

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 1210  
 Economic Matters

(The Speaker)

Finance

Corporate Diversity - Board, Executive Leadership, and Mission

This bill requires specified businesses in the State to demonstrate either (1) diversity in their board or executive leadership or (2) support for “underrepresented communities” in their mission in order to qualify for specified State capital grants, tax credits, or contracts worth more than \$1.0 million. The bill requires the Department of Commerce and the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA) to develop a State equity report that compiles diversity data relating to corporate boards, leadership, and missions. Additionally, the bill requires a person that submits an annual report to the State Department of Assessments and Taxation (SDAT) to submit related diversity data. The bill applies prospectively and does not apply to any application or claim for a contract, grant, or tax credit submitted before the bill’s effective date. **The bill takes effect July 1, 2022.**

Fiscal Summary

**State Effect:** General fund expenditures increase by *at least* \$686,200 in FY 2023 to implement the bill’s requirements; out-years reflect ongoing costs and the elimination of one-time contractual costs. General fund expenditures likely increase further for Commerce beginning in FY 2023 (not shown below), but a reliable estimate is not feasible, as discussed below. State 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	686,200	109,600	112,500	118,400
Net Effect	\$0	(\$686,200)	(\$109,600)	(\$112,500)	(\$118,400)

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

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Definitions*

“Entity” means (1) a commercial enterprise or business that is in good standing with SDAT and is incorporated in the State or registered to do business in the State or (2) a corporation, foundation, school, hospital, or other legal entity for which none of the net earnings inure to the benefit of any private shareholder or individual holding an interest in the entity. The bill does not apply to (1) a sole proprietor; (2) a limited liability company owned by a single member; (3) a privately held company if at least 75% of the company’s shareholders are family members; or (4) an entity that has an annual operating budget or annual sales less than \$5.0 million and does not qualify for a State benefit.

“State benefit” means (1) a State capital grant funding totaling \$1.0 million or more in a single fiscal year; (2) State tax credits totaling \$1.0 million or more in a single fiscal year; or (3) the receipt of a State contract with a total value of \$1.0 million or more. “State contract” means a contract that (1) resulted from a competitive procurement process and (2) is not federally funded in any way.

“Underrepresented community” means a community whose members self-identify (1) as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native or (2) with one or more of those racial or ethnic groups.

#### *Diversity Requirements for State Benefits*

An entity may not qualify for a State benefit, as defined, 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. An entity required to submit an annual report to SDAT must include with the report the diversity data required by Commerce and GOSBA under the bill.

#### *State Equity Report*

Commerce and GOSBA must develop and maintain a State equity report that compiles diversity data for each entity on (1) the membership of underrepresented communities in the entity’s board or executive leadership and (2) the support of underrepresented communities in the entity’s mission. Commerce and GOSBA must also adopt regulations to carry out the bill’s requirements, including directives for State agencies and entities to comply with the bill’s requirements.

### *Other Provisions*

The bill states that it is the intent of the General Assembly that, if an entity receives a State benefit that is intended to be disbursed over more than one year, only the amount that will be disbursed in one fiscal year counts toward the \$1.0 million threshold in a single year established under the bill. The bill also states that it is the intent of the General Assembly that an entity that proposes to locate within a tax increment financing district or enter into a payment in lieu of taxes agreement with a local jurisdiction first demonstrate the membership of underrepresented communities in the entity's board or executive leadership or support for underrepresented communities in the entity's mission. Provisions of the bill are severable.

### **Current Law/Background:**

#### *Annual Reports to the State Department of Assessments and Taxation*

SDAT serves as custodian of documents relating to the organization and ownership of many types of business entities that are required to file documents with the State, including charters for Maryland corporations and qualifications and registrations for foreign corporations. All Maryland (domestic) and non-Maryland (foreign) legal entities are required to file an annual report every year by April 15 (or June 15 if they apply for an extension). Failure to file the required report will result in the legal entity's charter being forfeited. Subject to a specified exception, if the person submitting the annual report is a tax-exempt, domestic nonstock corporation with an operating budget exceeding \$5.0 million, or a domestic stock corporation with total sales exceeding \$5.0 million, the annual report must include the number of female board members and the total number of members on the person's board of directors. SDAT advises that approximately 430,000 entities must submit annual reports; sole proprietors and general partnerships that are not organized as legal entities are not required to submit annual reports.

#### *Governor's Office of Small, Minority, and Women Business Affairs*

GOSBA is established in the Executive Department; the head of the office is a Special Secretary who is appointed by and serves at the pleasure of the Governor. The Special Secretary's general duties are to advise the Governor on activities to promote the employment of minority persons in the State and any other matters that affect the rights and interests of minority persons and the communities in which they live. GOSBA has designated oversight, reporting, and outreach responsibilities related to the State's Minority Business Enterprise program and responsibility for overseeing the State's Small Business Reserve program.

*State Benefits of More Than \$1.0 Million*

In fiscal 2020, 1,940 vendors received payments of more than \$1.0 million from the State, and 12,136 entities received grants of more than \$1.0 million.

*California’s Corporate Diversity Requirements*

California’s [AB 979](#), signed into law September 30, 2020, requires public companies headquartered in California to have at least one board director who is from an “underrepresented community” – defined as “an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.” The law requires additional board members from underrepresented communities by the end of calendar 2022, depending on the total number of members on a company’s board. Companies that violate the law may be fined \$100,000 for the first violation and \$300,000 for subsequent violations.

