

SENATE BILL 661

P2

11r2130

By: **Senator Kittleman**

Introduced and read first time: February 4, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Required Clauses – Project Labor Agreement Prohibition**

3 FOR the purpose of requiring State procurement contracts to include a clause
4 prohibiting certain parties from participating in certain project labor
5 agreements; and generally relating to project labor agreements and State
6 procurement contracts.

7 BY repealing and reenacting, with amendments,
8 Article – State Finance and Procurement
9 Section 13–218
10 Annotated Code of Maryland
11 (2009 Replacement Volume and 2010 Supplement)

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

14 **Article – State Finance and Procurement**

15 13–218.

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

17 (1) termination for default;

18 (2) termination wholly or partly by the State for its convenience if the
19 head of the primary procurement unit determines that termination is appropriate;

20 (3) variations that occur between estimated and actual quantities of
21 work in a procurement contract;

22 (4) liquidated damages, as appropriate;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (5) specified excuses for nonperformance;

2 (6) except for real property leases, the unilateral right of the State to
3 order in writing:

4 (i) changes in the work, if the changes are within the scope of
5 the procurement contract; and

6 (ii) a temporary stop or delay in performance;

7 (7) the obligation of the contractor to comply with the political
8 contribution reporting requirements under Title 14 of the Election Law Article, to
9 which the contractor may be subject as required under § 17–402 of this article; and

10 (8) nonvisual access for information technology as required under §
11 3A–312 of this article.

12 **(B) EACH PROCUREMENT CONTRACT SHALL INCLUDE A CLAUSE**
13 **PROHIBITING THE PARTIES FROM PARTICIPATING IN A PROJECT LABOR**
14 **AGREEMENT THAT REQUIRES A PARTY TO ADHERE TO OBLIGATIONS**
15 **CONCERNING UNION REFERRAL, UNION SECURITY, OR COLLECTIVELY**
16 **BARGAINED COMPENSATION OR BENEFITS.**

17 **[(b)] (C)** In addition to the clauses required under subsection (a) of this
18 section, a procurement contract for construction shall include:

19 (1) a clause providing for contract modification if the condition of a site
20 differs from the condition described in the specifications; and

21 (2) a clause covering the requirements for notice of contract claims,
22 submission of contract claims, and resolution of contract claims under § 15–219 of this
23 article.

24 **[(c)] (D)** Each procurement contract shall include a clause that gives to the
25 parties notice that preexisting regulations apply to the procurement contract in
26 accordance with § 11–206 of this article.

27 **[(d)] (E)** At any time after the parties enter into a procurement contract
28 they may include additional clauses in the procurement contract, by consent, without
29 consideration.

30 **[(e)] (F)** A clause required under this section for contract modification of or
31 change orders to a procurement contract for construction shall:

32 (1) make each contract modification or change order that affects the
33 price of the procurement contract subject to:

1 (i) prior written approval from the unit and any other person
2 responsible for the procurement contract; and

3 (ii) prior certification by the fiscal authority responsible for the
4 unit about:

5 1. the availability of money; and

6 2. the effect of the contract modification or change order
7 on the project budget or the total construction cost; and

8 (2) prohibit the contract modification or change order if the
9 certification by the fiscal authority discloses that the contract modification or change
10 order will increase the cost beyond budgeted and available money, unless:

11 (i) sufficient additional money is made available; or

12 (ii) the scope of the project is adjusted to allow completion
13 within the project budget.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2011.