

HB 1210 Diversity w Amendments REVISED FINANCE.pdf

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Position: FWA



**Testimony in Support with Amendments of House Bill 1210 –
Corporate Diversity – Board, Executive Leadership, and Mission
Economic Matters Committee
March 24, 2021**

The Jewish Community Relations Council of Greater Washington (JCRC) serves as the public affairs and community relations arm of the Jewish community. We represent over 100 Jewish organizations and synagogues throughout Maryland, Virginia, and the District of Columbia. The JCRC is strongly committed to cultivating a society based on freedom, justice, and pluralism. We work tirelessly throughout the entire Greater Washington area to advocate for our agencies that serve the most vulnerable residents, support our Jewish day schools and community centers, and to campaign for important policy interests on behalf of the entire Jewish community.

House Bill 1210 prohibits for profit and nonprofit companies from qualifying for certain State benefits unless the company satisfies criteria relating to underrepresented communities. This requirement affects state capital grant funding and state tax credits totaling \$1 million dollars or the receipt of a state contract with a value of \$1 million dollars or more in a fiscal year. HB 1210 defines underrepresented community as a community whose members self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native.

The JCRC has a long history advocating and securing funding for all faith-based communities including those that are vulnerable and disadvantaged. In fact, the agencies we represent are non-sectarian and the services these agencies provide reach the diverse community in which we live including citizens of various races, ethnicities, and religions. For example, the Jewish Social Service Agency and Jewish Council for the Aging provide services on a non-discriminatory basis and post their non-discrimination policies.

Bringing diversity to board compositions and leadership roles in non-profits is a priority of the JCRC and we commend the Bill Sponsor's effort in this matter. In fact, many diverse members of our Jewish community are members of underrepresented communities and there is a growing recognition within the Jewish community of the importance of diversity and inclusion initiatives. Given that context, we seek clarification regarding the language and requirement to demonstrate support for underrepresented communities in the entity's board composition and mission statement.

We appreciate the House Amendments regarding the funding to be disbursed within one fiscal year. However, we also ask the committee to clarify the wording of the legislation so as to ensure its commendable goal of fostering diversity while not unintentionally limiting the provision of social services to underrepresented communities and the ability of our day schools to educate Jewish students who are members of underrepresented communities. We support HB 1210 with Amendments and seek further clarity as outlined above.

HB 1210 to Senate Finance Fav-Amd March 24.pdf

Uploaded by: Bogdan, Henry

Position: FWA

March 24, 2021

Testimony on House Bill 1210
Corporate Diversity - Board, Executive Leadership, and Mission
Senate Finance Committee

Position: Support- Amend

Maryland Nonprofits is a statewide association of more than 1200 nonprofit organizations and institutions. While there are questions about its implementation that should be addressed by amendment, we applaud and strongly support the concept and intent of this bold initiative, and we urge its adoption. Maryland Nonprofits' commitment and advocacy for board and organizational diversity of nonprofits is reflected in the best practice guidelines of our ***Standards for Excellence Program***, our training and consulting work with members and other organizations, and our internal practices.

Our ***Standards for Excellence*** code of management and accountability best practices has long included a direction that *"Board membership should reflect the diversity of the communities served by the organization."* The ***Standards*** currently state that *"The board should establish a rigorous board development strategy for recruiting and selecting new members and ensuring that the board has an appropriate mix of talent, connections to the community, and diversity."*

Most nonprofits across the state recognize the importance of diversity and inclusion to effectively achieving their missions, but in a recent survey more than half conceded that they need to do more.

We support House Bill 1210. But based on concerns we have heard from members, that we share, about its implementation by regulation, we are asking for an amendment regarding those regulations.

In addition to commercial entities the bill covers the wide range of nonprofit organizations, from large educational or medical institutions to small all-volunteer groups, religious organizations and family foundations. Terms in the bill such as 'demonstrate membership' of underrepresented communities or 'demonstrate support in the mission', can have a very wide range of potential interpretations or measurements, affecting nonprofit organizations' ability to conform. The bill's impact is unclear on groups that rely on other organizational structures, such as advisory boards or councils, to assure equity, diversity or inclusiveness in their decisions and activities.

