandemic.

Many of the provisions are already included in one form or another in standard DGS and MDOT contracts. However, having these provisions clearly spelled out in a clause dealing particularly with increases in the cost of materials would add clarity. The most substantive addition proposed by SB 507 is the inclusion of force majeure with the specific inclusion of epidemics and pandemics. It would be helpful if that were further refined to specify the issuance by the Governor of a declaration of a health emergency related to an epidemic or pandemic, as was the case with COVID.

Accordingly, Maryland AGC supports SB 507 and respectfully requests the bill be given a favorable report.

Champe C. McCulloch

McCulloch Government Relations, Inc.

Lobbyist for Maryland AGC

## **Salling sb507 Ltr to Committee.pdf**

Uploaded by: johnny salling

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 8, 2022

Senate Budget and Taxation Committee

Re: SB507- Procurement – Construction Contracts- Contract Modification Clause

Position: Favorable

Dear Chair, Vice Chair, and Committee Members,

Thank you for accepting this letter of support for SB507. This bill would work to provide a mechanism to allow for contractors to petition to be reimbursed for the increased cost for materials when the prices dramatically rise such as in the case of COVID pandemic.

The past two years have had a dramatic impact on every area of our lives. One area that has been negatively impacted is the area relating to the cost of construction materials. Contractors who had agreements with our state have been put in very serious financial straits by having the cost of their materials skyrocket literally overnight. In some situations, contractors are doing the job for no profit because of the fact that they have had to cover the cost of the increase in material prices. And while we have seen some prices start to go back down, we are still in a pandemic, we continue to have supply chain issues, and there is no guarantee the prices will not skyrocket again.

This bill will work to allow construction contracts with the state to have a clause that provides for a way to work around the fact that there is a dramatic price increase due to events beyond a contractor's control. It allows for a request to be made to adjust the contract because of increased material cost. The definition of what is a substantial price increase is left up to the department to allow for flexibility. It is an emergency bill to allow for immediate help to our contractors, and this bill has precedence in that there are similar allowances at the federal level.

I think this bill will go a long way in helping our contractors get back on track and also to prevent future issues of unexpected price increases from adversely impacting our contractors. I ask for a favorable report on this bill.

Sincerely,  
Senator Johnny Ray Salling

# **SB 507\_MAA\_FAV.pdf**

Uploaded by: Rachel Clark

Position: FAV

CHAIRMAN:  
Rob Scrivener  
VICE CHAIRMAN  
Brian Russell

**MARYLAND ASPHALT ASSOCIATION**



SECRETARY:  
David Slaughter  
TREASURER:  
Jeff Graf  
PRESIDENT:  
G. Marshall Klinefelter

February 16, 2022

Senator Guy Guzzone, Chair  
Senate Budget and Taxation Committee  
3 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 507 – FAVORABLE – Procurement – Construction Contracts – Contract Modification Clause**

Dear Chair Guzzone and Members of the Senate Budget and Taxation Committee:

The Maryland Asphalt Association (MAA) is comprised of 18 producer members representing more than 47 production facilities, 24 contractor members, 24 consulting engineer firms and 41 other associate members. We proactively work with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Senate Bill 507 requires all state procurement contracts for construction to include a clause providing for contract modification when there is a substantial increase in the price of materials required to complete the contract due to any one of several factors, including delayed notice of commencement by the procuring unit, acts or omissions by the procuring unit, changes in the work or sequencing of the work, the discovery of hazardous materials or other unknown conditions on the site, delays associated with pending disputes, and force majeure events. Under current law, our contractors and subcontractors take on great risks when entering into procurement contracts with the State for construction projects that often take years to complete—sometimes lasting through the volatility of one or more economic cycles. Material costs can fluctuate greatly over this time, so when companies are forced to estimate these expenditures up front just to even bid on the procurement, any significant change to material costs could place our member businesses in great financial risk with no recourse. Senate Bill 507 provides just that recourse by allowing the contract to be modified under those circumstances. By offering this opportunity to our contractors and subcontractors, we are better able to support our State's countless construction and transportation projects that are essential to our entire infrastructure network.

We appreciate you taking the time to address this important issue and we respectfully urge a favorable report on Senate Bill 507.

