

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 90

(Delegate Lierman)

Environment and Transportation

Education, Health, and Environmental Affairs

State and Local Housing Programs – Affirmatively Furthering Fair Housing

This bill requires the Department of Housing and Community Development (DHCD) to administer its programs and activities to “affirmatively further fair housing.” It further establishes that local jurisdictions have a duty to affirmatively further fair housing. DHCD must submit a report to the Governor and the General Assembly on, among other things, efforts by specified units of State and local government to promote fair housing, as specified. Finally, the bill establishes provisions relating to the inclusion of assessments of fair housing in local comprehensive plans. The Maryland Department of Planning (MDP) and DHCD must provide specified technical assistance upon request. **The bill’s provisions relating to local comprehensive plans take effect January 1, 2022.**

Fiscal Summary

State Effect: No effect in FY 2022. General fund expenditures increase by \$54,700 in FY 2023 and by \$34,200 in FY 2024. Revenues are not affected.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------|---------|------------|------------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 0 | 54,700 | 34,200 | 0 | 0 |
| Net Effect | \$0 | (\$54,700) | (\$34,200) | \$0 | \$0 |

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

Local Effect: Local governments are likely able to include assessments of fair housing as part of the housing elements in their local comprehensive plans with existing resources to the extent they previously conducted such assessments and/or receive technical assistance from MDP and DHCD. No direct effect on revenues.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Selected Definitions

“Affirmatively further fair housing” means to take meaningful actions, in addition to actions aimed at combating discrimination, to (1) overcome patterns of segregation and (2) foster inclusive communities free from barriers that restrict access to housing and opportunity based on protected characteristics. Affirmatively further fair housing includes to take meaningful actions that, taken together (1) address significant disparities in housing needs and access to opportunity; (2) replace segregated living patterns with truly integrated and balanced living patterns; (3) transform racially and ethnically concentrated areas of poverty into areas of opportunity; and (4) foster and maintain compliance with civil rights and fair housing laws.

“Meaningful action” means a significant action that is designed and can be reasonably expected to achieve a material positive change by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

Affirmatively Furthering Fair Housing

DHCD must (1) administer its programs and activities related to housing and community development to affirmatively further fair housing and (2) explore ways to ensure it is collaborating with and supporting nonprofit and governmental entities devoted to furthering fair housing. DHCD is prohibited from taking any action that is materially inconsistent with the obligation to affirmatively further fair housing.

DHCD must require political subdivisions and housing authorities to affirmatively further fair housing; DHCD must require those entities to submit an assessment of fair housing as part of the housing element of a comprehensive plan.

These provisions do not (1) require a political subdivision or housing authority to take a specific action to affirmatively further fair housing or (2) prohibit a political subdivision or housing authority from taking a specific action to affirmatively further fair housing.

Reporting

By December 1, 2023, and by December 1 every five years thereafter, DHCD, in consultation with political subdivisions and housing authorities, must submit a report to the Governor and the General Assembly on (1) the efforts by the State, political subdivisions, and housing authorities to promote fair housing choice and racial and

economic housing integration, and the results of those efforts, delineated by county and (2) any assessment of fair housing completed since the most recent report, as specified, including any assessment of fair housing completed or revised under the federal U.S. Department of Housing and Urban Development's (HUD) most recently published Affirmatively Furthering Fair Housing Rule.

The report must provide an update on the actions being taken by local jurisdictions to affirmatively further fair housing. DHCD must work in partnership with each local jurisdiction to jointly develop and complete a template to capture data in the jurisdiction related to affirmatively furthering fair housing.

Local Comprehensive Plans

The bill establishes that local jurisdictions have a duty to affirmatively further fair housing through their housing and urban development programs. The housing element of a local comprehensive plan that is enacted or amended on or after January 1, 2023, must include an assessment of fair housing to ensure that the local jurisdiction is affirmatively furthering fair housing. On request of a local jurisdiction, MDP, in consultation with DHCD, must provide technical assistance for the purpose of developing the housing element of the comprehensive plan. The bill does not require a local jurisdiction to take, or prohibit a local jurisdiction from taking, a specific action to affirmatively further fair housing.

A local jurisdiction that completed or revised an Assessment of Fair Housing under HUD's most recently published Affirmatively Furthering Fair Housing Rule, or an analysis of impediments to fair housing prior to the Affirmatively Furthering Fair Housing Rule, must incorporate relevant portions of the Assessment of Fair Housing or analysis of impediments into the housing element of the local jurisdiction's comprehensive plan, by reference, the next time the local jurisdiction amends its comprehensive plan.

Current Law:

The Federal Fair Housing Act, Generally

The federal Fair Housing Act of 1968 declares that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” Accordingly, the Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of race, color, religion, sex, familial status, national origin, or disability. In addition to prohibiting discrimination, the Act requires that HUD programs be administered in a manner to affirmatively further the policies of the Act.

Local Comprehensive Plans and Housing Elements, Generally

Local jurisdictions must enact, adopt, amend, and execute a comprehensive plan; the plan must include provisions and elements specified in statute. At least once every 10 years, each planning commission must review the comprehensive plan and, if necessary, revise or amend the plan to include all of the required elements and visions.

While charter counties and Baltimore City are subject to different requirements than noncharter counties and municipalities with respect to what elements a comprehensive plan must include, Chapters 713 and 714 of 2019 require that a comprehensive plan adopted by a local jurisdiction must include a housing element. A housing element (1) must address the need for affordable housing within the local jurisdiction, including workforce housing and low-income housing, and (2) may include goals, objectives, policies, plans, and standards.

State Expenditures: The bill requires DHCD to report on, among other things, efforts undertaken by local jurisdictions and housing authorities to promote fair housing choice and racial and economic housing integration by December 1, 2023, and every five years thereafter. DHCD advises that due to the high number of political subdivisions and housing authorities from which it must collect and analyze this information for the initial report, DHCD requires additional resources to comply with the bill's requirements. Thus, general fund expenditures increase by \$54,729 in fiscal 2023 and by \$34,208 in fiscal 2024. This estimate reflects the cost of hiring one contractual reports specialist to oversee the collection of data from specified entities and to produce the required report. It accounts for an October 1, 2022 starting date (one year from the bill's effective date) for the related provisions and the elimination of the contractual position on December 31, 2023. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | <u>FY 2023</u> | <u>FY 2024</u> |
|--------------------------------|-----------------------|-----------------------|
| New Contractual Position | 1.0 | 0.0 |
| Salary and Fringe Benefits | 49,148 | 33,880 |
| Operating Expenses | <u>5,581</u> | <u>328</u> |
| Total DHCD Expenditures | \$54,729 | \$34,208 |

General fund expenditures may similarly increase for contractual support every five years thereafter, which is beyond the scope of this analysis.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

MDP and DHCD advise that, on request by local jurisdictions, they can provide technical assistance in developing the housing elements of local comprehensive plans with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 687 (Senator Smith) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Montgomery and Prince George's counties; City of Bowie; Department of Housing and Community Development; Maryland Department of Planning; Department of Legislative Services

Fiscal Note History: First Reader - January 22, 2021
rh/mcr Third Reader - April 2, 2021
Revised - Amendment(s) - April 2, 2021

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