

HOUSE BILL 1088

P2

8lr2763

By: **Delegates Cullison and Rosenberg**

Introduced and read first time: February 7, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Information Technology – Nonvisual Access**

3 FOR the purpose of requiring the Secretary of Information Technology, or the Secretary's
4 designee, to develop a provision for inclusion in all State procurement contracts that
5 requires a certain determination to be made within a certain period of time; requiring
6 the Secretary, or the Secretary's designee, to notify a certain vendor under certain
7 circumstances; providing that a certain vendor may be subject to a certain civil
8 penalty under certain circumstances; requiring a certain vendor that is found in
9 violation of a certain requirement to indemnify the State from liability under certain
10 circumstances; altering a certain exemption from the nonvisual access clause
11 requirement; requiring the Department of Information Technology, on or before a
12 certain date, to adopt new nonvisual access procurement standards that are
13 consistent with certain federal standards; altering a certain definition; and generally
14 relating to information technology and nonvisual access.

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 3A–301, 3A–303, and 3A–311
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2017 Supplement)

20 BY adding to
21 Article – State Finance and Procurement
22 Section 3A–303.1
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2017 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

27 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3A-301.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) (1) "Development" means all expenditures for a new information
4 technology system or an enhancement to an existing system including system:

5 (i) planning;

6 (ii) procurement;

7 (iii) creation;

8 (iv) installation;

9 (v) testing; and

10 (vi) initial training.

11 (2) "Development" does not include:

12 (i) ongoing operating costs, software or hardware maintenance,
13 routine upgrades, or modifications that merely allow for a continuation of the existing level
14 of functionality; or

15 (ii) expenditures made after a new or enhanced system has been
16 legally accepted by the user and is being used for the business process for which it was
17 intended.

18 (c) "Fund" means the Major Information Technology Development Project Fund.

19 (d) "Information technology" means all electronic information processing
20 hardware and software, including:

21 (1) maintenance;

22 (2) telecommunications; and

23 (3) associated consulting services.

24 (e) "Information technology services" means information provided by electronic
25 means by or on behalf of a unit of State government.

26 (f) "Major information technology development project" means any information
27 technology development project that meets one or more of the following criteria:

- 1 (1) the estimated total cost of development equals or exceeds \$1,000,000;
- 2 (2) the project is undertaken to support a critical business function
3 associated with the public health, education, safety, or financial well-being of the citizens
4 of Maryland; or
- 5 (3) the Secretary determines that the project requires the special attention
6 and consideration given to a major information technology development project due to:
- 7 (i) the significance of the project's potential benefits or risks;
- 8 (ii) the impact of the project on the public or local governments;
- 9 (iii) the public visibility of the project; or
- 10 (iv) other reasons as determined by the Secretary.

11 (g) “Master plan” means the statewide information technology master plan.

12 (h) “Nonvisual access” means the ability[, through keyboard control, synthesized
13 speech, Braille, or other methods not requiring sight] to receive, use, and manipulate
14 information and operate controls necessary to access information technology **IN A WAY
15 THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND INDEPENDENTLY USABLE BY
16 INDIVIDUALS WITH DISABILITIES SO THAT INDIVIDUALS WITH DISABILITIES ARE
17 ABLE TO ACQUIRE THE SAME INFORMATION, ENGAGE IN THE SAME INTERACTIONS,
18 AND ENJOY THE SAME SERVICES AS USERS WITHOUT DISABILITIES, WITH
19 SUBSTANTIALLY EQUIVALENT EASE OF USE, USING THE STANDARDS OF § 508 OF THE
20 FEDERAL REHABILITATION ACT OF 1973.**

21 (i) “Resource sharing” means the utilization of a State resource by private
22 industry in exchange for the provision to the State of a communication service or other
23 consideration.

24 (j) “Systems development life cycle plan” means a plan that defines all actions,
25 functions, or activities to be performed by a unit of State government in the definition,
26 planning, acquisition, development, testing, implementation, operation, enhancement, and
27 modification of information technology systems.

28 3A-303.

29 The Secretary is responsible for carrying out the following duties:

- 30 (1) developing, maintaining, revising, and enforcing information
31 technology policies, procedures, and standards;
- 32 (2) providing technical assistance, advice, and recommendations to the

1 Governor and any unit of State government concerning information technology matters;

2 (3) reviewing the annual project plan for each unit of State government to
3 make information and services available to the public over the Internet;

4 (4) developing and maintaining a statewide information technology master
5 plan that will:

6 (i) be the basis for the management and direction of information
7 technology within the Executive Branch of State government;

8 (ii) include all aspects of State information technology including
9 telecommunications, data processing, and information management;

10 (iii) consider interstate transfers as a result of federal legislation and
11 regulation;

12 (iv) work jointly with the Secretary of Budget and Management to
13 ensure that information technology plans and budgets are consistent;

14 (v) ensure that State information technology plans, policies, and
15 standards are consistent with State goals, objectives, and resources, and represent a
16 long-range vision for using information technology to improve the overall effectiveness of
17 State government; and

18 (vi) include standards to assure nonvisual access to the information
19 and services made available to the public over the Internet; [and]

20 (5) adopting by regulation and enforcing nonvisual access standards to be
21 used in the procurement of information technology services by or on behalf of units of State
22 government; AND

23 (6) DEVELOPING THE PROVISION REQUIRED UNDER § 3A-303.1 OF
24 THIS SUBTITLE.