There are no specific criteria on the nature of the 'scorecard' with respect to how entities' missions can show 'support' for disadvantaged communities. Other questions include how scorecards will fairly score or compare diverse organizations to one another for the public's information. All of this is left to regulations to be promulgated by the Department of Commerce and the Office of Small, Minority, and Women Business Affairs.

Again, we support House Bill 1210 and endorse its objectives. We believe these concerns can be resolved by adequate opportunity to review the implementing regulations before the 2022 legislative session. For this reason, we urge you to **amend the bill to require that regulations be prepared for public comment by the end of this calendar year, to allow for public review and, if necessary, legislative clarification, before the bill is scheduled to take effect.** House Bill 1210's effective date is already set for July 1, 2022, allowing adequate time so that this amendment would not delay its implementation.

The bill has raised other questions that should also be considered, if not now in the future, including:

- the implication for other marginalized and underrepresented groups, such as persons with disabilities or members of the LGBTQ community, with regard to "state benefits" and other state laws related to equity, diversity and inclusion; and
- the lack of diversity or inclusiveness of state and local government boards and commissions, and executive agencies.

In conclusion, we urge you to give House Bill 1210 a favorable report, but to include an amendment that assures the opportunity for review of those regulations prior to the 2022 legislative session.

Henry Bogdan
hbogdan@mdnonprofit.org

SC HB1210 Testimony 2021 Corporate Diversity Balti

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WRITTEN TESTIMONY

House Bill 1210 (HB1210) – Corporate Diversity - Board, Executive Leadership, and Mission

Senate Finance Committee

March 24, 2021

MEMBER ORGANIZATIONS

Adat Chaim Congregation

American Jewish Committee

Americans for Peace Now

Baltimore Chapter

American Israel Public Affairs Committee

American Red Magen David for Israel

American Zionist Movement

Amit Women

Association of Reform Zionists of America

Baltimore Board of Rabbis

Baltimore Hebrew Congregation

Baltimore Jewish Green and Just Alliance

Baltimore Men's ORT

Baltimore Zionist District

Beth Am Congregation

Beth El Congregation

Beth Israel Congregation

Beth Shalom Congregation of

Howard County

Beth Tfiloh Congregation

B'nai B'rith, Chesapeake Bay Region

B'nai Israel Congregation

B'nai Jacob Shaarei Zion Congregation

Bolton Street Synagogue

Chevra Ahavas Chesed, Inc.

Chevrei Tzedek Congregation

Chizuk Amuno Congregation

Congregation Beit Tikvah

Congregation Beth Shalom of

Carroll County

Congregation Tiferes Yisroel

Federation of Jewish Women's

Organizations of Maryland

Hadassah

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J Street

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Jewish Labor Committee

Jewish War Veterans

Jewish War Veterans, Ladies Auxiliary

Jewish Women International

Jews For Judaism

Moses Montefiore Anshe Emunah

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National Council of Jewish Women

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Religious Zionists of America

Shaarei Tfiloh Congregation

Shomrei Emunah Congregation

Simon E. Sobeloff Jewish Law Society

Suburban Orthodox Congregation

Temple Beth Shalom

Temple Isaiah

Zionist Organization of America

Baltimore District

SUPPORT WITH AMENDMENTS

Background: HB1210, as amended, would prohibit a corporation or nonprofit from qualifying for certain state benefits unless the entity is able to demonstrate either membership of underrepresented communities in the entity's board or executive leadership; or support for underrepresented communities in the entity's mission. The requirement would apply to corporations and non-profit organizations, including foundations, schools, and hospitals, and would include state capital grant funding totaling \$1 million or more in a single fiscal year; state tax credits totaling \$1 million or more in a single fiscal year; or the receipt of a state contract with a total value of \$1 million or more in a fiscal year. Underrepresented community is defined in the bill as a community whose members self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native. Regulations and compliance would be determined by Department of Commerce and the Office of Small, Minority, and Women Business Affairs.

