

# SENATE BILL 439

P2

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CF HB 1140

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By: **Senators Conway, Bates, Benson, Eckardt, Kagan, Madaleno, Manno, McFadden, Peters, Pinsky, Robinson, Salling, Simonaire, Waugh, Young, and ~~Zucker~~ Zucker, and Nathan-Pulliam**

Introduced and read first time: January 30, 2017

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 28, 2017

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Procurement – Information Technology – Nonvisual Access**

3 FOR the purpose of requiring the Secretary of Information Technology to appoint an access  
4 technology officer in accordance with certain requirements; establishing the duties  
5 of the access technology officer; requiring the access technology officer to develop a  
6 provision for inclusion in all State procurement contracts that requires a certain  
7 determination to be made within a certain amount of time; requiring an access  
8 technology officer to notify a certain vendor under certain circumstances; providing  
9 that a certain vendor may be subject to ~~a certain civil penalty~~ liquidated damages  
10 under certain circumstances; requiring a certain vendor that is found in violation of  
11 a certain requirement to indemnify the State from liability under certain  
12 circumstances; requiring the access technology officer, along with other parties, to  
13 develop a nonvisual access clause in accordance with certain requirements; altering  
14 a certain exemption from the nonvisual access clause requirement; requiring the  
15 Department, on or before a certain date, to adopt new nonvisual access procurement  
16 standards that are consistent with certain federal standards; altering a certain  
17 definition; and generally relating to information technology and nonvisual access.

18 BY repealing and reenacting, with amendments,  
19 Article – State Finance and Procurement  
20 Section 3A–301, 3A–303, and 3A–311  
21 Annotated Code of Maryland  
22 (2015 Replacement Volume and 2016 Supplement)

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to  
2 Article – State Finance and Procurement  
3 Section 3A–303.1  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume and 2016 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
7 That the Laws of Maryland read as follows:

8 **Article – State Finance and Procurement**

9 3A–301.

10 (a) In this subtitle the following words have the meanings indicated.

11 (b) (1) “Development” means all expenditures for a new information  
12 technology system or an enhancement to an existing system including system:

13 (i) planning;

14 (ii) procurement;

15 (iii) creation;

16 (iv) installation;

17 (v) testing; and

18 (vi) initial training.

19 (2) “Development” does not include:

20 (i) ongoing operating costs, software or hardware maintenance,  
21 routine upgrades, or modifications that merely allow for a continuation of the existing level  
22 of functionality; or

23 (ii) expenditures made after a new or enhanced system has been  
24 legally accepted by the user and is being used for the business process for which it was  
25 intended.

26 (c) “Fund” means the Major Information Technology Development Project Fund.

27 (d) “Information technology” means all electronic information processing  
28 hardware and software, including:

29 (1) maintenance;

1 (2) telecommunications; and

2 (3) associated consulting services.

3 (e) “Information technology services” means information provided by electronic  
4 means by or on behalf of a unit of State government.

5 (f) “Major information technology development project” means any information  
6 technology development project that meets one or more of the following criteria:

7 (1) the estimated total cost of development equals or exceeds \$1,000,000;

8 (2) the project is undertaken to support a critical business function  
9 associated with the public health, education, safety, or financial well-being of the citizens  
10 of Maryland; or

11 (3) the Secretary determines that the project requires the special attention  
12 and consideration given to a major information technology development project due to:

13 (i) the significance of the project’s potential benefits or risks;

14 (ii) the impact of the project on the public or local governments;

15 (iii) the public visibility of the project; or

16 (iv) other reasons as determined by the Secretary.

17 (g) “Master plan” means the statewide information technology master plan.

