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Budget and Taxation Committee

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THE SENATE OF MARYLAND
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SPONSOR STATEMENT

Senate Bill 453 – State Contracts – Prohibited Provisions

February 5, 2025

Madame Chairman and Members of the Budget and Taxation Committee's Procurement Subcommittee:

State agencies enter into hundreds of contracts and other legal agreements every year. Contracts with vendors and other organizations frequently contain numerous contract terms that Maryland agencies are not authorized to accept, such as the governing law of other states, broad indemnification terms, and binding arbitration. And many vendor contracts now incorporate terms found on vendor websites, which allows vendors to unilaterally modify contracts.

Over the past 10 years, vendors have become unwilling to change their boilerplate contract terms unless State contracting personnel can identify a statutory prohibition on certain contract terms.

In the 2024 legislative session, legislation was passed, (Senate Bill 375), that would streamline the contracting process for all Maryland agencies, significantly reduce personnel time required to negotiate (sometimes hundreds of hours for zero-dollar contracts), reduce frustration for State personnel and vendors, and protect the State by reducing the risk of liability and litigation.

After passage of that legislation, it was discovered that clarifying legislation was needed as it relates to limitation of liability. Senate Bill 453 does two things:

1. clarifies that property is limited to **real property or tangible personal** property.
2. clarifies that State contracts may not include a provision that limits the State's ability to recover the difference in the cost of the replacement contractor to perform the services not performed by the original contractor, but only to the extent the cost exceeds what was to be paid to the original contractor to perform such services.

This added language corrects a technical issue with last year's legislation and so I respectfully request a favorable report on Senate Bill 453.