

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1192
 Appropriations

(Delegate Valderrama, *et al.*)

Budget and Taxation

Assembly Areas - State-Funded Construction or Renovation - Assisted Listening System Requirement

This bill requires a recipient of State funds to install an assistive listening system (ALS) in an assembly area during the construction or renovation of the assembly area if (1) the assembly area uses or requires the use of a public address system and (2) a State contract has been executed to enable the construction or renovation of the assembly area. The bill establishes a Hearing Accessibility Advisory Board to consult with stakeholders, make recommendations, consider applications for waivers from the bill’s requirements, and monitor compliance. The Department of General Services (DGS) must adopt regulations to carry out the bill’s requirements. A person may bring a civil action for a violation of the bill’s provisions, and a court may order relief, as specified. The bill does not apply to a contract for construction or renovation of an assembly area entered into before the effective date of the bill. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: The bill generally codifies existing federal regulations, as discussed below; however, general fund expenditures increase by \$43,300 in FY 2020 for DGS to implement the bill. Out-years reflect ongoing costs. Potential minimal increase in general fund revenues from application of civil penalties.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	43,300	38,700	40,000	41,400	42,800
Net Effect	(\$43,300)	(\$38,700)	(\$40,000)	(\$41,400)	(\$42,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

“Assembly area” is a building or facility, or any portion of a building or facility, which (1) is used for the purpose of entertainment, education, or civic gatherings and (2) requires the use of a public address system. “Assembly area” includes an amphitheater, an arena, and a stadium; an auditorium; a center for the performing arts; a classroom and a lecture hall; a concert hall; a convention center; a courtroom; a legislative chamber; a movie theater, a theater, and a playhouse; and a public hearing and meeting room. However, “assembly area” does not include an outdoor area.

“Assistive listening system” means an amplification system using transmitters to bypass the acoustical space between a sound source and a listener by means of a wireless direct connection, such as a hearing induction loop system, that couples to a personal hearing device or a receiver, such as a hearing induction loop receiver or other similar technology.

“Hearing induction loop” means a hearing loop or T-loop system that takes a sound source and transfers it directly via a magnetic signal to a hearing aid, a cochlear implant, a hearing induction loop receiver, or any other personal device that acts as a receiver.

“Recipient of State funds” means a unit of State government, unit of local government, or for-profit or nonprofit entity or association that receives State money for construction or renovation of an assembly area.

“Construction or renovation” includes construction, reconstruction, and renovation.

Installation of Assistive Listening Systems

Requirement: A recipient of State funds must install an ALS in an assembly area during the construction or renovation of the assembly area if (1) the assembly area uses or requires the use of a public address system and (2) a State contract has been executed to enable construction or renovation of the assembly area. The bill does not, however, require State agencies or recipients of State funds to retrofit existing facilities that are not undergoing renovation.

Waiver: A recipient of State funds may apply for a waiver from the above-mentioned requirement if (1) the recipient claims that an ALS is not technologically feasible or (2) there is a dispute regarding whether the requirement applies to a construction or renovation project. A waiver request must include a description of the alternative assistive listening technology the recipient will use to comply with the Americans with Disabilities Act (ADA).

Hearing Accessibility Advisory Board

The bill establishes the Hearing Accessibility Advisory Board. The Secretary of General Services appoints the members of the board. The board must consist of individuals who have expertise in ALSs and consumers who use ALSs.

The board must (1) consult with State residents who use or will use the facilities under construction or renovation, including individuals with hearing loss as well as organizations that represent people with hearing loss and have background experience and knowledge of the use of ALSs and devices; (2) make recommendations for regulations to implement the bill's requirements; (3) consider applications for waivers from those requirements; (4) monitor compliance; and (5) investigate complaints regarding noncompliance.

Regulations

DGS must adopt regulations to carry out the bill's requirements, including regulations regarding proper maintenance, training of staff, adequate signage, and a requirement for facilities to provide receivers compatible with the technology for specified individuals.

Relief for Violations

A person may bring a civil action for a violation of the bill's requirements or if the person has reasonable grounds for believing that the bill's requirements will be violated. A person may not be required to take any other action before bringing a civil action for a potential violation of the bill's requirements if the person has actual notice that a recipient of State funds does not intend to comply with the bill's requirements.

In a civil action authorized under the bill, the court may grant any equitable relief that the court considers appropriate, including temporary, preliminary, or permanent relief; providing an auxiliary aid or service; requiring a modification of policy, practice, or procedure; and making facilities readily accessible to and usable by individuals with disabilities. In addition, the court may assess a civil penalty against the recipient of State funds or award any other relief the court considers appropriate.

If a court orders injunctive relief, as specified, the order must include a requirement that the facilities be altered to make them readily accessible to and usable by individuals with disabilities to the extent required under the bill.

