

SENATE BILL 1156

P2, F3

4r0585
CF HB 1383

By: **Howard County Senators**

Introduced and read first time: February 11, 2024

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Howard County Board of Education – Liquidated Damages – Model Policy and**
3 **Requirements**

4 **Ho. Co. 3–24**

5 FOR the purpose of requiring the Howard County Board of Education, on or before a certain
6 date and in consultation with the Howard County Executive and the Howard County
7 Council, to publish a model policy concerning the inclusion and use of liquidated
8 damages provisions in procurement contracts; requiring certain student
9 transportation procurement contracts to include a liquidated damages clause
10 consistent with the model policy, subject to a certain exception; requiring certain
11 documentation of a decision not to pursue certain liquidated damages under certain
12 circumstances; and generally relating to Howard County Board of Education
13 procurements and liquidated damages provisions.

14 BY repealing and reenacting, without amendments,
15 Article – State Finance and Procurement
16 Section 13–218(a)(4)
17 Annotated Code of Maryland
18 (2021 Replacement Volume and 2023 Supplement)

19 BY adding to
20 Article – State Finance and Procurement
21 Section 15–114
22 Annotated Code of Maryland
23 (2021 Replacement Volume and 2023 Supplement)

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

26 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 13-218.

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

3 (4) liquidated damages, as appropriate;

4 15-114.

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) "BOARD OF EDUCATION" MEANS THE HOWARD COUNTY BOARD
8 OF EDUCATION.

9 (3) "LIQUIDATED DAMAGES" MEANS DAMAGES IN AN AMOUNT
10 DESIGNATED BY THE PARTIES TO A CONTRACT THAT THE INJURED PARTY IS
11 ELIGIBLE TO COLLECT AS COMPENSATION FOR A SPECIFIC BREACH OF THE
12 CONTRACT.

13 (B) (1) ON OR BEFORE JANUARY 1, 2025, THE BOARD OF EDUCATION, IN
14 CONSULTATION WITH THE HOWARD COUNTY EXECUTIVE AND THE HOWARD
15 COUNTY COUNCIL, SHALL PUBLISH A MODEL POLICY CONCERNING THE INCLUSION
16 AND USE OF LIQUIDATED DAMAGES PROVISIONS IN PROCUREMENT CONTRACTS.

17 (2) THE MODEL POLICY SHALL INCLUDE THE FOLLOWING ELEMENTS:

18 (I) GUIDANCE ON WHEN TO INCLUDE LIQUIDATED DAMAGES
19 PROVISIONS IN PROCUREMENT CONTRACTS, INCLUDING:

20 1. INSTANCES WHERE LIQUIDATED DAMAGES
21 PROVISIONS ARE REQUIRED BY LAW, INCLUDING THE REQUIREMENTS UNDER §§
22 14-303, 17-220, 17-222, AND 18-108 OF THIS DIVISION II; AND

23 2. CONDITIONS WHERE LIQUIDATED DAMAGES
24 PROVISIONS ARE RECOMMENDED TO PROTECT STATE OR COUNTY INTERESTS;

25 (II) GUIDANCE FOR DRAFTING LIQUIDATED DAMAGES
26 PROVISIONS, INCLUDING RECOMMENDED METHODS FOR CALCULATING THE
27 AMOUNT TO BE ASSESSED;

28 (III) A DRAFT PLAN FOR RESPONDING TO DEFICIENCIES IN A
29 CONTRACTOR'S PERFORMANCE THAT MAY TRIGGER A LIQUIDATED DAMAGES
30 PROVISION, REVIEWED BY LEGAL COUNSEL FOR THE BOARD OF EDUCATION; AND

1 (IV) EXAMPLES OF LIQUIDATED DAMAGES PROVISIONS THAT
2 MAY BE USED IN A PROCUREMENT CONTRACT WITH APPROPRIATE MODIFICATION
3 BY THE BOARD OF EDUCATION.

4 (3) THE BOARD OF EDUCATION MAY PROPOSE ALTERNATIVE
5 ELEMENTS OR MODELS BASED ON CONTRACT TYPE.

6 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
7 EACH STUDENT TRANSPORTATION PROCUREMENT CONTRACT ENTERED INTO BY
8 THE BOARD OF EDUCATION AND VALUED AT \$1,000,000 OR MORE SHALL INCLUDE
9 A LIQUIDATED DAMAGES CLAUSE CONSISTENT WITH THE MODEL POLICY
10 ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION.

11 (2) THE BOARD OF EDUCATION MAY DECIDE NOT TO INCLUDE IN A
12 CONTRACT A LIQUIDATED DAMAGES CLAUSE ON APPROVAL OF THE DECISION BY A
13 VOTE OF THE BOARD OF EDUCATION.

14 (D) IF THE BOARD OF EDUCATION OR THE HOWARD COUNTY
15 SUPERINTENDENT OF SCHOOLS DECIDES NOT TO PURSUE LIQUIDATED DAMAGES
16 WHEN A SPECIFIED BREACH ASSOCIATED WITH A LIQUIDATED DAMAGES PROVISION
17 HAS OCCURRED:

18 (1) THE BOARD OF EDUCATION SHALL:

19 (I) DOCUMENT THE APPROVAL OF THE DECISION BY A VOTE OF
20 THE BOARD OF EDUCATION; AND

21 (II) MAINTAIN DOCUMENTATION ON THE REASON THE BOARD
22 OF EDUCATION DECIDED NOT TO PURSUE LIQUIDATED DAMAGES; OR

23 (2) THE HOWARD COUNTY SUPERINTENDENT OF SCHOOLS SHALL
24 MAINTAIN DOCUMENTATION ON THE REASON THE SUPERINTENDENT DECIDED NOT
25 TO PURSUE LIQUIDATED DAMAGES.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
27 1, 2024.