

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 961
Appropriations

(Delegate Embry, *et al.*)

Commissioned Public Art - Artist Rights

This bill prohibits an entity from including provisions in a contract for State public art that require an artist to waive copyright protections or rights under federal law. It also bars a court from enforcing a waiver to copyright protections or rights in a contract for State public art entered into before October 1, 2025. “State public art” is defined as art commissioned for a project that receives State funding, regardless of whether the State funding directly paid for the public art.

Fiscal Summary

State Effect: The bill does not materially affect governmental operations or finances.

Local Effect: The bill is not expected to materially affect local governmental finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: §106A of Title 17 of the United State Code, known as the Visual Artist Rights Act (VARA), allows artists to control the ascription and integrity of their works of visual art, including the right to prevent intentional distortion, mutilation, or destruction of their artwork, particularly if it is considered of recognized stature. VARA provides its protections only to paintings, drawings, prints, sculptures, and still photographic images produced for exhibition only if they exist as single copies or in limited editions of 200 or fewer copies, signed and numbered by the artist.

Prohibited Provisions in State Contracts

State law delineates provisions that may not be included in a State contract. Except as required by State or federal law, a State contract may not contain a provision:

- that requires the State to indemnify, defend, or hold harmless another person without an appropriation of State funds for that purpose;
- by which the State agrees to binding arbitration or any other binding extrajudicial dispute resolution process;
- that names a jurisdiction or venue for any action or dispute against the State other than a court of proper jurisdiction in the State;
- that requires the State to agree to limit the liability for any direct loss to the State, as specified, or that would otherwise impose an indemnification obligation on the State;
- that requires the State to be bound by a term or condition that (1) is unknown to the State at the time of signing the contract; (2) may be unilaterally changed by the other party; or (3) is electronically accepted by a State employee without authority;
- that requires a person other than the Attorney General of Maryland to serve as legal counsel for the State, except as allowed under current law;
- that is inconsistent with the State's Open Meetings Act or Public Information Act;
- that binds the State to pay unappropriated amounts or otherwise causes the State to incur unfunded liabilities, as specified under State law;
- for automatic renewal that obligates the State to allocate funding in subsequent fiscal years; or
- that limits the State's ability to recover the cost of a replacement contractor.

Additional Information

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

Designated Cross File: SB 1006 (Senator Kagan) - Rules.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of General Services; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2025
km/mcr

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