18 (h) “Nonvisual access” means the ability[, through keyboard control, synthesized  
19 speech, Braille, or other methods not requiring sight] to receive, use, and manipulate  
20 information and operate controls necessary to access information technology **IN A WAY  
21 THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND INDEPENDENTLY USABLE BY  
22 INDIVIDUALS WITH DISABILITIES, SO THAT THEY ARE ABLE TO ACQUIRE THE SAME  
23 INFORMATION, ENGAGE IN THE SAME INTERACTIONS, AND ENJOY THE SAME  
24 SERVICES AS USERS WITHOUT DISABILITIES, WITH SUBSTANTIALLY EQUIVALENT  
25 EASE OF USE, USING THE STANDARDS OF SECTION 508 OF THE FEDERAL  
26 REHABILITATION ACT OF 1973.**

27 (i) “Resource sharing” means the utilization of a State resource by private  
28 industry in exchange for the provision to the State of a communication service or other  
29 consideration.

30 (j) “Systems development life cycle plan” means a plan that defines all actions,  
31 functions, or activities to be performed by a unit of State government in the definition,

1 planning, acquisition, development, testing, implementation, operation, enhancement, and  
2 modification of information technology systems.

3 3A-303.

4 The Secretary is responsible for carrying out the following duties:

5 (1) developing, maintaining, revising, and enforcing information  
6 technology policies, procedures, and standards;

7 (2) providing technical assistance, advice, and recommendations to the  
8 Governor and any unit of State government concerning information technology matters;

9 (3) reviewing the annual project plan for each unit of State government to  
10 make information and services available to the public over the Internet;

11 (4) developing and maintaining a statewide information technology master  
12 plan that will:

13 (i) be the basis for the management and direction of information  
14 technology within the Executive Branch of State government;

15 (ii) include all aspects of State information technology including  
16 telecommunications, data processing, and information management;

17 (iii) consider interstate transfers as a result of federal legislation and  
18 regulation;

19 (iv) work jointly with the Secretary of Budget and Management to  
20 ensure that information technology plans and budgets are consistent;

21 (v) ensure that State information technology plans, policies, and  
22 standards are consistent with State goals, objectives, and resources, and represent a  
23 long-range vision for using information technology to improve the overall effectiveness of  
24 State government; and

25 (vi) include standards to assure nonvisual access to the information  
26 and services made available to the public over the Internet; [and]

27 (5) adopting by regulation and enforcing nonvisual access standards to be  
28 used in the procurement of information technology services by or on behalf of units of State  
29 government; **AND**

30 **(6) APPOINTING AN ACCESS TECHNOLOGY OFFICER.**

31 **3A-303.1.**

1           **(A) THE ACCESS TECHNOLOGY OFFICER IS RESPONSIBLE FOR:**

2           **(1) BEING DIRECTLY FAMILIAR WITH THE USE OF NONVISUAL ACCESS**  
3 **TECHNOLOGY SOFTWARE AND KNOWLEDGEABLE ABOUT INDUSTRY-ACCEPTED**  
4 **ACCESSIBILITY GUIDELINES, INCLUDING THE STANDARDS OF SECTION 508 OF THE**  
5 **FEDERAL REHABILITATION ACT OF 1973 AND THE WORLD WIDE WEB CONSORTIUM**  
6 **WEB CONTENT ACCESSIBILITY GUIDELINES;**

7           **(2) ENSURING THAT TECHNOLOGY PROCURED BY THE STATE IS**  
8 **ACCESSIBLE BY:**

9           **(I) DEVELOPING, IMPLEMENTING, AND MAINTAINING AN**  
10 **INFORMATION AND COMMUNICATIONS TECHNOLOGY ACCESSIBILITY POLICY;**

11           **(II) ESTABLISHING AND MAINTAINING, IN CONSULTATION WITH**  
12 **THE SECRETARY, AN ORGANIZATIONAL STRUCTURE THAT ENABLES AND**  
13 **FACILITATES PROGRESS IN INFORMATION AND COMMUNICATIONS TECHNOLOGY**  
14 **ACCESSIBILITY;**

