

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 439

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Procurement - Information Technology - Nonvisual Access

This bill (1) expands the definition of “nonvisual access;” (2) requires the Secretary of Information Technology to appoint an access technology officer; (3) specifies the access technology officer’s roles and responsibilities; (4) requires the Department of Information Technology (DoIT) to adopt new nonvisual access procurement standards; and (5) exempts an information technology (IT) project or service from requiring nonvisual access if the cost of modifying the technology would increase the price of the procurement by more than 15%, instead of more than 5%.

Fiscal Summary

State Effect: DoIT general fund expenditures increase by at least \$196,200 in FY 2018 to hire an access technology officer, acquire contractual services, and provide accessibility training for existing staff. Future year expenditures reflect annualization and the elimination of one-time costs. DoIT general fund expenditures may be significantly higher to the extent that the department requires additional contractual assistance, as discussed below. State expenditures (all funds) increase, potentially significantly, for IT procurement due to the bill’s change to the nonvisual access exception. State expenditures for IT services likely increase further to the extent that the bill’s terms and conditions for IT contracts limit competition for IT projects, as discussed below. Revenues are only affected to the extent that liquidated damages are applied; this analysis assumes no material impact on revenues.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	196,200	256,700	261,000	265,600	270,400
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations; however, to the extent that local governments provide contractual IT services to the State, which happens occasionally, they are affected by the bill's requirements.

Small Business Effect: Meaningful. The terms and conditions prescribed by the bill may reduce the number of small business contractors willing or able to contract with the State. Conversely, the bill may create more opportunities for small businesses if larger vendors are deterred from working with the State due to the bill's terms and conditions.

Analysis

Bill Summary: The bill expands the definition of "nonvisual access" to mean the ability to receive, use, and manipulate information and operate controls necessary to access IT in a way that is fully and equally accessible to and independently usable by individuals with disabilities so that they are able to acquire the same information, engage in the same interactions, and enjoy the same services as users without disabilities, with substantially equivalent ease of use, based on the standards of Section 508 of the Federal Rehabilitation Act of 1973.

The access technology officer is responsible for:

- being directly familiar with the use of nonvisual access technology software and knowledgeable about industry-accepted accessibility guidelines;
- ensuring that technology procured by the State is accessible, as specified by the bill;
- conducting hands-on testing of both employee and public-facing electronic IT products to ensure their conformance to accessibility guidelines;
- using relevant functional access guidelines as adopted by the U.S. Access Board;
- ensuring that employees with disabilities who use access technology software have access to the training necessary to ensure proficiency with the software;
- reviewing all State IT contracts to ensure compliance with Section 508 of the Federal Rehabilitation Act of 1973 and the World Wide Web Consortium Web Content Accessibility Guidelines 2.0 Level AA; and
- developing a provision to be included in all State procurement contracts that requires the officer to make a determination of an access barrier within 18 months from the contract commencement.

If the access technology officer determines that an access barrier is present, he or she must notify the vendor in writing and require the vendor, at the vendor's own expense, to remedy the defect within 12 months. If the vendor fails to remedy the barrier within 12 months,

the vendor may be subject to liquidated damages applied at the rate of 1% of the total purchase price of the contract for each day until the problem is remediated or until the full price of the contract is refunded. A vendor subject to the liquidated damages must indemnify the State for liability resulting from the use of IT that is found inaccessible after the vendor has been given the opportunity to remedy the access barrier for 12 months.

Current Law: The Secretary of Information Technology has numerous duties related to the development, review, maintenance, and procurement of IT projects and services, including (1) developing, maintaining, revising, and enforcing IT policies, procedures, and standards; (2) providing technical assistance, advice, and recommendations to the Governor and any unit of State government concerning IT matters; and (3) adopting by regulation and enforcing nonvisual access standards to be used in the procurement of IT services. The current regulations governing nonvisual access standards are similar to many (but not all) of the standards required by Section 508 of the Rehabilitation Act of 1973.

