

SENATE BILL 832

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By: **Senator Jennings**

Introduced and read first time: February 3, 2020

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Major Information Technology Development Projects**

3 FOR the purpose of requiring the Secretary of Information Technology to conduct a certain
4 risk assessment of certain major information technology development projects under
5 certain circumstances; requiring the risk assessment to consider certain factors;
6 authorizing the Secretary to recommend an increase in a certain limitation of
7 liability amount under certain circumstances; requiring a certain recommendation
8 to be made in a certain manner and include certain information; requiring the Chief
9 Procurement Officer to review a certain recommendation; authorizing the Chief
10 Procurement Officer to approve a certain change to a certain limitation of liability;
11 requiring a procurement contract for a major information technology development
12 project to include certain terms and conditions; requiring a certain limitation of
13 liability to be reasonable and not exceed a certain amount; prohibiting a certain
14 contract provision from limiting the liability of a contractor for certain acts; limiting
15 the application of certain provisions of law; requiring a certain annual report
16 submitted by the Secretary to include certain information, beginning with a certain
17 annual report; requiring the Chief Procurement Officer and the Secretary to study
18 certain procurement processes of major information technology development projects
19 with certain stakeholders, make certain recommendations, and report to the General
20 Assembly on or before a certain date; and generally relating to procurement and
21 major information technology development projects.

22 BY repealing and reenacting, without amendments,
23 Article – State Finance and Procurement
24 Section 3A–301(a), (b), (d), and (f)
25 Annotated Code of Maryland
26 (2015 Replacement Volume and 2019 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – State Finance and Procurement
29 Section 3A–308 and 3A–309(m)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – State Finance and Procurement
Section 13–228
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement

3A–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Development” means all expenditures for a new information
technology system or an enhancement to an existing system including system:

(i) planning;

(ii) procurement;

(iii) creation;

(iv) installation;

(v) testing; and

(vi) initial training.

(2) “Development” does not include:

(i) ongoing operating costs, software or hardware maintenance,
routine upgrades, or modifications that merely allow for a continuation of the existing level
of functionality; or

(ii) expenditures made after a new or enhanced system has been
legally accepted by the user and is being used for the business process for which it was
intended.

(d) “Information technology” means all electronic information processing
hardware and software, including:

(1) maintenance;

(2) telecommunications; and

(3) associated consulting services.

(f) “Major information technology development project” means any information technology development project that meets one or more of the following criteria:

(1) the estimated total cost of development equals or exceeds \$1,000,000;

(2) the project is undertaken to support a critical business function associated with the public health, education, safety, or financial well-being of the citizens of Maryland; or

(3) the Secretary determines that the project requires the special attention and consideration given to a major information technology development project due to:

(i) the significance of the project’s potential benefits or risks;

(ii) the impact of the project on the public or local governments;

(iii) the public visibility of the project; or

(iv) other reasons as determined by the Secretary.

3A–308.

(a) This section does not apply to a public institution of higher education.

(b) In submitting its information technology project requests, a unit of State government shall designate projects which are major information technology development projects.

(c) In reviewing information technology project requests, the Secretary may change a unit’s designation of a major information technology development project.

(d) **(1)** The Secretary shall review and, with the advice of the Secretary of Budget and Management, approve major information technology development projects and specifications for consistency with all statewide plans, policies, and standards, including a systems development life cycle plan.

(2) (I) IF, AFTER A REVIEW UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY BELIEVES A MAJOR INFORMATION TECHNOLOGY DEVELOPMENT PROJECT MAY PRESENT AN EXCEPTIONAL RISK TO THE STATE, THE SECRETARY SHALL CONDUCT A RISK ASSESSMENT PRIOR TO APPROVING THE MAJOR INFORMATION TECHNOLOGY DEVELOPMENT PROJECT.

(II) A RISK ASSESSMENT CONDUCTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL CONSIDER THE NATURE, PROCESSING, AND USE OF SENSITIVE OR PERSONALLY IDENTIFIABLE INFORMATION.

(III) IF THE RISK ASSESSMENT CONCLUDES THAT THE MAJOR INFORMATION TECHNOLOGY DEVELOPMENT PROJECT PRESENTS AN EXCEPTIONAL RISK TO THE STATE AND THE LIMITATION OF LIABILITY AMOUNT PROVIDED UNDER § 13–228 OF THIS ARTICLE IS NOT ADEQUATE TO PROTECT THE INTEREST OF THE STATE, THE SECRETARY MAY RECOMMEND THE UNIT INCREASE THE LIMITATION OF LIABILITY AMOUNT.

(IV) A RECOMMENDATION MADE UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH SHALL:

1. BE IN WRITING;

2. DESCRIBE THE RISKS TO THE STATE;

3. EXPLAIN THE REASONS THAT THE LIMITATIONS REQUIRED UNDER § 13–228 OF THIS ARTICLE ARE NOT ADEQUATE TO MITIGATE THE RISKS DESCRIBED; AND

4. RECOMMEND A REASONABLE MAXIMUM ALTERNATIVE LIMITATION OF LIABILITY AMOUNT, CALCULATED AS A MULTIPLE OF THE CONTRACT VALUE.

(3) THE CHIEF PROCUREMENT OFFICER:

(I) SHALL REVIEW A RECOMMENDATION MADE UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND

(II) MAY APPROVE A CHANGE TO THE LIMITATION OF LIABILITY REQUIRED UNDER § 13–228 OF THIS ARTICLE.