15           **(III) INTEGRATING INFORMATION AND COMMUNICATIONS**  
16 **TECHNOLOGY ACCESSIBILITY CRITERIA INTO KEY PHASES OF DEVELOPMENT,**  
17 **PROCUREMENT, ACQUISITIONS, AND OTHER RELEVANT BUSINESS PROCESSES;**

18           **(IV) PROVIDING A PROCESS FOR ADDRESSING INACCESSIBLE**  
19 **INFORMATION AND COMMUNICATIONS TECHNOLOGY;**

20           **(V) ENSURING THE AVAILABILITY OF RELEVANT INFORMATION**  
21 **AND COMMUNICATIONS TECHNOLOGY ACCESSIBILITY SKILLS AND OTHER**  
22 **RESOURCES WITHIN THE ORGANIZATION; AND**

23           **(VI) MAKING INFORMATION REGARDING INFORMATION AND**  
24 **COMMUNICATIONS TECHNOLOGY ACCESSIBILITY POLICY, PLANS, AND PROGRESS**  
25 **AVAILABLE TO CUSTOMERS;**

26           **(3) CONDUCTING HANDS-ON TESTING OF BOTH EMPLOYEE AND**  
27 **PUBLIC-FACING ELECTRONIC INFORMATION TECHNOLOGY PRODUCTS TO CONFIRM**  
28 **THE PRODUCT'S CONFORMANCE TO APPLICABLE ACCESSIBILITY GUIDELINES FOR**  
29 **WEB-BASED APPLICATIONS ACCORDING TO WORLD WIDE WEB CONSORTIUM WEB**  
30 **CONTENT ACCESSIBILITY GUIDELINES 2.0 LEVEL AA;**

31           **(4) USING RELEVANT FUNCTIONAL ACCESS GUIDELINES AS ADOPTED**  
32 **BY THE U.S. ACCESS BOARD, WHICH INCORPORATE THE CORE PRINCIPLES OF**  
33 **SECTION 508 OF THE FEDERAL REHABILITATION ACT OF 1973 FOR**  
34 **NON-WEB-BASED SOFTWARE OR HARDWARE;**

1           **(5) ENSURING THAT EMPLOYEES WITH DISABILITIES WHO USE**  
2 **ACCESS TECHNOLOGY SOFTWARE HAVE ACCESS TO THE TRAINING NECESSARY TO**  
3 **ENSURE PROFICIENCY WITH THE ACCESS TECHNOLOGY SOFTWARE AND THE**  
4 **ELECTRONIC INFORMATION TECHNOLOGY REQUIRED TO PERFORM THE**  
5 **RESPONSIBILITIES REQUIRED OF THEIR POSITIONS; AND**

6           **(6) REVIEWING ALL STATE PROCUREMENT CONTRACTS FOR**  
7 **PURCHASE OF ELECTRONIC INFORMATION TECHNOLOGY PRODUCTS TO ~~DETERMINE~~**  
8 **~~WHETHER THERE ARE ANY BARRIERS TO ACCESS IN ACCORDANCE WITH~~**  
9 **~~SUBSECTION (B) OF THIS SECTION~~ ENSURE COMPLIANCE WITH SECTION 508 OF THE**  
10 **REHABILITATION ACT OF 1973 AND THE WORLD WIDE WEB CONSORTIUM WEB**  
11 **CONTENT ACCESSIBILITY GUIDELINES 2.0 LEVEL AA.**

12           **(B) (1) THE ACCESS TECHNOLOGY OFFICER SHALL DEVELOP A**  
13 **PROVISION FOR INCLUSION IN ALL STATE PROCUREMENT CONTRACTS THAT**  
14 **REQUIRES A DETERMINATION BY THE ACCESS TECHNOLOGY OFFICER WITHIN 18**  
15 **MONTHS FROM CONTRACT COMMENCEMENT OF A BARRIER TO ACCESS ELECTRONIC**  
16 **INFORMATION TECHNOLOGY PRODUCTS.**

