

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 77

(Chair, Budget and Taxation Committee)(By Request -
Departmental - Commerce)

Budget and Taxation

Government, Labor, and Elections

State Contracts - Prohibited Provisions - Exemptions

This departmental bill exempts from the list of prohibited provisions any State contract entered into by the Office of International Trade (OIT) in the Department of Commerce for the development of international business activities and opportunities authorized under State law. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: None. This bill codifies existing practice.

Local Effect: None.

Small Business Effect: The Department of Commerce has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: OIT is established in State law with the goal of promoting the development of international business activities and opportunities in the State. The office has several statutory obligations and authorities, including the authority to enter into contracts and make grants. Procurement by the office for services to be performed or supplies to be delivered outside the State is not subject to State procurement law but must be consistent with it.

Chapter 433 of 2024 prohibited specified provisions from being included in State contracts. Except as required by State or federal law, and notwithstanding any term or condition to the contrary in the contract, 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.

If a State contract contains any of these provisions, the provision is void and the contract containing that provision is enforceable as if it did not contain the provision.

Background: OIT maintains that some of the currently prohibited provisions include items OIT generally needs to include in its contracts for international conventions and other activities. Due to the international nature of the contracts the office enters into, OIT’s statutory authority includes an exemption from Division II of the State Finance and Procurement Article, but the prohibited provisions are listed in Division I of the same article. As the Office does not have an exemption from the prohibited contract provisions added in 2024 to Division I of the article, OIT was made aware that its contracts may be violating State law. Adding the exemption from the prohibited provisions ensures that OIT can continue to operate as it has and that the prohibited provisions of Division I do not interfere with the office’s ability to function.

Additional Information

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

Designated Cross File: HB 300 (Chair, Government, Labor, and Elections Committee)(By Request - Departmental - Commerce) - Government, Labor, and Elections.

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

Fiscal Note History: First Reader - January 19, 2026
caw/mcr Third Reader - February 25, 2026

Analysis by: Andrew Stover

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Contracts - Prohibited Provisions - Exemptions

BILL NUMBER: SB 77

PREPARED BY: Matthew Kachura (410-767-6443)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This proposal adds contracts entered into by the Office of International Investment and Trade (OIIT) to the stated exemptions from State Finance and Procurement Article 2-901 which prohibits State contracts from including certain provisions. The proposed changes would have no impact on small businesses.