

**Department of Legislative Services**  
 Maryland General Assembly  
 2025 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 487 (Senators Jennings and Hester)  
 Budget and Taxation

**Procurement - Major Information Technology Development Projects**

This bill requires a procurement contract for a major information technology (IT) development project to include terms and conditions governing the indemnification obligations and limitation of liability for the contractor; the limitations of liability must be reasonable and may not exceed twice the value of the contract. The bill also (1) establishes a related risk assessment process through which the Secretary of Information Technology may recommend an increased limitation of liability for a project and (2) requires the Chief Procurement Officer (CPO) and Secretary of Information Technology to examine the existing major IT development project procurement process and make recommendations to ensure that personnel with required expertise are available to work on an awarded contract. The recommendations must be submitted to the General Assembly by December 1, 2026.

**Fiscal Summary**

**State Effect:** General fund expenditures by the Department of Information Technology (DoIT) increase by \$119,000 in FY 2026 for additional staff. Future years reflect annualization and ongoing operating expenses. Limiting liability for major IT development projects may affect State expenditures, as discussed below; this potential impact is not reflected below. Revenues are not affected.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	119,000	144,400	150,800	157,400	164,200
Net Effect	(\$119,000)	(\$144,400)	(\$150,800)	(\$157,400)	(\$164,200)

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** Potential meaningful.

## Analysis

### **Bill Summary:**

#### *Major Information Technology Development Projects – Contracts and Limitations of Liability*

The terms and conditions for major IT projects may not limit the liability of a contractor for (1) intentional or willful misconduct, fraud, or recklessness 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.

#### *Review of Major Information Technology Development Projects – Risk Assessments*

After reviewing a major IT development project, if the Secretary of Information Technology believes the project may present an exceptional risk to the State, the Secretary must conduct a risk assessment prior to approving the project. The risk assessment must consider the nature, processing, and use of sensitive or personally identifiable information.

If the risk assessment concludes that the project presents an exceptional risk, and the limitations of liability discussed above are not adequate to protect the interest of the State, the Secretary may recommend that the contracting unit increase the limitation of liability amount. Any such calculation must (1) be in writing; (2) describe the risks to the State; (3) explain why the limitations of liability are not sufficient; and (4) recommend a reasonable maximum alternative limitation of liability, calculated as a multiple of the contract value. The CPO must review any such recommendation and may approve the recommended change.

In its annual report on the status of the Information Technology Investment Fund (ITIF), which is used to fund many major IT development projects, DoIT must include the list of recommendations and review outcomes.

### **Current Law:**

#### *Department of Information Technology*

DoIT and the Secretary of Information Technology are, among other things, responsible for (1) developing, maintaining, revising, and enforcing IT policies, procedures, and standards; (2) providing technical assistance, advice, and recommendations to any unit of State government concerning IT matters; and (3) developing and maintaining a statewide IT master plan.

A unit of State government must submit its IT project requests to DoIT for review; the unit must designate projects which it considers major IT development projects. The Secretary of Information Technology is responsible for overseeing the implementation of major IT development projects, regardless of fund source.

The Secretary of Information Technology must review and, with the advice of the Secretary of Budget and Management, approve any major IT development projects and specifications for consistency with all statewide plans, policies, and standards. In reviewing a project, the Secretary may change a unit's designation of a major IT development project. Major IT development projects may be eligible for funding through ITIF.

#### *Information Technology Investment Fund*

In order to centralize State oversight and funding for major Executive Branch IT projects, Chapters 467 and 468 of 2002 established a review and approval process for major IT development projects and the related Major IT Development Fund. Chapter 497 of 2024 made various changes to the fund, including renaming it as ITIF. Under Chapter 497, the purpose of ITIF is to support both major IT development projects and expedited projects. ITIF may be used only for major IT development projects, maintenance costs for major IT development projects for a specified time period, expedited projects, administrative costs, and costs for specified pilot programs and prototypes. Each fiscal year, at least 20% of the amount budgeted from the fund must be used for expedited projects.

For a project to be eligible for funding through ITIF, it must (1) be estimated to cost at least \$5.0 million; (2) support critical business functions associated with the public health, education, safety, or financial well-being of the citizens of Maryland; or (3) be determined to require special attention and consideration by the Secretary. An expedited project is a project that is not a major IT development project but receives money from ITIF in a manner that allows for modernization projects to move forward in a nimble and expedited manner.

#### *Chief Procurement Officer and Procurement Improvement Council*

Chapter 590 of 2017 established the position of CPO within the Department of General Services (DGS). Except for procurement activity by a primary procurement unit other than DGS, the CPO is the head of all procurement activity for the Executive Branch and also controls procurement for DGS.

## State Expenditures:

### *Risk Assessments*

To implement the bill, DoIT plans to create a new process to conduct required risk assessments and make the corresponding recommendations; however, DoIT does not currently have staff with the expertise necessary to do so. Therefore, general fund expenditures increase by \$119,016, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of hiring one audit program manager to conduct risk assessments and prepare the corresponding recommendations. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$111,647
Operating Expenses	<u>7,369</u>
<b>Total FY 2026 DoIT Expenditures</b>	<b>\$119,016</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

It is assumed that the audit program manager can work with DGS to complete the study and examination required by the bill.

### *Limitations of Liability*

DGS advises that the Office of State Procurement's (OSP) current practices already cap vendor liability for major IT development project procurements at a certain value depending on the procurement. More specifically, the existing Sample Contract for IT procurements, which pertains to contracts resulting from major IT development projects, caps a contractor's liability per incident at two times the total value of the contract or \$1.0 million, whichever is greater. However, there is flexibility to amend this provision when appropriate to ensure liability provisions are tailored to the specifics of each project.

As the current default liability cap equals the capped liability level established by the bill (twice the contract amount), and current practice already allows for some flexibility in adjusting the liability level (as does the bill), it is unclear to what extent the bill affects State liability risks or IT procurement costs. The bill does add risks for which liability cannot be capped, which may discourage some smaller firms from bidding on IT contracts. However, a reliable estimate of any effect on liability risk or procurement costs is not feasible given the case-by-case risk assessments required by the bill.

*Department of General Services*

DGS advises that additional staff are needed for OSP to review the risk assessments and recommendations provided by DoIT and independently evaluate the associated risks with each project. While the bill does require OSP to review and approve recommendations stemming from risk assessments conducted by DoIT, it does not require any additional assessments or reevaluations. For this reason, the Department of Legislative Services disagrees that OSP requires additional staff to implement the bill.

**Small Business Effect:** Since small businesses are less likely to be able to accommodate risk from taking on large projects, limiting liability to twice the value of a contract for major IT development projects may encourage more small businesses to apply for and result in more small businesses obtaining State contracts for those projects. Conversely, they may be less likely to bid on projects with unlimited liability for purported negligence.

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**Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Department of Information Technology; Department of General Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2025  
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