

SB 556_MAA_FAV.pdf

Uploaded by: Rachel Clark

Position: FAV

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Tim Smith

February 7, 2024

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

RE: SB 556 – FAVORABLE – Procurement – Construction Contingency Fund and Contract Modification

Dear Chair Guzzone and Members of the Committee:

The Maryland Asphalt Association (MAA) is comprised of 19 producer members representing more than 48 production facilities, 25 contractor members, 25 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 556 requires state procurement contracts for construction to include a clause providing for contract modification when there is a substantial increase or decrease in the price of materials required to complete the contract due to one of several enumerated clauses, up to 10 percent.

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 this legislation because it would allow construction contractors to receive additional compensation in such situations. SB 556 is crucial for enhancing flexibility in managing construction projects, which will ultimately ensure their timely and cost-effective completion.

We appreciate you taking the time to consider our request for a **FAVORABLE** report on Senate Bill 556.

Sincerely,

Tim E. Smith. P.E.
President
Maryland Asphalt Association

SB 556_MTBMA_FAV.pdf

Uploaded by: Rachel Clark

Position: FAV



February 7, 2024

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

RE: SB 556 – FAVORABLE – Procurement – Construction Contingency Fund and Contract Modification

Dear Chair Guzzone and Members of the 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 556 requires state procurement contracts for construction to include a clause providing for contract modification when there is a substantial increase or decrease in the price of materials required to complete the contract due to one of several enumerated clauses, up to 10 percent.

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. MTBMA supports this legislation because it would allow construction contractors to receive additional compensation in such situations. SB 556 is crucial for enhancing flexibility in managing construction projects, which will ultimately ensure their timely and cost-effective completion.

We appreciate you taking the time to consider our request for a **FAVORABLE** report on Senate Bill 556.

Thank you,

A handwritten signature in blue ink, appearing to read "Michael Sakata", is written over a faint, light blue circular watermark or seal.

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association



CONSTRUCTION CONTRACTS WRITTEN TESTIMONY.pdf

Uploaded by: johnny salling

Position: FWA

JOHNNY RAY SALLING
Legislative District 6
Baltimore County

Budget and Taxation Committee
Public Safety, Transportation,
and Environment Subcommittee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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

To the Chair, Vice Chair, and esteemed Committee Members of the Budget and Taxation Committee:

I am Senator Johnny Ray Salling, and I am here to present a crucial bill aimed at addressing the challenges faced by contractors in our state due to the unprecedented rise in construction material prices, notably influenced by recent inflationary trends.

Over the past few years, various aspects of our lives have been significantly impacted, and one sector that has borne the brunt of these changes is the construction industry, particularly concerning the escalating costs of materials. Contractors who have entered agreements with the state find themselves in dire financial situations as material prices have skyrocketed overnight. In some instances, contractors are undertaking projects with no profit margins, forced to cover the increased costs of materials.

While we have observed a partial decline in prices, persistent supply chain issues pose uncertainties, leaving contractors vulnerable to potential future surges in material costs. This proposed bill seeks to provide a solution by allowing construction contracts with the state to include a clause addressing dramatic price increases beyond a contractor's control.

The bill enables contractors to request adjustments to contracts in response to substantial increases in material costs, with the definition of "substantial" left to the discretion of the relevant department, ensuring flexibility. Importantly, this legislation aligns with similar allowances at the federal level.

Notably, the Department of General Services conducted a study last year supporting this bill. In their endorsement, they recommended an addition to the bill's language. Specifically, with the Governor's approval, the Secretaries of Budget and Management and General Services may request the Board of Public Works to authorize expenditures from the Fund to supplement capital appropriations or conduct evaluations on projects affected by material price fluctuations.

In conclusion, I believe this bill is instrumental in helping our contractors recover from financial setbacks and preventing future challenges stemming from unforeseen increases in material prices. The inclusion of recommendations from the Department of General Services further solidifies the bill's merit. I appreciate your time and the opportunity to testify on this bill today, and I respectfully request a favorable report on its behalf.

Sincerely,

A handwritten signature in red ink that reads "Johnny Ray Salling".