Current Law:

Americans with Disabilities Act

Equal Communication Access: The federal ADA prohibits discrimination on the basis of disability by public and private entities in the provision of public services and accommodations. Under federal ADA requirements, specified public and private entities must ensure communications access for individuals with disabilities and provide appropriate auxiliary aids and services, which may include ALSs.

New Construction and Alterations: Regulations adopted by the U.S. Department of Justice under ADA set forth accessibility requirements applicable to the construction and alteration of public and private buildings and facilities. These requirements have also been adopted under the Maryland Accessibility Code. A “public building or facility,” as it applies to regulations adopted under ADA, is “a building or facility or portion of a building or facility designed, constructed, or altered by, on behalf of, or for the use of a public entity” as defined under ADA. Under ADA, “public entity” includes a State or local government or instrumentality of a State or local government. A “private building or facility,” as it applies to regulations adopted under ADA, is “a place of public accommodation or a commercial building or facility” as defined under ADA.

With specified exceptions, new construction and alterations of facilities covered under ADA must comply with standards adopted under ADA. “Alteration,” as it applies to these standards, means a change to a building or facility that affects or may affect the usability of the building or facility or part of the building or facility. “Alteration” includes remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, and changes to or rearrangement of structural elements or plan configurations of walls and specified partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electric systems are generally not considered alterations for purposes of ADA.

Standards adopted under ADA set forth specific requirements pertaining to the provision of ALSs in assembly areas. “Assembly area,” as it applies to these standards, is a building or facility, or a portion or facility, used for entertainment, educational or civic gatherings, or similar purposes. “Assembly area” includes classrooms, lecture halls, courtrooms, public meeting rooms, public hearing rooms, legislative chambers, motion picture houses, auditoria, theaters, playhouses, dinner theaters, concert halls, centers for the performing arts, amphitheaters, arenas, stadiums, grandstands, or convention centers.

Under standards adopted under ADA, an ALS must be provided in each assembly area “where audible communication is integral to the use of the space.” Except in courtrooms, ALSs are not required where audio amplification is not provided. “Assistive listening system (ALS),” as it applies to standards adopted under ADA, means “an amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical space between a sound source and a listener by means of induction loop, radio frequency, infrared, or direct-wired equipment.” An assembly area required to provide ALSs must also provide specified signage informing patrons of the availability of an ALS. ADA standards set forth technical and other requirements applicable to ALSs in assembly areas, including the minimum number of receivers that must be provided.

Background: According to the U.S. Access Board, ALSs are designed to improve communication access for individuals with hearing loss by circumventing the acoustical space between a sound source and a listener. Types of ALSs used in large areas include (1) induction loop systems, which deliver sound via an electromagnetic field emitted from a loop of wire encircling a seating area, and which are compatible with hearing aids fitted with telecoils; (2) FM systems, which deliver sound via radio waves, and which require the use of portable receivers; and (3) infrared systems, which transmit sound via infrared light waves.

According to the Governor’s Office of the Deaf and Hard of Hearing, an estimated 1.2 million Marylanders age 12 and older are deaf or hard of hearing.

State Expenditures: In large part, the bill codifies federal regulations adopted under ADA, which generally require that a newly constructed or altered assembly area include an ALS. Accordingly, it is assumed that, for constructed or renovated assembly areas, installation or provision of an ALS is required in the absence of the bill. While the bill’s definition of an ALS is limited to systems that utilize a *wireless* direct connection (an ALS, as it applies to standards adopted under the ADA, may include direct-wired equipment), wireless systems are typically utilized in large areas, as discussed above. To the extent that the bill’s technology requirement impacts the type of system selected for an assembly area, associated project costs may be minimally affected.

General fund expenditures for DGS increase by \$43,319 in fiscal 2020, which accounts for the bill’s July 1, 2019 effective date. This estimate reflects the cost of hiring one part-time (50%) administrative coordinator to support the activities of the board, including processing waivers. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	\$38,116
Operating Expenses	<u>5,203</u>
FY 2020 DGS Personnel Costs	\$43,319

Future year expenditures reflect annual increases and employee turnover and ongoing operating expenses.

The Judiciary advises that it can likely handle any additional cases generated by the bill with existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 1014 (Senators Patterson and Benson) - Budget and Taxation.

Information Source(s): Anne Arundel, Charles, and Montgomery counties; City of Havre de Grace; Maryland Association of Counties; Maryland Municipal League; Maryland Independent College and University Association; University System of Maryland; Public School Construction Program; Baltimore City Community College; Maryland Higher Education Commission; Morgan State University; Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Information Technology; Department of General Services; Governor’s Office of the Deaf and Hard of Hearing; Maryland Department of Disabilities; U.S. Access Board; U.S. Department of Justice; John F. Kennedy Center for the Performing Arts; Arizona State University Speech and Hearing Clinic; Department of Legislative Services

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