Written Comments: The Baltimore Jewish Council (BJC) represents The Associated: Jewish Federation of Baltimore and all of its agencies and programs. As a Jewish community, we are strongly in support of efforts to encourage greater diversity, particularly in the ranks of people who are making leadership decisions for organizations. We also are passionately committed to efforts to support the communities in which we live, and our agencies routinely provide services to members of vulnerable communities without regard to race or religion. We collectively see our mission as including improving our broader communities, and we have been particularly focused on such city neighborhoods of Park Heights, Reservoir Hill and Jonestown.

We urge committee members to consider ways to better define legislative intent for diversity within this legislation. We are concerned that too much room is left up to interpretation of executive branch agencies, without more direction from the General Assembly. For example, would it be sufficient for the 20-member board of a corporation or foundation to have just one member of an underrepresented community? Is there a process that the executive branch agencies should follow to determine proper representation levels? And would

BALTIMORE JEWISH COUNCIL

5750 Park Heights Avenue, Suite 329 • Baltimore, Maryland 21215

410-542-4850 • fax 410-542-4834 • baltjc.org

Member of the Jewish Council for Public Affairs

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it be sufficient for a corporation or non-profit to simply amend its mission statement to say that it supports underrepresented communities? Should there be a requirement that a certain level of resources be committed to helping such communities? We are concerned that without a clearer definition of legislative intent within the wording of the bill, the executive branch agencies might set the requirements too low, or regulators might make them unattainable for too many organizations.

The Baltimore Jewish Council believes that bringing greater diversity to the leadership of corporations and nonprofit organizations in Maryland is an important goal for the General Assembly. We support HB1210, with amendments that would further clarify the intent of legislators and give better guidance to the executive branch agencies that will be charged with implementing the bill.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of the Associated Jewish Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

HB 1210 Corporate Diversity - Board, Executive Lea

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Position: UNF



HB 1210
Corporate Diversity – Board, Executive Leadership, and Mission
Finance Committee
Position: Unfavorable

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation’s largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America’s leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC respectfully urges HB 1210 be given an unfavorable report.

HB 1210 is intended to increase the representation of “underrepresented communities” on the boards and in the executive cadre of private sector companies, both for profit and not-for-profit. It does so by conditioning the award of grants, tax credits, or State contracts valued at \$1,000,000 or more on the private entity’s having persons from underrepresented communities on its board or in its executive cadre or having support for underrepresented communities in its mission. It further requires these entities to report the racial make-up of their boards and executive cadres as part of their annual Form 1 filings with the Department of Assessments and Taxation in a form to be developed by the Department of Commerce and the Office of Small, Minority, And Women Business Affairs. This data would be public.

HB 1210 would represent a dramatic intrusion by the State into a private entity’s ability to determine its board and management structure and the purpose for which the entity was created. Owners of for-profit businesses put their own capital, and, in many cases, all of their personal assets and that of their spouses’ at risk to establish a business. It is simply inappropriate in a free market economy for the State to seek to coerce these private owners to restructure their managements or their missions to suit what the State deems to be acceptable. HB 1210 does not provide an incentive as some other bills before the General Assembly would do – it imposes a mandate. Restructure as the State sees fit or be barred from any meaningful opportunity to do business with or receive any benefit from the State. This would be an egregious overstep by the State, bad public policy, and should be rejected.

Moreover, HB 1210 runs roughshod over small businesses and especially family-owned businesses. Many firms in the construction industry or industry in general are owned and operated by family members. The greatest part of America’s wealth lies with family-owned businesses. According to the US Census Bureau, family firms comprise 90% of all business enterprises in North America.¹ HB 1210 would require family-owned and operated firms to add non-family member representatives of underrepresented communities to boards and executive cadres, totally disrupting the intrinsic structure and purposes for which the family owners created their business in the first place. If the committee is intent on moving forward with the bill, the bill should be amended at a minimum to remove family-owned corporations from its ambit.