Senator Johnny Ray Salling

'24 SB 556 Contract Modifications DGS LOI B&T 2-7-

Uploaded by: Ellen Robertson

Position: INFO

BILL: **Senate Bill 556** - Procurement - Construction Contingency Fund & Contract Modification

COMMITTEE: Senate Budget and Taxation

DATE: February 7, 2024

POSITION: Letter of Information

Senate Bill 556 addresses construction contract modifications when there is a substantial increase in the price of materials required to complete a contract, under certain circumstances. As we are aware, the COVID-19 pandemic exposed several shortcomings in our state procurement laws, including the inability of contracts to account for changes in circumstances not due to the fault of any of the parties.

Senate Bill 556, with sponsor amendments, would allow the Department of General Services (DGS), in consultation with the Department of Budget and Management, to use the Construction Contingency Fund, if necessary, to fund certain price fluctuations for materials that have been identified.

For background, in 2023 Senate Bill 358 was introduced to address this issue. At the direction of the Chair of the House Health and Government Operations Committee, DGS, the Department of Public Safety and Correctional Services and the Department of Transportation were asked to more closely examine the processes proposed in the 2023 bill. The group, along with the sponsor and members of the House committee, met over the interim and developed an agreeable proposal to address material price fluctuations. The sponsor's amendments will bring the bill in line with the agreed upon proposal.

The proposal, similar to one in use at the Maryland Port Administration, would add to the DGS Design, Construction and Energy division's General Conditions for Construction Contracts under guidelines identified as DGS Contract Modification - Material Price Fluctuation. These guidelines will provide for the use and acceptance of material price fluctuation by establishing a

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DGS - SB 556

contract monetary threshold for when costs can be adjusted up and based on fluctuations that are above market monthly increases identified by suppliers. This is applicable to projects over \$200,000, Category III Small Procurements and higher. The fluctuation must be an increase or decrease of at least 10% or more than the price of the material at the time of the bid. The Producer Price Index, as maintained by the U.S. Bureau of Labor Statistics, will be the benchmark for determining monthly fluctuations in costs.

For additional information, contact Ellen Robertson at 410-260-2908 or Lisa Nissley at 410-260-2922.

SB0556 - TSO - Construction Contingency Fund and C

Uploaded by: Patricia Westervelt

Position: INFO

February 7, 2024

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

RE: Letter of Information – Senate Bill 556 – Procurement – Construction Contingency Fund and Contract Modification

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) provides the following information for the Committee’s consideration on Senate Bill 556.

As written, Senate Bill 556 requires State construction contracts to include a clause providing for a contract modification when there is a substantial increase, or decrease, in the price of materials required to complete the contract under certain circumstances.

The MDOT recognizes that increases in the cost of materials may occur during a construction contract and that private sector partners do not have control over the cost of materials; however, contractors can employ mitigation strategies such as 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, including changes to the materials used, where those materials are purchased from, and the timing of those purchases.

Many of MDOT’s current construction contracts are fixed-price with price adjustments to provide for variations in pricing under special conditions defined in the contract. As reported as a requirement of Senate Bill 507 of 2022, MDOT executed 314 construction contracts during fiscal years 2019 – 2021. Of those contracts, 174 were fixed-price with price adjustments, and all 174 contracts have had price adjustments made for specific materials. A total of 731 adjustments were made, for a total amount of \$30,792,168.

The Maryland Port Administration has implemented “Standard Process-38 Adjustments for Material Price Fluctuations; Payment for Stored Materials,” which has proven to be an effective method to address material price fluctuations. The Maryland Aviation Administration implemented these same policies in December. The Maryland Transit Administration allows escalations for certain materials, in accordance with Federal Transit Administration policies. The Maryland Transportation Authority utilizes contract language that allows price adjustments for materials on certain fixed-price contracts. The State Highway Administration grants price adjustments in accordance with COMAR and Federal Highway Administration policies.

The Honorable Guy Guzzone
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MDOT is aware that the bill sponsor will be offering amendments to align the bill with a proposal that was agreed upon during a work group formed during the 2023 interim to address material price fluctuations. MDOT was a member of the informal work group and looks forward to reviewing the amendments.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 556.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090