(e) The Secretary shall be responsible for overseeing the implementation of major information technology development projects, regardless of fund source.

(f) With the advice of the Secretary of Budget and Management, expenditures for major information technology development projects shall be subject to the approval of the Secretary who shall approve expenditures only when those projects are consistent with statewide plans, policies, and standards.

(g) (1) The Secretary shall approve funding for major information technology

1 development projects only when those projects are supported by an approved systems
2 development life cycle plan.

3 (2) An approved systems development life cycle plan shall include
4 submission of:

5 (i) a project planning request that details initial planning for the
6 project, including:

7 1. the project title, appropriation code, and summary;

8 2. a description of:

9 A. the needs addressed by the project;

10 B. the potential risks associated with the project;

11 C. possible alternatives; and

12 D. the scope and complexity of the project; and

13 3. an estimate of:

14 A. the total costs required to complete through planning; and

15 B. the fund sources available to support planning costs; and

16 (ii) a project implementation request to begin full design,
17 development, and implementation of the project after the completion of planning, including:

18 1. the project title, appropriation code, and summary;

19 2. a description of:

20 A. the needs addressed by the project;

21 B. the potential risks associated with the project;

22 C. possible alternatives;

23 D. the scope and complexity of the project; and

24 E. how the project meets the goals of the statewide master
25 plan; and

26 3. an estimate of:

A. the total project cost; and

B. the fund sources available.

(3) The Secretary may approve funding incrementally, consistent with the systems development life cycle plan.

(H) IN THE ANNUAL REPORT SUBMITTED IN ACCORDANCE WITH § 3A-309(M) OF THIS SUBTITLE, BEGINNING WITH THE ANNUAL REPORT SUBMITTED IN 2021, THE SECRETARY SHALL PUBLISH A LIST OF RECOMMENDATIONS MADE UNDER SUBSECTION (D)(2) OF THIS SECTION AND THE OUTCOME OF THE RECOMMENDATION REVIEW CONDUCTED UNDER SUBSECTION (D)(3) OF THIS SECTION DURING THE PRECEDING FISCAL YEAR.

3A-309.

(m) (1) On or before November 1 of each year, the Secretary shall report to the Governor, the Secretary of Budget and Management, and to the budget committees of the General Assembly and submit a copy of the report to the General Assembly, in accordance with § 2-1257 of the State Government Article.

(2) The report shall include:

(i) the financial status of the Fund and a summary of its operations for the preceding fiscal year;

(ii) an accounting for the preceding fiscal year of all money from each of the revenue sources specified in subsection (e) of this section, including any expenditures made from the Fund; [and]

(iii) for each project receiving money from the Fund in the preceding fiscal year and for each major information technology development project receiving funding from any source other than the Fund in the preceding fiscal year:

1. the status of the project;

2. a comparison of estimated and actual costs of the project;

3. any known or anticipated changes in scope or costs of the project;

4. an evaluation of whether the project is using best practices; and

5. a summary of any monitoring and oversight of the project from outside the agency in which the project is being developed, including a description of

any problems identified by any external review and any corrective actions taken; AND

**(IV) THE LIST OF RECOMMENDATIONS AND REVIEW OUTCOMES
REQUIRED UNDER § 3A-308(H) OF THIS SUBTITLE.**

13-228.

**(A) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION AND §
3A-308(D)(2)(III) OF THIS ARTICLE, EACH PROCUREMENT CONTRACT FOR A MAJOR
INFORMATION TECHNOLOGY DEVELOPMENT PROJECT SHALL INCLUDE TERMS AND
CONDITIONS GOVERNING THE INDEMNIFICATION OBLIGATIONS AND LIMITATION OF
LIABILITY OF THE CONTRACTOR WHICH ARE REASONABLE AND MAY NOT EXCEED IN
AGGREGATE TWICE THE VALUE OF THE CONTRACT.**

**(B) A CONTRACT PROVISION ADOPTED IN ACCORDANCE WITH SUBSECTION
(A) OF THIS SECTION MAY NOT LIMIT THE LIABILITY OF A CONTRACTOR FOR:**

**(1) INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD, OR
RECKLESSNESS OF THE CONTRACTOR OR AN EMPLOYEE OF THE CONTRACTOR; OR**

**(2) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO
REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE
NEGLIGENCE OF THE CONTRACTOR OR AN EMPLOYEE OF THE CONTRACTOR.**

**(C) NOTHING IN THIS SECTION PROHIBITS A UNIT FROM AGREEING TO A
LIMITATION OF LIABILITY THAT IS LESS THAN TWICE THE VALUE OF THE CONTRACT.**

SECTION 2. AND BE IT FURTHER ENACTED, That the Chief Procurement Officer
in the Department of General Services and the Secretary of Information Technology shall:

(1) together with appropriate stakeholders, examine the procurement
processes for major information technology development projects, including:

(i) the time frames for competitive sealed procurements for major
information technology development projects, from issuing the request for proposal through
evaluation and contract award; and

(ii) how the associated time frames impact the allocation of
personnel within companies bidding on major information technology development
projects;

(2) make recommendations on adjusting the procurement process and
associated timeline for major information technology development projects to ensure
personnel with required expertise are available to work on an awarded contract; and

1 (3) on or before December 1, 2021, shall report to the General Assembly, in
2 accordance with § 2-1257 of the State Government Article, on the study and
3 recommendations conducted under this section.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2020.