17           **(2) IF THE ACCESS TECHNOLOGY OFFICER DETERMINES THAT AN**  
18 **ACCESS BARRIER IS PRESENT, THE ACCESS TECHNOLOGY OFFICER SHALL NOTIFY**  
19 **THE VENDOR IN WRITING AND REQUIRE THE VENDOR, AT THE VENDOR'S OWN**  
20 **EXPENSE, TO REMEDY THE DEFECT WITHIN 12 MONTHS.**

21           **(C) (1) IF THE VENDOR FAILS TO REMEDY THE ACCESS BARRIER WITHIN**  
22 **12 MONTHS FROM THE DATE OF THE NOTIFICATION REQUIRED UNDER SUBSECTION**  
23 **(B)(2) OF THIS SECTION, THE VENDOR MAY BE SUBJECT TO ~~A CIVIL PENALTY~~**  
24 **LIQUIDATED DAMAGES APPLIED AT THE RATE OF 1% OF THE TOTAL PURCHASE**  
25 **PRICE OF THE CONTRACT FOR EACH DAY UNTIL THE PROBLEM IS REMEDIATED OR**  
26 **UNTIL THE FULL PRICE OF THE CONTRACT IS REFUNDED.**

27           **(2) A VENDOR THAT IS FOUND IN VIOLATION UNDER PARAGRAPH (1)**  
28 **OF THIS SUBSECTION IS REQUIRED TO INDEMNIFY THE STATE FOR LIABILITY**  
29 **RESULTING FROM THE USE OF INFORMATION TECHNOLOGY THAT IS FOUND TO BE**  
30 **INACCESSIBLE AFTER THE VENDOR HAS BEEN GIVEN THE OPPORTUNITY TO REMEDY**  
31 **THE ACCESS BARRIER FOR 12 MONTHS.**

32 3A-311.

33           (a) The Secretary AND ACCESS TECHNOLOGY OFFICER, in consultation with  
34 other units of State government, and after public comment, shall develop a nonvisual access  
35 clause for use in the procurement of information technology and information technology  
36 services that specifies that the technology and services:

1           (1)     must provide equivalent access for effective use by both visual and  
2 nonvisual means;

3           (2)     will present information, including prompts used for interactive  
4 communications, in formats intended for both visual and nonvisual use;

5           (3)     can be integrated into networks for obtaining, retrieving, and  
6 disseminating information used by individuals who are not blind or visually impaired; and

7           (4)     shall be obtained, whenever possible, without modification for  
8 compatibility with software and hardware for nonvisual access.

9           (b)     (1)     Except as provided in paragraph (2) of this subsection, the nonvisual  
10 access clause required under subsection (a) of this section shall be included in each  
11 invitation for bids or request for proposals and in each procurement contract or modification  
12 of a contract issued under Title 13 of this article, without regard to the method chosen  
13 under Title 13, Subtitle 1 of this article for the purchase of new or upgraded information  
14 technology and information technology services.

15           (2)     Except as provided in subsection (a)(4) of this section, the nonvisual  
16 access clause required under paragraph (1) of this subsection is not required if:

17                   (i)     the information technology is not available with nonvisual access  
18 because the essential elements of the information technology are visual and nonvisual  
19 equivalence cannot be developed; or

20                   (ii)    the cost of modifying the information technology for compatibility  
21 with software and hardware for nonvisual access would increase the price of the  
22 procurement by more than ~~[5%]~~ 15%.

23           **(C)     ON OR BEFORE JANUARY 1, 2018, THE DEPARTMENT OF INFORMATION**  
24 **TECHNOLOGY SHALL ADOPT NEW NONVISUAL ACCESS PROCUREMENT STANDARDS**  
25 **THAT ARE CONSISTENT WITH THE STANDARDS OF SECTION 508 OF THE FEDERAL**  
26 **REHABILITATION ACT OF 1973.**

27           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2017.