25 **3A-303.1.**

26 (A) (1) THE SECRETARY, OR THE SECRETARY'S DESIGNEE, SHALL
27 DEVELOP A PROVISION FOR INCLUSION IN ALL STATE PROCUREMENT CONTRACTS
28 THAT REQUIRES A DETERMINATION BY THE SECRETARY, OR THE SECRETARY'S
29 DESIGNEE, WITHIN 18 MONTHS AFTER CONTRACT COMMENCEMENT THAT ANY
30 INFORMATION TECHNOLOGY PRODUCTS PROCURED IN THE CONTRACT HAVE NO
31 BARRIERS TO NONVISUAL ACCESS.

32 (2) IF THE SECRETARY, OR THE SECRETARY'S DESIGNEE,
33 DETERMINES THAT AN ACCESS BARRIER EXISTS, THE SECRETARY, OR THE

1 **SECRETARY'S DESIGNEE, SHALL NOTIFY THE VENDOR IN WRITING AND REQUIRE**
2 **THE VENDOR, AT THE VENDOR'S OWN EXPENSE, TO REMEDY THE DEFECT WITHIN 12**
3 **MONTHS.**

4 **(B) (1) IF THE VENDOR FAILS TO REMEDY THE ACCESS BARRIER WITHIN**
5 **12 MONTHS AFTER THE DATE OF THE NOTIFICATION REQUIRED UNDER SUBSECTION**
6 **(A)(2) OF THIS SECTION, THE VENDOR MAY BE SUBJECT TO A CIVIL PENALTY**
7 **APPLIED AT THE RATE OF 1% OF THE TOTAL PURCHASE PRICE OF THE CONTRACT**
8 **FOR EACH DAY UNTIL THE PROBLEM IS REMEDIATED OR UNTIL THE FULL PRICE OF**
9 **THE CONTRACT IS REFUNDED.**

10 **(2) A VENDOR THAT IS FOUND IN VIOLATION UNDER PARAGRAPH (1)**
11 **OF THIS SUBSECTION IS REQUIRED TO INDEMNIFY THE STATE FOR LIABILITY**
12 **RESULTING FROM THE USE OF INFORMATION TECHNOLOGY THAT IS FOUND TO BE**
13 **INACCESSIBLE AFTER THE VENDOR HAS BEEN GIVEN THE OPPORTUNITY TO REMEDY**
14 **THE ACCESS BARRIER.**

15 3A-311.

16 (a) The Secretary, in consultation with other units of State government, and after
17 public comment, shall develop a nonvisual access clause for use in the procurement of
18 information technology and information technology services that specifies that the
19 technology and services:

20 (1) must provide equivalent access for effective use by both visual and
21 nonvisual means;

22 (2) will present information, including prompts used for interactive
23 communications, in formats intended for both visual and nonvisual use;

24 (3) can be integrated into networks for obtaining, retrieving, and
25 disseminating information used by individuals who are not blind or visually impaired; and

26 (4) shall be obtained, whenever possible, without modification for
27 compatibility with software and hardware for nonvisual access.

28 (b) (1) Except as provided in paragraph (2) of this subsection, the nonvisual
29 access clause required under subsection (a) of this section shall be included in each
30 invitation for bids or request for proposals and in each procurement contract or modification
31 of a contract issued under Title 13 of this article, without regard to the method chosen
32 under Title 13, Subtitle 1 of this article for the purchase of new or upgraded information
33 technology and information technology services.

34 (2) Except as provided in subsection (a)(4) of this section, the nonvisual
35 access clause required under paragraph (1) of this subsection is not required if:

1 (i) the information technology is not available with nonvisual access
2 because the essential elements of the information technology are visual and nonvisual
3 equivalence cannot be developed; or

4 (ii) the cost of modifying the information technology for compatibility
5 with software and hardware for nonvisual access would increase the price of the
6 procurement by more than ~~[5%]~~ 15%.

7 (c) **ON OR BEFORE JANUARY 1, 2019, THE DEPARTMENT OF INFORMATION**
8 **TECHNOLOGY SHALL ADOPT NEW NONVISUAL ACCESS PROCUREMENT STANDARDS**
9 **THAT ARE CONSISTENT WITH THE STANDARDS OF § 508 OF THE FEDERAL**
10 **REHABILITATION ACT OF 1973.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2018.