

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 1114

(Senator Jones)

Finance

State Personnel - Equal Employment Opportunity Program - Revisions

This bill establishes an independent equal employment opportunity (EEO) unit in the Department of Budget and Management (DBM). The bill also specifies that any EEO complaints filed against the head of a principal unit, an appointing authority, a manager, or a supervisor of a fair practices officer or equal employment opportunity officer must be referred to the EEO coordinator for investigation. The coordinator must, within 30 days, conduct any necessary investigation, issue a written decision to the complainant, and recommend to the Secretary of Budget and Management whether remedial action is necessary. The bill also establishes that persons aggrieved by the decision of the Secretary over the outcome of an EEO complaint may appeal the decision to the Office of Administrative Hearings (OAH).

Fiscal Summary

State Effect: Potential increase in expenditures if the additional cases received by OAH due to the bill cannot be handled with its existing staff. Any increase in OAH expenditures is assessed to the agencies from which the cases originate. Thus, State expenditures (all funds) may increase to cover the additional costs incurred by OAH. The EEO program within DBM can likely handle the additional workload created by the bill with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that Secretary, in consultation with the Joint Committee on Fair Practices and State Personnel Oversight, must establish a mediation or arbitration process to resolve EEO complaints.

Each principal unit's annual EEO plan must include policies and programs designed to promote workforce diversification that reflects the availability of women, minorities, and individuals with disabilities to ensure that personnel practices in the unit are not discriminatory. Further, each principal unit must (1) develop programs about diversity and cultural differences; (2) train managers, supervisors, and employees about the protections available to protect against employment discrimination; and (3) train managers and supervisors about reasonable accommodations for people with disabilities.

Current Law: The State's EEO program is under the authority of the Secretary of Budget and Management but is administered and enforced by an EEO coordinator. The purpose of the EEO program is to ensure a system that provides equal opportunity in employment on the basis of merit and fitness. It covers all employees in any Executive Branch agency (including those with an independent personnel system) and applicants for a position in the skilled, professional, and management services (or comparable positions) in those agencies.

The State's EEO program (1) reviews appealed discrimination complaints; (2) investigates whistleblower complaints; (3) monitors agencies' fair practices and EEO programs and policies; (4) provides training and technical assistance to managers and supervisors; (5) ensures compliance with federal, State, and local laws prohibiting discrimination; (6) evaluates State agencies' EEO efforts; and (7) reports annually to the Governor. It also manages the Employee Assistance Program, which provides confidential and professional referral and assessment services to State employees who are experiencing personal difficulties that are adversely affecting their work performance.

The head of each department is required to appoint a fair practices officer and an appropriate number of EEO officers – if necessary, the fair practices officer can be the department's EEO officer. The fair practices officer implements the State's EEO program, investigates and resolves complaints, and coordinates EEO officer activities. An EEO officer monitors all personnel actions, attests that EEO procedures were followed in personnel actions, and performs other assigned duties.

Background: DBM advises that the bill largely codifies provisions established by Executive Order 01.01.2007.16, which was issued in August 2007. This Executive Order (1) creates the EEO unit required by the bill that oversees the administration of an equal employment practices program consistent with the requirements of applicable federal and

State law; (2) requires that Executive Branch agencies develop policies that promote equal employment and work force diversification; (3) requires leadership training for managers and supervisors regarding fair employment practices; and (4) requires the development of activities and events to educate employees on issues of diversity and cultural differences.

State Fiscal Effect:

The EEO Program Can Likely Handle Additional Investigations with Existing Resources

All EEO complaints filed by an Executive Branch employee are first investigated by the agency's EEO officer, who makes a recommendation for disposition of the complaint to the head of the agency.

DBM advises that the bill does not affect the complaint resolution process in most cases; however, for complaints filed against the head of a principal unit, an appointing authority, a manager, or a supervisor of a fair practices officer or equal employment opportunity officer must be referred directly to the EEO coordinator for investigation. DBM estimates that about 10 complaints per year are filed by employees against these individuals. Under the bill, these complaints must be administered by the EEO coordinator. The number of EEO complaints may be reduced to some extent by increased diversity training and outreach. Legislative Services assumes that increasing the workload of the EEO coordinator by 10 or fewer cases per year may be handled with existing resources. However, DBM advises that budgeted resources and staffing levels for the EEO program are constrained and the additional workload may compromise other activities or services offered by the EEO program to State agencies. Legislative Services acknowledges that, if the workload created by the bill proves to be unmanageable with existing resources, DBM may need to seek additional staffing for this purpose through the budgetary process.

A Significant Number of EEO Complaints May Be Appealed to OAH due to the Bill

If a complainant is aggrieved by the decision of the head of an agency, the complaint may be appealed to the EEO coordinator; the EEO coordinator recommends a decision to the Secretary of Budget and Management who issues a final resolution to the matter. According to DBM, 241 complaints were appealed to the EEO coordinator in fiscal 2009. In most cases the EEO coordinator recommended that the Secretary concur with the agency's decision.

The bill creates an additional appeals process by which a complainant who is aggrieved by the decision of an agency head and the Secretary may appeal the complaint to OAH. While the precise number of additional cases received by OAH cannot be reliably

estimated, DBM estimates that OAH may receive over 200 EEO complaints per year. The complexity level and average length of these cases is also unknown, which makes it difficult to determine the impact on OAH. Nonetheless, the increased activity may have a significant impact on OAH and may require the hiring of an additional administrative law judge.

OAH receives reimbursable funds from State agencies that have contested cases referred to OAH for resolution. DBM allocates funds to these agencies to cover the OAH assessment based on actual caseload data from the preceding fiscal year. To the extent that EEO complaints from various agencies are appealed to OAH, State expenditures (all funds) increase due to EEO cases from various Executive Branch agencies being heard at OAH.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Human Relations Commission, Office of Administrative Hearings, Department of Legislative Services

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