Thank you,

Marshall Klinefelter  
President  
Maryland Asphalt Association

# **SB 507\_MTBMA\_FAV.pdf**

Uploaded by: Rachel Clark

Position: FAV





February 16, 2022

Senator Guy Guzzone, Chair  
Senate Budget and Taxation Committee  
3 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 507 – FAVORABLE – Procurement – Construction Contracts – Contract Modification Clause**

Dear Chair Guzzone and Members of the Senate Budget and Taxation Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 507 requires all state procurement contracts for construction to include a clause providing for contract modification when there is a substantial increase in the price of materials required to complete the contract due to any one of several factors, including delayed notice of commencement by the procuring unit, acts or omissions by the procuring unit, changes in the work or sequencing of the work, the discovery of hazardous materials or other unknown conditions on the site, delays associated with pending disputes, and force majeure events. Under current law, our contractors and subcontractors take on great risks when entering into procurement contracts with the State for construction projects that often take years to complete—sometimes lasting through the volatility of one or more economic cycles. Material costs can fluctuate greatly over this time, so when companies are forced to estimate these expenditures up front just to even bid on the procurement, any significant change to material costs could place our member businesses in great financial risk with no recourse. Senate Bill 507 provides just that recourse by allowing the contract to be modified under those circumstances. By offering this opportunity to our contractors and subcontractors, we are better able to support our State’s countless construction and transportation projects that are essential to our entire infrastructure network.

We appreciate you taking the time to address this important issue and we respectfully urge a favorable report on Senate Bill 507.

Thank you,

Michael Sakata  
President and CEO  
Maryland Transportation Builders and Materials Association

# **SB 507 - Letter of Support - Maryland NECA.pdf**

Uploaded by: William Yull

Position: FAV



**Maryland Chapter**  
**National Electrical Contractors Association**



Phone: (410) 590-1189

1743 Dorsey Road, Suite 104-105  
Hanover, MD 21076

Fax: (410) 590-1198

February 15, 2022

Dear Chair Guzzone and members of the Senate Budget & Taxation Committee:

On behalf of the Maryland Chapter of the National Electrical Contractors Association (NECA), I write today to express our strong support for Senate Bill 507, requiring procurement contract for construction to include a clause providing for contract modification when there's a substantial increase in the price of materials.

Maryland NECA represents 75 construction contractors, some 2,000 workers and over 400 working apprentices. Our economic footprint throughout the region is substantial, generating some \$300 million in annual revenue, and some \$50 million in state, federal and local taxes each and every year.

Maryland NECA strongly supports Senate Bill 507 because the volatility of prices for material in the construction industry has increased exponentially since the outbreak of COVID-19 and the contractor is the one who must bear the brunt of the increased cost.

In construction, generally, the most stable and predictable part of bidding a project is the cost of material; however, since COVID-19, the cost of material has fluctuated greatly due to increased cost in labor to produce and manufacture the construction material, shipping and processing delays, as well as the inflated market for the material because of the high demand. For these reasons, the cost of essential building material has increased beyond what anyone could predict.

In a study conducted by the Bureau of Labor Statistics to determine, "Construction input and 'Bid Price' producer price indexes (PPIs)," between August 2020 through August 2021, bid prices rose only 5% over 12 months with eight (8) of those months with zero to minimal increase. In contrast, the cost of contractors' purchases soared as high as 23% over the same interval. In other words, if a contractor submitted a fixed-price bid in August 2020 based on materials costs at that time but did not buy the materials until a year later—a common occurrence—their cost for the materials would have risen an average of more than 20%. Given that materials often represent half or more of the cost of a contract, such an increase could easily wipe out the profit from a project and potentially put the contractor out of business.

According to the same study, the change in PPIs from August 2020 to August 2021 for six widely used materials showed that the index for copper increased 45%, the PPI for aluminum increased 35%, plastic construction products have increased by 30%, and the cost of steel has increased a staggering 123%. Accordingly, contractors whose purchases are weighted toward any of these broad classes of materials are likely to have experienced even greater total increases in costs than the overall PPI for inputs suggests.

Senate Bill 507 is critical for the members of NECA and any contractor in the construction industry by making sure that when a dramatic increase in material cost occurs which is both, unforeseen and "out of the hands" of the contractor, they have the ability to reprice the increase in construction material in order to remain profitable on an already bid project.

For these reasons, Maryland NECA supports Senate Bill 507 and asks for a favorable report.

Sincerely,

A handwritten signature in black ink that reads "William Yull". The signature is written in a cursive style with a large initial "W" and a distinct "Yull" at the end.

William Yull  
Executive Director  
Maryland Chapter, NECA

## **'22 SB 507 Construction Contract Mods DGS LOI B&T**

Uploaded by: Ellen Robertson

Position: INFO

Larry Hogan  
Governor

Boyd K. Rutherford  
Lt Governor



OFFICE OF THE SECRETARY

Ellington E. Churchill, Jr.  
Secretary

Nelson E. Reichart  
Deputy Secretary

**BILL:** Senate Bill 507  
Procurement – Construction Contracts – Contract Modification Clause

**COMMITTEE:** Senate Budget and Taxation

**DATE:** February 16, 2022

**POSITION:** Letter of Information

Upon review of Senate Bill 507 – Procurement – Construction Contracts - Contract Modification Clause, the Maryland Department of General Services (DGS), provides these comments for your consideration.

