

# HOUSE BILL 1088

P2

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By: ~~Delegates Cullison and Rosenberg~~, Rosenberg, Pendergrass, Bromwell, Angel, Barron, Hayes, Hill, Kelly, Kipke, Krebs, McDonough, Metzgar, Miele, Morales, Morgan, Pena-Melnyk, Platt, Saab, Sample-Hughes, Szeliga, West, and K. Young

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Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2018

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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, or the Secretary's  
4 designee, on or before a certain date, to develop a provision for inclusion in all State  
5 procurement contracts that requires a certain determination to be made within a  
6 certain period of time; requiring the Secretary, or the Secretary's designee, to notify  
7 a ~~certain~~ vendor under certain circumstances; providing that a certain vendor may  
8 be subject to a certain civil penalty under certain circumstances; requiring a certain  
9 vendor that is found in violation of a certain requirement to indemnify the State from  
10 liability under certain circumstances; altering a certain exemption from the  
11 nonvisual access clause requirement; requiring the Department of Information  
12 Technology, on or before a certain date, to adopt new nonvisual access procurement  
13 standards that provide certain individuals with certain nonvisual access and that  
14 are consistent with certain federal standards; altering a certain definition; and  
15 generally relating to information technology and nonvisual access.

16 BY repealing and reenacting, with amendments,  
17 Article – State Finance and Procurement  
18 Section 3A–301, 3A–303, and 3A–311  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2017 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 2017 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 INDIVIDUALS WITH DISABILITIES ARE~~  
23 ~~ABLE TO ACQUIRE THE SAME INFORMATION, ENGAGE IN THE SAME INTERACTIONS,~~  
24 ~~AND ENJOY THE SAME SERVICES AS USERS WITHOUT DISABILITIES, WITH~~  
25 ~~SUBSTANTIALLY EQUIVALENT EASE OF USE, USING THE STANDARDS OF § 508 OF THE~~  
26 ~~FEDERAL REHABILITATION ACT OF 1973 IN ACCORDANCE WITH STANDARDS~~  
27 ADOPTED UNDER § 3A-311(C) OF THIS SUBTITLE.

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

31 (j) “Systems development life cycle plan” means a plan that defines all actions,  
32 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) DEVELOPING THE PROVISION REQUIRED UNDER § 3A-303.1 OF  
31 THIS SUBTITLE.

32 3A-303.1.

1           (A) (1) ~~THE~~ ON OR BEFORE JANUARY 1, 2020, THE SECRETARY, OR THE  
2 SECRETARY'S DESIGNEE, SHALL DEVELOP A PROVISION FOR INCLUSION IN ALL  
3 STATE PROCUREMENT CONTRACTS THAT REQUIRES A DETERMINATION BY THE  
4 SECRETARY, OR THE SECRETARY'S DESIGNEE, WITHIN 18 MONTHS AFTER  
5 CONTRACT COMMENCEMENT THAT ANY INFORMATION TECHNOLOGY PRODUCTS  
6 PROCURED IN THE CONTRACT HAVE NO BARRIERS TO NONVISUAL ACCESS.

7           (2) IF THE SECRETARY, OR THE SECRETARY'S DESIGNEE,  
8 DETERMINES THAT AN ACCESS BARRIER EXISTS, THE SECRETARY, OR THE  
9 SECRETARY'S DESIGNEE, SHALL NOTIFY THE VENDOR IN WRITING AND REQUIRE  
10 THE VENDOR, AT THE VENDOR'S OWN EXPENSE, TO REMEDY THE DEFECT WITHIN 12  
11 MONTHS.

12           (B) (1) IF THE VENDOR FAILS TO REMEDY THE ACCESS BARRIER WITHIN  
13 12 MONTHS AFTER THE DATE OF THE NOTIFICATION REQUIRED UNDER SUBSECTION  
14 (A)(2) OF THIS SECTION, THE VENDOR MAY BE SUBJECT TO A CIVIL PENALTY  
15 ~~APPLIED AT THE RATE OF 1% OF THE TOTAL PURCHASE PRICE OF THE CONTRACT~~  
16 ~~FOR EACH DAY UNTIL THE PROBLEM IS REMEDIATED OR UNTIL THE FULL PRICE OF~~  
17 ~~THE CONTRACT IS REFUNDED.~~

18           (2) A VENDOR THAT IS FOUND IN VIOLATION UNDER PARAGRAPH (1)  
19 OF THIS SUBSECTION IS REQUIRED TO INDEMNIFY THE STATE FOR LIABILITY  
20 RESULTING FROM THE USE OF INFORMATION TECHNOLOGY THAT IS FOUND TO BE  
21 INACCESSIBLE AFTER THE VENDOR HAS BEEN GIVEN THE OPPORTUNITY TO REMEDY  
22 THE ACCESS BARRIER.

23 3A-311.

24           (a) The Secretary, in consultation with other units of State government, and after  
25 public comment, shall develop a nonvisual access clause for use in the procurement of  
26 information technology and information technology services that specifies that the  
27 technology and services:

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

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

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

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

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

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

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

12 (ii) the cost of modifying the information technology for compatibility  
13 with software and hardware for nonvisual access would increase the price of the  
14 procurement by more than [5%] ~~15%~~ 10%.

15 (C) ON OR BEFORE JANUARY 1, ~~2019~~ 2020, THE DEPARTMENT OF  
16 INFORMATION TECHNOLOGY SHALL ADOPT NEW NONVISUAL ACCESS  
17 PROCUREMENT STANDARDS THAT:

18 (1) PROVIDE AN INDIVIDUAL WITH DISABILITIES WITH NONVISUAL  
19 ACCESS IN A WAY THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND  
20 INDEPENDENTLY USABLE BY THE INDIVIDUAL WITH DISABILITIES SO THAT THE  
21 INDIVIDUAL IS ABLE TO ACQUIRE THE SAME INFORMATION, ENGAGE IN THE SAME  
22 INTERACTIONS, AND ENJOY THE SAME SERVICES AS USERS WITHOUT DISABILITIES,  
23 WITH SUBSTANTIALLY EQUIVALENT EASE OF USE; AND

24 (2) ARE CONSISTENT WITH THE STANDARDS OF § 508 OF THE  
25 FEDERAL REHABILITATION ACT OF 1973.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2018.