

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 453

(Senator King)

Budget and Taxation

Health and Government Operations

State Contracts - Prohibited Provisions

This bill prohibits, unless required by State or federal law, a State contract from including a provision that limits the State's ability to recover the difference in the cost of a replacement contractor to perform the services not performed by the original contractor, to the extent that the sum of the amount paid to the replacement contractor and the amount paid to the original contractor exceed the costs provided for in the contract with the original contractor. It also clarifies that, unless required by State or federal law, a State contract cannot include a provision that requires the State to agree to limit the liability for any direct loss to the State for bodily injury, death or damage to *real property or tangible personal* property of the State caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other legally actionable misconduct of a person or a person's employees or agents.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: A "State contract" means any agreement entered into by the State. Except as required by State or federal law, a State contract cannot include:

- a provision that requires the State to indemnify, defend, or hold harmless another person without an appropriation of State fund for that purpose;

- a provision by which the State agrees to binding arbitration or any other binding extrajudicial dispute resolution process;
- a provision that names a jurisdiction or venue for any action or dispute against the State other than a court of proper jurisdiction in the State;
- a provision that requires the State to agree to limit the liability for any direct loss to the State for bodily injury, death, or damage to property of the State caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents or a provision that would otherwise impose an indemnification obligation on the State;
- a provision that requires the State to be bound by a term or condition that (1) is unknown to the State at the time of signing a contract; (2) may be unilaterally changed by the other party; or (3) is electronically accepted by a State employee without authority;
- a provision that provides for a person other than the Attorney General of Maryland to serve as legal counsel for the State, unless provided under State law;
- a provision that is inconsistent with the State's obligations under the Open Meetings Act or the Public Information Act;
- a provision that requires an agent of the State to enter into a contract that purports to bind the State, create a deficiency, or incur a liability unless money has been appropriated for that purpose and remains unspent;
- a provision for automatic renewal that obligates the State to allocate funding in subsequent fiscal years; or
- a provision that limits the State's ability to recover the cost of a replacement contractor.

If a State contract does contain one of provisions on this list, that specific provision is considered void, and the contract is enforceable as if it did not contain that provision.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 507 (Delegate Kerr) - Health and Government Operations.

Information Source(s): Department of Information Technology; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2025
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