

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 971

(Senator Kagan)

Education, Health, and Environmental Affairs

Rules and Executive Nominations

**Procurement - Nondiscrimination Clauses and State Policy Prohibiting
Discrimination**

This bill expands the required nondiscrimination clause in State contracts to also prohibit discrimination by contractors on the basis of religion, ancestry, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics. In addition, the bill requires the Maryland Commission on Civil Rights (MCCR), in conjunction with the Department of Commerce, to study strategies for increasing diversity on boards of directors of for-profit and nonprofit entities in Maryland. MCCR must report its findings and recommendations to the General Assembly by December 1, 2017.

Fiscal Summary

State Effect: General fund expenditures for MCCR increase minimally to complete the required study in FY 2018 only. MCCR has neither the expertise nor the resources to conduct the study. Thus, it is assumed MCCR is able to outsource the study, despite having only two months to do so. Otherwise, staff must be diverted from core functions, including federal obligations, to complete the study. The expansion of the nondiscrimination clause has no material effect on governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Chapter 283 of 2006 established a commercial nondiscrimination policy that prohibits the State from entering into a procurement contract with a business entity that has discriminated against vendors, suppliers, subcontractors, or commercial customers

on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, disability, or any other unlawful use of characteristics. Chapter 283 also established a process to adjudicate complaints of discrimination and included penalties against any business that is found to have violated the commercial nondiscrimination policy. Finally, it required that specific certifications relating to the nondiscrimination policy be included in State procurement contracts.

The requirement for State construction contracts and subcontracts to contain a nondiscrimination clause was initiated by Chapter 448 of 1961; the clause references only discrimination on the basis of sex, race, age, color, creed, or national origin and thus does not align with the State's broader nondiscrimination policy. The State may declare a contract to be void if the nondiscrimination clause is omitted from either a contract or a subcontract. If a contractor willfully fails to comply with the requirements of a nondiscrimination clause and the contract is partly executory, the State may compel the contractor to continue to perform work under the contract. Even so, the State is liable for no more than the reasonable value of work performed and materials provided. A contractor may similarly void a subcontract if the subcontractor willfully fails to comply with the requirements of a nondiscrimination clause. The Board of Public Works must investigate any charge related to a violation of a nondiscrimination clause in a construction contract or subcontract; if it concludes the charge is true, the board may invoke any remedy available by law.

Additional Information

Prior Introductions: None.

Cross File: HB 919 (Delegate K. Young, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Commission on Civil Rights; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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