

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 929

(Senator Benson)

Education, Health, and Environmental Affairs

Health and Government Operations

State Policies, Guidelines, and Regulations - Mitigation of Disparate Impacts

This bill requires specified departments to develop and implement a procedure for (1) determining whether the adoption of a policy, guideline, or regulation by the department would have or has had a disparate impact on racial minorities and (2) mitigating any disparate impact. Annually by December 1, the departments must report to the Department of Budget and Management and the Senate Budget and Taxation and House Appropriations committees on the implementation of the bill, including any changes to policies, guidelines, or regulations that were made by the department to mitigate any disparate impacts on racial minorities.

Fiscal Summary

State Effect: General and special fund expenditures increase, likely significantly, beginning in FY 2019 in order for State agencies to make the required determinations regarding disparate impacts, as discussed below. Revenues are not directly affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The procedure adopted must include (1) a racial equity framework that includes an equity lens; (2) racial disparity indicators; (3) data collection and reporting; and (4) staff training in racial equity, cultural competence, and implicit bias. A department may hire staff or consultants using existing resources.

The departments affected by the bill are (1) the State Department of Education (MSDE); (2) the Maryland Department of Health (MDH); (3) the Department of Housing and Community Development (DHCD); (4) the Department of Human Services; and (5) the Department of Public Safety and Correctional Services (DPSCS).

Current Law/Background: Disparate impacts are those in which a policy, rule, or law appears to be neutral, yet results in a disproportionate impact on a particular group. For example, zone drug laws, which penalize drug offenses more harshly when they take place near a school zone or other public facility (*e.g.*, public housing), have been shown to have a severe disproportionate racial impact in some areas. Because urban areas are more densely populated and often have large minority populations, minorities are more likely to be within proximity of a designated zone space and, accordingly, subject to harsher punishment than others who commit the same offense in a less populated area.

A disparate impact theory may also be used as a basis for discrimination claims under some federal laws. For example, following a report that African American students were suspended at much higher rates than white students, the U.S. Department of Education and the U.S. Department of Justice issued guidance stating that schools are violating federal law (Title IV and Title VI) when they implement facially neutral policies and practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race.

State Fiscal Effect: General and special fund expenditures increase, likely significantly, beginning in fiscal 2019 in order for the impacted State agencies to comply with the bill's requirements.

Regardless of the bill's authorization for departments to hire staff or consultants using existing resources, the majority of responses indicate a lack of existing resources to do so. The Department of Legislative Services (DLS) agrees with this assessment and also notes the bill's specific requirement that a determination of whether policies, guidelines, or regulations would have or *has had* a disparate impact on racial minorities must be made. Therefore, DLS advises that a large portion of effort is required at the initial phase, as agencies begin the process of evaluating *all existing* policies, guidelines, and regulations.

Given the magnitude of that task and the ongoing constraint of agency budgets due to the State's fiscal difficulties, it is likely that many of the impacted agencies may need to utilize an outside consultant with specific expertise or hire additional staff, at least in the initial phase. For example, the Office of the Inspector General within MDH estimates that although it does not have many policies, guidelines, or regulations to review, it will still need a part-time contractual employee, as it does not have staff with the requisite knowledge and experience to meet the bill's requirements. However, it also advises that such work can possibly be completed in the first year, and after staff is trained, procedures

can possibly be implemented to relieve the need for the contractual position. Even agencies that indicated the possibility of accomplishing the bill initially with existing resources, including DHCD, noted that the bill may require additional staff to properly handle implementing procedures and reporting requirements. DLS agrees, and notes that until a full review has been conducted, it is difficult to precisely anticipate what resources will be needed, particularly in regard to mitigating any disparate impact.

DLS further notes that because the bill also requires an ongoing determination regarding policies, guidelines, and procedures, it is likely that many agencies need permanent staff, particularly when considering the volume of guidelines, regulations, and policies that are implemented annually. For example, the Office of Health Care Quality within MDH oversees 42 different provider types, each of which is governed by its own regulations and policies regarding licensing, survey, and certification activities; it enforces 49 separate chapters of the Code of Maryland Regulation. It therefore anticipates the need for five staff (three health policy positions, one administrator, and one program manager), for a minimum estimated cost of \$370,000 annually. Numerous other units under the purview of MDH also express the need for additional resources. For example, the Office of Controlled Substances Administration advises that a research statistician will be required to design, implement, and maintain a program to make a determination of any potential disparate impact and to mitigate the impact; expenditures are estimated at approximately \$80,000 annually. Other MDH units anticipate similar expenditures.

MSDE advises it does not have the capacity to implement procedures regarding a racial equity framework and also needs assistance in staff training; general fund expenditures to hire a consultant are anticipated to be \$100,000 annually. DPSCS anticipates that at least two additional staff are necessary to comply with the bill, with annual expenditures of at least \$119,000.

Small Business Effect: Small businesses that offer consulting services may benefit under the bill to the extent a State agency elects to hire one or more consultants to assist in meeting the bill's requirements.

Additional Information

Prior Introductions: None.

Cross File: HB 1623 (Delegate J. Lewis, *et al.*) - Health and Government Operations.

Information Source(s): Maryland State Department of Education; Department of Budget and Management; Maryland Department of Health; Department of Housing and Community Development; Department of Public Safety and Correctional Services; U.S. Department of Education; U.S. Department of Justice; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2018
md/kdm Third Reader - March 20, 2018

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510