

SB453_USM.pdf

Uploaded by: Andy Clark

Position: FAV



SENATE BUDGET AND TAXATION COMMITTEE
Procurement Subcommittee
Senate Bill 453
State Contracts – Prohibited Provisions
February 5, 2025
Favorable

Chair Benson and members of the subcommittee, thank you for allowing the University System of Maryland (USM) the opportunity to offer testimony on Senate Bill 453.

The USM is comprised of twelve distinguished institutions, and three regional centers. We award eight out of every ten bachelor's degrees in the State. Each of University USM's 12 institutions has a distinct and unique approach to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from Western Maryland to the Eastern Shore, with the flagship campus in the Washington suburbs. The USM includes three Historically Black Institutions, comprehensive institutions and research universities, and the country's largest public online institution.

Last year, the General Assembly passed legislation addressing prohibitions pertaining to liability limitations on state contracts for damage to real or tangible personal property. Senate Bill 453 makes two technical corrections – minor changes – to clarify the intent and purpose of 2024's Senate Bill 375.

First, Senate Bill 453 clarifies the claims to which a limitation of liability in a State contract would not apply. The bill makes clear that property is limited to real property or tangible personal property. Without this clarification, property could be interpreted broadly to include, for example, software systems or data. This would mean that contractors would have to manage the risks associated with unlimited liability for damage to higher-risk property, such as software systems or data.

Second, the bill 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. Without this clarification, the language may be interpreted to allow the State to seek the entire cost of a replacement contractor, regardless of whether the original contractor had performed any of the services and regardless of whether the cost of the replacement contractor was less than or equal to the costs provided for in the contract with the original contractor.

The USM urges a Favorable Report on Senate Bill 453 as the USM works to streamline the contracting process, reduce the time staff spends on negotiating small dollar agreements, and mitigate the risk of potential litigation by ensuring that contract terms do not impact state agreements.



Contact: Susan Lawrence, Vice Chancellor for Government Relations, slawrence@usmd.edu

SB453-King-Sponsor Testimony.pdf

Uploaded by: Senator Nancy King

Position: FAV

NANCY J. KING
Legislative District 39
Montgomery County

Majority Leader

Budget and Taxation Committee

Chair
Education, Business and
Administration Subcommittee



James Senate Office Building
11 Bladen Street, Room 120
Annapolis, Maryland 21401
301-858-3686 • 410-841-3686
800-492-7122 Ext. 3686
Fax 301-858-3670 • 410-841-3670
Nancy.King@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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.