AB 979 followed an earlier California law from September 2018 (SB 826), that required a public company headquartered in California to have at least one woman on its board of directors by the end of 2019, with future increases pegged to a company’s board size. A 2020 report from the California Partners Project found that while nearly 30% of public boards in California were all male in 2018, the figure decreased to less than 3% after the passage of SB 826 – an increase of 669 board seats filled by women.

**State Fiscal Effect:**

*State Department of Assessments and Taxation*

General fund expenditures for SDAT increase by \$556,160 in fiscal 2023, which accounts for the bill’s July 1, 2022 effective date. This estimate reflects the cost of hiring one desktop support technician to maintain SDAT’s systems and each year’s data, including conducting follow-up with entities that do not comply with the reporting requirement. It also includes costs for contractual information technology (IT) support to update SDAT’s software and data programming systems in order to be able to receive and process the new diversity data information submitted by business entities. It includes a salary, fringe benefits, and ongoing operating expenses, including licensing fees related to maintaining SDAT’s IT systems.

New Position	1.0
Salaries and Fringe Benefits	\$70,415
Contractual IT Costs	450,000
Database Licensing Fees	30,000
Other Operating Expenses	<u>5,745</u>
<b>Total FY 2023 SDAT Expenditures</b>	<b>\$556,160</b>

Out-year expenditures reflect annual increases and employee turnover and ongoing operating expenses and the termination of one-time IT costs. The Department of Legislative Services (DLS) notes that the delayed effective date of July 1, 2022, does not allow SDAT to incur costs to hire staff or reprogram its IT systems in the year leading up to the bill's effective date.

### *Department of Commerce*

Although the bill requires Commerce and GOSBA to collaborate on the State equity report, this analysis assumes that all expenditures related to the report are borne by Commerce.

General fund expenditures for Commerce increase, likely significantly, to develop and maintain the State equity report, but a reliable estimate is not feasible as it depends on a number of factors, including the number of entities covered by the report's data diversity requirement. The bill requires Commerce and GOSBA to develop and maintain a State equity report with diversity data "for each entity"; under the bill, an "entity" is defined, in part, as a commercial enterprise or business in good standing with SDAT that is incorporated or registered to do business in the State, excluding specified types of entities (*i.e.*, excluding sole proprietors, limited liability companies owned by a single member, privately held companies if at least 75% of a company's shareholders are family members, or entities that have an annual operating budget or annual sales of less than \$5.0 million and do not qualify for a State benefit). As noted above, SDAT advises that approximately 430,000 entities are in good standing with SDAT, including small, privately owned businesses that do not have corporate boards or leadership structures. To the extent this figure of approximately 430,000 entities in good standing with SDAT includes entities excluded from the bill's requirements, the potential number of entities required to satisfy the bill's requirements is lower. However, a reliable estimate of the number of entities covered by the data diversity requirement is not feasible, as SDAT advises that it does not currently track specified financial information that determines eligibility under the bill, including whether a business is privately or publicly held or the percentage of a business's shareholders that are family members. Additionally, this analysis assumes that many, if not most, sole proprietors do not form legal entities and thus are not included in the 430,000 entities required to submit annual reports to SDAT. By contrast, the California law referenced above covers fewer than 700 public corporations based in the state.

According to Commerce, the Latino Corporate Directors Association, which maintains a "scorecard" only for Latino representation on California boards, has reported that it takes two full-time staff researchers to monitor information for approximately 700 public companies on a daily basis, along with specialized database costs of approximately \$100,000. Although a reliable estimate of the number of affected entities is not feasible, the baseline figure of 430,000 reporting entities suggests that the number of affected entities may be significant. If Commerce were to develop and maintain a sophisticated

report, expenditures likely are substantial. However, DLS notes that such costs could be mitigated to the extent that data reported to SDAT could be provided to Commerce in an automated format that could easily be uploaded into a report format. The feasibility of this approach is unknown,

Of course, costs could be considerably greater if Commerce is required to verify the information reported to SDAT, which SDAT advises it cannot do.

### *Comptroller's Office*

General fund expenditures for the Comptroller's Office increase on a one-time basis by approximately \$130,000 to alter or create new tax credit forms and for programming costs related to changes to the tax system. The Comptroller's Office further advises that depending on the complexity of tax credit processing under the bill, hiring an additional revenue specialist may be necessary, but any such costs are not reflected in this analysis.

**Small Business Effect:** Small businesses are not eligible to receive State capital grant funding, tax credits, or State contracts totaling \$1.0 million or more in a single fiscal year unless they are able to demonstrate diversity in their boards or executive leadership, or support for underrepresented communities in their corporate missions. Additionally, entities throughout the State must submit diversity data to SDAT and Commerce/GOSBA, as described above.

---

## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Governor's Office of Small, Minority, and Women Business Affairs; Department of Commerce; Comptroller's Office; Maryland Department of Labor; State Department of Assessments and Taxation; Department of Legislative Services

**Fiscal Note History:**  
an/mcr

First Reader - February 23, 2021

Third Reader - March 22, 2021

Revised - Amendment(s) - March 22, 2021

Enrolled - May 4, 2021

Revised - Amendment(s) - May 4, 2021

---

Analysis by: Tyler Allard

Direct Inquiries to:

(410) 946-5510

(301) 970-5510