The Secretary of Information Technology is required to develop a nonvisual access clause for use in the procurement of IT and IT services. The clause must require that any procured technology or service (1) provide equivalent access for effective use by both visual and nonvisual means; (2) will present information in formats intended for both visual and nonvisual use; (3) can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) must be obtained, whenever possible, without modification for compatibility with software and hardware for nonvisual access. These requirements do not apply if (1) the essential elements of the technology are visual and a nonvisual equivalent cannot be developed; (2) the cost of modifying the technology would increase the price of the procurement by more than 5%; or (3) as specified in regulation, the technology is acquired and used by a contractor incidental to a contract with the State and is not transferred to the State or an agency as part of the contract.

Background: In 1998, the U.S. Congress amended the Rehabilitation Act of 1973 to require federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. The law ([29 U.S.C. § 794 \(d\)](#)) applies to all federal agencies when they develop, procure, maintain, or use EIT. Under Section 508, agencies must give disabled employees and members of the public access to information that is comparable to access available to others.

The U.S. Access Board is an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards. Created in 1973 to ensure access to federally funded facilities, the board is now a leading source of information on accessible design. The board develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, medical diagnostic equipment, and IT. It also provides

technical assistance and training on these requirements and on accessible design and continues to enforce accessibility standards that cover federally funded facilities.

The World Wide Web Consortium Web Content Accessibility Guidelines cover a wide range of recommendations for making web content more accessible to more people with disabilities, including those with blindness and low vision, deafness and hearing loss, learning disabilities, limited movement, speech disabilities, and photosensitivity.

State Expenditures: As required by the bill, DoIT must hire an access technology officer. Additionally, DoIT requires additional contractual assistance to perform the required compliance testing on an ongoing basis at a cost of \$150 per hour. Due to the extensive responsibilities prescribed by the bill, this estimate assumes that the contractual assistance is needed for at least 20 hours per week, on average, for 50 weeks per year, totaling \$150,000 annually. To the extent that the services are required for more than 20 hours per week, the cost increases accordingly. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate also includes expenditures of \$5,000 annually for ongoing accessibility training for DoIT’s existing staff. Therefore, general fund expenditures by DoIT increase by \$196,182 in fiscal 2018, which accounts for the bill’s October 1, 2017 effective date.

	<u>FY 2018</u>	<u>FY 2019</u>
Position	1	
Salaries and Fringe Benefits	\$74,825	\$101,074
Operating Expenses	5,107	625
Contractual Services	112,500	150,000
Accessibility Training	<u>3,750</u>	<u>5,000</u>
Total State Administrative Expenditures	\$196,182	\$256,699

Future year expenditures reflect annualization, annual increases in salaries, employee turnover, the elimination of one-time costs, and ongoing operating expenses.

Under current law, an IT project is exempt from requiring nonvisual access if doing so would increase the price of the procurement by more than 5%; however, the bill changes this exemption to only apply if ensuring nonvisual access would increase the price of the procurement by more than 15%. State expenditures across all agencies likely increase as a result of this change, reflecting an increase in the cost of IT contracts that require nonvisual access. However, a precise estimate of the cost depends on the size and scope of future IT projects and, therefore, cannot be reliably estimated at this time.

DoIT advises that many of the terms and conditions prescribed by the bill may dissuade vendors, especially large firms, from participating in IT procurement with the State because the risks may be too great. Any reduction in competition for State contracts likely leads to

higher costs for IT projects. For example, the provision that gives the access officer discretion in identifying access barriers and then requiring a vendor to remedy an access barrier at the vendor's own expense may be viewed as the State having too much discretion to elicit greater expenditures by the vendor. Similarly, the bill's liquidated damages of 1% of the total purchase price of the contract for each day until an access barrier issue is resolved may be considered too much of a risk by vendors for expensive projects.

Additional Information

Prior Introductions: None.

Cross File: HB 1140 (Delegate Platt, et al.) – Health and Government Operations.

Information Source(s): Department of Information Technology; Department of Budget and Management; Maryland Department of Disabilities; Department of General Services; Board of Public Works; U.S. Access Board; World Wide Web Consortium; Department of Legislative Services

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