

**DATE:** February 9, 2021  
**BILL NO.:** Senate Bill 687  
**COMMITTEE:** Senate Committee on Education, Health, and Environmental Affairs  
**TITLE:** State and Local Housing Programs – Affirmatively Furthering Fair Housing  
**SPONSORS:** Sen. Smith

### **Letter of Information**

#### **Description of Bill:**

Senate Bill 687 establishes reporting requirements for the Department of Housing and Community Development that would require a significant data collection and analysis beyond the current scope of the agency’s work, to include data collection from local governments, housing authorities, and private entities. Senate Bill 687 would also mandate that local governments undertake similar data collection and analysis as a part of their Comprehensive Plan process and impose upon local governments, housing authorities, and other private entities and certification and data analysis process before they may receive financial assistance from DHCD.

#### **Background and Analysis:**

Under the current applicable standards of the Fair Housing Act, HUD program participants (which include States, housing authorities, and nearly all local jurisdictions) already have a duty to affirmatively further fair housing. The Fair Housing Act and subsequent related acts requiring certifications do not specify how HUD, or recipients of HUD funding, are to affirmatively further fair housing, though HUD imposes site and neighborhood standards for HUD-funded development through 24 CFR § 891.125, and requires affirmative marketing of housing units to promote integrated neighborhoods. For that reason, we do not anticipate that this legislation will result in any increased availability or access to affordable housing for Marylanders. Rather, the impact may ultimately be the opposite, by increasing overall compliance costs to jurisdictions, obligating them to allocate finite resources that may otherwise be deployed in direct support of housing and community development programs.

The required reporting standard in this bill is similar to a federal rule, also referred to as Affirmatively Furthering Fair Housing (AFFH), promulgated by the U.S. Department of Housing and Urban Development (HUD). AFFH was never fully implemented for states and insular areas and was suspended in 2017 before being repealed last year. During the federal proposed rulemaking process, at one time, HUD estimated state compliance with their AFFH standard could be expected to take DHCD, as a state agency, approximately 1,000 hours of work over the five year reporting period, with most of that work concentrated in year or two of the five year Consolidated Plan cycle.

While the requested data under this bill is not as extensive as that of the proposed federal rule, the workload for this bill would certainly be greater overall due to the volume of information to be collected, much of it from third parties, and the number of jurisdictions that would be impacted. As was noted earlier, the AFFH report was to be submitted to HUD on a five year cycle (replacing the Analysis of Impediments to Fair Housing report); Senate Bill 687 requires an annual report.

In addition, under the federal rule, DHCD was only required to report on its own activities and assessments in “non-entitlement” jurisdictions, that is, jurisdictions that do not receive program funds directly from HUD; Senate Bill 687 requires DHCD to report on all jurisdictions, as well as any applicants for DHCD funding (to include housing authorities and other private entities).

In Maryland, there are 14 “entitlement” jurisdictions that are tasked with completing their own Consolidated Plans, including the associated Analysis of Impediments to Fair Housing (AI) or AFFH reporting (if applicable while the rule was in place), including the top 7 jurisdictions by population, accounting for approximately 80% of the population of the State of Maryland. The administrative burden for DHCD to report on all jurisdictions would require significantly more personnel hours.

This bill also creates reporting requirements and certification processes for local governments to adhere to, and requires any entities receiving financial assistance from DHCD, whether housing-related or not, to submit their own detailed certification that they affirmatively further fair housing and the ways in which they do it. DHCD provides financial assistance to a significant number of borrowers who are not involved in housing at all, including small businesses, such as restaurants and entertainment venues.

Both the reporting and the certifications will require increased compliance costs for local jurisdictions, but while the 14 entitlement jurisdictions may only see a limited expansion of their existing requirements, the vast majority of Maryland’s 24 counties and 157 municipalities would likely see a dramatic surge in compliance costs.

Finally, just last week, President Biden directed the HUD Secretary to undertake an examination of the impact of the repeal of the federal AFFH rule, and to take any action necessary to ensure that the Fair Housing Act’s requirements to affirmatively further fair housing are being implemented, including by preventing practices with an unjustified discriminatory impact. DHCD takes very seriously our existing duty to affirmatively further fair housing and we will continue to ensure the highest and best use of State resources to support high quality, affordable housing for Marylanders in all corners of the state. We welcome this examination and hope that the result will either affirm the progress being made by housing agencies across the country or result in a constructive process to address shortcomings eschewing the burdensome processes that accompanied the previous AFFH. In either case, we feel it would be prudent to let the federal examination and recommendations play out, without creating a duplicative, perhaps overly burdensome, unfunded mandate that may not comply with the federal government’s ultimate determination.

