

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 286

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Procurement - Information Technology - Nonvisual Access

This bill (1) alters the definition of “nonvisual access”; (2) requires the Department of Information Technology (DoIT) to adopt new nonvisual access procurement standards consistent with federal standards by January 2020; (3) expands the nonvisual access clause that is included in information technology (IT) contracts and establishes a related confirmation process; and (4) exempts an 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: State expenditures (all funds) increase, potentially significantly, for IT procurement beginning in FY 2019. General fund expenditures increase by \$99,100 in FY 2020 for DoIT to hire additional staff; future years reflect elimination of one-time costs. Revenues are only affected to the extent that civil penalties are imposed (which likely cannot occur before FY 2022); this analysis assumes no material effect on revenues.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	99,100	97,100	100,500	104,100
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.

Analysis

Bill Summary: The bill requires DoIT to adopt new nonvisual access procurement standards by January 1, 2020, that provide nonvisual access 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, consistent with the standards of Section 508 of the federal Rehabilitation Act of 1973. The statutory definition of “nonvisual access” is altered to reflect the new standards.

By January 1, 2020, the Secretary of Information Technology or the Secretary’s designee must establish a process to (1) determine whether IT meets the nonvisual access standards adopted by DoIT; (2) work with the vendor to modify existing IT to meet the standards, if practicable; and (3) enforce the nonvisual access clause for IT procured after the standards are adopted.

In addition, beginning on January 1, 2020, the existing nonvisual access clause that must be included in IT contracts must include a statement that:

- the Secretary (or designee) will determine whether the IT meets DoIT’s nonvisual access standards within 18 months from the award of a procurement;
- if the IT does not meet the standards, the vendor will be notified that it has 12 months to modify the technology to meet the standards, at the vendor’s own expense; and
- if the vendor fails to meet the standards within 12 months, the vendor may be subject to a civil penalty of \$5,000 for a first offense and \$10,000 for a subsequent offense and must indemnify the State for liability resulting from the use of IT that does not meet the standards.

Current Law: The Secretary of Information Technology has numerous duties related to the development, review, maintenance, and procurement of IT projects and services, including 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 federal 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: The Maryland Department of Disabilities (MDOD) advises that the fiscal 2019 budget includes an accessibility IT coordinator position within MDOD. MDOD's position was created in response to [Executive Order 01.01.2017.23](#), which designates October as Disability Employment Awareness Month and requires MDOD to initiate a public awareness campaign to provide information to employers on the benefits of hiring workers with disabilities.

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.

State Expenditures: DoIT needs additional staff to develop the new nonvisual access standards to be included in State IT contracts, work with vendors of IT still in use by the State to modify the technology if practicable, review IT contracts that are newly awarded to determine compliance with access standards, and establish an enforcement process. Therefore, general fund expenditures increase by \$99,068 in fiscal 2020 for DoIT to hire an access technology officer, which assumes that the officer is hired on July 1, 2019, in order to develop the contract provision and begin reviewing contracts by January 1, 2020. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$93,553
One-time and Ongoing Operating Expenses	<u>5,515</u>
DoIT FY 2020 Expenditures	\$99,068

Future year expenditures reflect annual increases in the salary, 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 beginning in fiscal 2019 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 the terms and conditions prescribed by the bill may dissuade vendors, especially large firms, from participating in IT procurement with the State. Any reduction in competition for State contracts likely leads to higher costs for IT projects. Similarly, the bill’s civil penalty may be considered as an additional risk by vendors.

Small Business Effect: 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.

Additional Information

Prior Introductions: SB 439 of 2017, a bill with similar provisions, passed the Senate and received a hearing in the House Health and Government Operations Committee, but no further action was taken. Its cross file, HB 1140 of 2017, received an unfavorable report from the House Health and Government Operations Committee.

Cross File: None designated; however, HB 1088 (Delegate Cullison, *et al.* – Health and Government Operations) is identical.

Information Source(s): Department of Information Technology; Maryland Department of Disabilities; Department of Legislative Services

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