This bill offers to compensate contractors for material cost increases for various reasons, most of which are already covered by DGS contracts. The bill also provides for material cost increases due to Force Majeure Events, including Endemics and Pandemics, which are beyond anyone's control. Force Majeure is defined as "unforeseeable circumstances that prevent someone from fulfilling a contract".

The burden of verifying costs would fall on the DGS Division of Design and Construction and Energy (DCE). DCE staff would be responsible to verify the actual material costs increases and if the cost increase was due entirely to an Endemic or Pandemic. **Since prices for these materials naturally fluctuate, regardless of whether or not there is a pandemic, verifying these cost increases would be difficult** for DCE staff; **particularly since DCE does not know the exact material costs that bids are based on; this information is determined and provided by the contractor/bidder.** There is no provision in Senate Bill 507 should material costs decrease due to a Force Majeure Event. When contractors are allowed to ask for increased pricing based upon market conditions, **it takes away the ability to have fair competition among contractors**; this competition is increased through the inclusion of fixed pricing in contracts.

Currently, **DGS has clauses in its contracts that allow for changes based on acts by the State or finding unknown hazards or conditions**, which a pandemic or endemic could fall under. **This bill places an undue burden on the State and potentially increases contract prices.**

For additional information, contact Ellen Robertson at 410-260-2908.



## **SB0507 - FIN - Construction Contracts - Contract M**

Uploaded by: Patricia Westervelt

Position: INFO

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February 16, 2022

The Honorable Guy Guzzone  
Chairman, Senate Budget and Taxation Committee  
3 West Miller Senate Office Building  
Annapolis, MD 21401

***Re: Letter of Information – Senate Bill 507 – Procurement-Construction Contracts –  
Contract Modification Clause***

Dear Chairman Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 507 but offers the following information for the Committee's consideration.

Senate Bill 507 requires State construction contracts to include a clause providing for a contract modification when there is a substantial increase in the price of materials required to complete the contract under certain circumstances. This bill creates a significant risk transfer to the State, which has the potential to increase the cost of construction projects considerably.

Every construction project involves the identification and analysis of each project risk. Risks can generally be avoided, accepted, mitigated, or transferred. The responsibility for a risk should generally reside with the party best able to manage the risk at the lowest cost. Senate Bill 507 requires a blanket risk transfer of increases in materials costs to the State from contractors regardless of other ways that the risk could have been addressed.

The MDOT recognizes that increases in the cost of materials may occur during the course of a construction contract and that our private sector partners do not have control over the cost of materials; however, contractors have other ways to mitigate the impact of a cost increase. These mitigation strategies include utilizing a contingency or an allowance in the bid to account for changes in the cost of materials. Contractors can also make purchasing decisions that can mitigate the impact of price changes. This can include changes to the materials used, where those materials are purchased from, and the timing of those purchases. For example, especially for multi-year contracts like many of the MDOT's construction contracts, contractors have flexibility regarding the timing of the purchase of materials. If costs are expected to rise, contractors may purchase all materials early in the contract to mitigate the cost increase. If costs are expected to decrease, contractors may purchase only the materials immediately needed and delay purchase of additional materials until rates decline. If the State is required to pay for all increases in materials costs, contractors have no incentive to take actions like these to attempt to minimize additional costs.



The Honorable Guy Guzzone  
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Senate Bill 507 puts the State in a worse negotiating position by creating a blanket risk transfer without regard for other contract provisions that are negotiated. It also creates the potential for disputes with contractors due to language that is not defined, like what constitutes a “substantial” increase in the price of materials.

It is notable that Senate Bill 507 provides for contract modifications for price increases only and ignores price decreases. This puts all of the downside risk on the State for price changes but does not provide the State any of the upside risk for price changes. If material prices were to fall, that would result in additional profit for the contractor. For example, when the MDOT utilizes allowances to address fuel prices, it adjusts for both cost increases and decreases so that the MDOT may pay more if costs increase, but the MDOT also pays less if costs decrease.

The MDOT looks forward to continued collaboration to ensure that our efforts to provide safe transportation infrastructure are also leveraged to support broader goals of economic development and equity in the State.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 507.

Respectfully submitted,

Pilar Helm  
Director of Government Affairs  
Maryland Department of Transportation  
419-865-1090