Finally, the term the “support of underrepresented communities in the entity’s mission” presupposes that every business has a defined “mission”. While it may be business school orthodoxy to create a mission statement, values statement, etc., the overwhelming majority of small businesses don’t bother with such niceties. HB 1210 may cause businesses to develop boilerplate mission statements that include some reference to serving underrepresented communities, but that alone would be of questionable value and would do nothing to ensure that the execution of the mission – not its mere statement - serves underrepresented communities.

¹ Inc. Magazine, Family-Owned Businesses, <https://www.inc.com/encyclopedia/family-owned-businesses.html>, accessed 2/22/2021 1:00 p.m.

For HB 1210 to be effective, the State would have to monitor all affected entities' business activities to ensure there is congruence between the mission statement and the business activity regarding underrepresented communities. This is contemplated in the bill in §19-106(D). As the Fiscal Note points out on page 6, such an effort would require significant expense in every agency that has not been included in the calculation of the cost to the State. The Fiscal Note also points out that there could be as many as 430,000 businesses involved. Note that California, which has enacted legislation similar to HB 1210, deals with only 700 publicly traded companies headquartered in the state.

For the foregoing reasons, Maryland AGC respectfully urges that HB 1210 be given an unfavorable report.

Champe C. McCulloch
McCulloch Government Relations, Inc.
Lobbyist for Maryland AGC

HB 1210- OAG

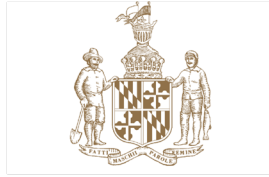
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BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 6, 2021

Yaakov E. Weissmann
Maryland General Assembly
Office of the Senate President
State House
Annapolis, Maryland 21401
Via email

Re: *House Bill 1210, "Corporate Diversity – Board, Executive Leadership, and Mission"*

Dear Mr. Weissmann:

You asked for advice about House Bill 1210. The bill addresses corporate diversity through a funding restriction, compilation of an equity scorecard, and a reporting requirement. You asked for clarification about the scope of the bill regarding the scorecard and reporting requirement.

The bill provides that "an entity" may not receive "a State benefit" unless the entity is able to demonstrate: "(1) membership of underrepresented communities in the entity's board or executive leadership; or (2) support for underrepresented communities in the entity's mission." New Business Regulation Article ("BR"), § 19-106(c) (page 3, lines 3-8). "Entity" and "State benefit" are defined in the bill. In addition, the bill directs the Department of Commerce and the Office of Small, Minority, and Women Business Affairs to:

- (1) develop, maintain, and post publicly a State Equity scorecard that compiles diversity data for each entity on:
 - (i) the membership of underrepresented communities in the entity's board or executive leadership; and
 - (ii) the support of underrepresented communities in the entity's mission; and

(2) adopt regulations to carry out this section, including directives for State agencies and entities to comply with the requirements in this section.

New BR § 19-106(d) (page 3, lines 3-8).

The bill also adds a new provision to an already existing reporting requirement in State law for specified persons:

If the person submitting the report is an entity that is subject to § 19-106 of the Business Regulation Article, the report shall include the diversity data required by the regulations adopted by the Department of Commerce and the Office of Small, Minority, and Women Business Affairs under § 19-106 of the Business Regulation article.

New Tax-Property Article ("TP"), § 11-101(d) (page 4, lines 12-17).

You asked which entities are subject to BR § 19-106(d) and TP § 11-101(d). After looking at the language of the bill as well as listening to the bill sponsor's testimony in the House committee, and that of the sponsor's panel, it is my view that the scorecard and reporting requirement will apply to any "entity" as defined in BR § 19-106(a)(2), excluding a sole proprietor per BR § 19-106(b). That is, the provisions in question are not limited to those entities receiving a State benefit. The legislative process envisioned by HB 1210 appears to be that the Department of Commerce, together with the Office of Small, Minority, and Women Business Affairs, will adopt regulations as to what kind of diversity data needs to be submitted by entities when filing the report required under TP § 11-101(d), which will then be used by those agencies to create a State Equity Scorecard.¹

Sincerely,



Sandra Benson Brantley
Counsel to the General Assembly

¹ The identity of most corporate board members, including nonprofit boards, is required public information.