



HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE
House Bill 289 – State Contracts – Prohibited Provisions
January 23, 2024
Favorable Report (FAV)

Chair Pena-Melnyk, Vice-Chair Bonnie Cullison, and members of the Health and Government Operations Committee,

Thank you for the opportunity to share our thoughts on House Bill 289. My name is Jen Gartner and I serve as Deputy General Counsel at the University of Maryland, College Park. I am here today representing the University but also speaking as a Maryland resident of District 47A. I have worked in the University's Office of General Counsel as an attorney for over ten years and negotiate contracts with the University's partners and vendors on a daily basis.

As a native Marylander and a contracts attorney for over twenty years, I am thrilled to be here with you today! I get the opportunity to help solve a problem my clients face daily, while saving the State money and increasing its efficiencies.

Over the past ten years, the University has noticed an increase in vendors and partner organizations who refuse to make changes to their boilerplate contracts. Contract terms that the University cannot accept, such as governing law of another state or broad indemnification provisions, appear in contracts of all sizes: \$500 procurements of goods and services, \$300,000 scientific research awards, and multi-million dollar clinical trial agreements.

These prohibited terms are also found in legally-binding "click-through" contracts that University personnel often need to accept in order to perform their University duties. For example, even laboratory equipment, such as an electron-scanning microscope, can require a faculty member to click "I accept" or "I agree" on the software used to operate the equipment. That click turns into a contract that legally binds the University to terms that are not acceptable for a State of Maryland agency, such as California governing law or mandatory and binding arbitration in Germany.

On contracts of all sizes, the University's procurement office, sponsored research office, and other contracting units can spend months negotiating over these prohibited terms. When it is possible for me to connect directly with an attorney at the other organization, I'm able to explain our legal rationale and we have been able to reach mutually-acceptable terms. In most cases, our negotiating partners simply want the University to identify a statute that prohibits the University from accepting these terms. If this bill becomes law, our contracting personnel will be able to point to it upon request. That simple step will save thousands of wasted hours and needless frustration for the University *and* our contracting partners every year. The same is true for the contracting personnel at other State agencies, and their contracting partners. This bill will maximize efficiency by allowing State personnel to focus on the substantive work of advancing the State's initiatives and serving the State's citizens.

This bill will also curb abusive practices by vendors. As one example, a vendor suddenly invoiced the University for overage charges based on a term that was unknown to the University at the time the contract was signed. The vendor refused to provide any support for the overage charges and threatened to

immediately stop work and initiate a lawsuit. Because the vendor provides a service that is critical to University operations, the University had no choice but to pay over \$80,000 in these overage charges. The vendor has continued to escalate its invoices, which now exceed \$250,000. A team of University personnel have spent over a year negotiating to maintain a critical service and avoid the vendor's threatened lawsuit. Had this law been in place, the University would have relied upon it to reject the vendor's unreasonable monetary demands. This is just one contract out of the hundreds that the University enters into each fiscal year. Imagine the cost savings not just for the University, but across all State agencies, if contracting personnel could rely on statutory authority to reject these unreasonable invoices and threats of litigation!

I have spoken with attorneys and contracting personnel at public universities in states that have adopted legislation similar to this bill. They have found it much easier and faster to negotiate agreements and reported better relationships with partners and vendors because negotiations do not drag on and require each party to involve attorneys.

A similar statutory approach in Maryland could streamline the contracting process, significantly reduce the time legal and contract personnel spend negotiating agreements (especially small- and zero-dollar ones), and reduce risk and potential litigation by ensuring that the most common problematic commercial contract terms do not impact State agreements.

Thank you for allowing me to share my thoughts regarding House Bill 289. I strongly urge a favorable report.