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**MARYLAND ASPHALT ASSOCIATION**



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G. Marshall Klinefelter

February 15, 2023

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

**RE: SB 358 – FAVORABLE WITH AMENDMENTS – Procurement – Construction Contracts – Contract Modification Clause**

Dear Chair Guzzone and Members of the 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. MAA works proactively 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 358 requires 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 one of a number of enumerated causes. The determination of what constitutes a "substantial increase" would be at the discretion of the procuring unit.

The COVID-19 pandemic exposed several shortcomings of our state procurement laws, including the inability of construction contracts to account for changes in circumstances not due to the fault of any of the parties. MAA supports the guiding principle behind Senate Bill 358 because it would allow for construction contractors to receive additional compensation in such situations, but we ask the committee to consider some amendments to the bill as drafted. We believe the "substantial" modifier is vague and should be removed; moreover, we request a universal catch-all clause allowing such a modification due to any unforeseen event not known or anticipated at the time of the contract signing.

We appreciate you taking the time to address our request on Senate Bill 358.

Sincerely,

Marshall Klinefelter  
President  
Maryland Asphalt Association