

Department of Finance and Administration

Legislative Impact Statement

Bill: SB440

Bill Subtitle: TO AMEND THE PROCUREMENT REQUIREMENTS FOR NONVISUAL ACCESS TECHNOLOGY; AND TO DECLARE AN EMERGENCY.

Basic Change :

Sen. Hendren,

Current law provides the procurement requirements for state agency purchase of information technology equipment to ensure accessibility by blind or visually impaired individuals. This bill amends this subchapter in an effort to allow state agencies to make purchases when the equipment available in the commercial marketplace cannot meet the exacting standards set forth in the law, or when budgetary restrictions make it impossible to do so. The bill also allows purchases from any vendor in the marketplace carrying the product desired.

Current law requires the head of each covered entity (the State of Arkansas or any state-assisted organization) to ensure that information technology equipment and software used by employees, program participants, or members of the general public provide blind or visually impaired individuals with access, including, but not limited to, interactive use of the equipment and services that is equivalent to that provided to individuals who are not blind or visually impaired. To this end, Ark. Code Ann. § 25-26-204 adopts standards for purchase of software applications and operating systems, and web-based intranet and Internet information and applications provided in federal law, specifically 36 C.F.R. §§ 1194.21 and 1994.22, as they existed on January 1, 2011. These federal regulations are derived from Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998. The federal regulations provide numerous specific technical standards for these products, and there are no provisions in the current Arkansas law to deviate from these standards.

SB440 adopts additional federal regulations that also govern these types of purchases that were in place at the time of the enactment of the current Arkansas law, but which were not adopted by Arkansas at that time. These additional federal regulations allow deviation from the standards when items meeting all of the requirements are not available in the commercial marketplace, allowing the agency to "procure the product that best meets the standards." In addition, agencies would be allowed to deviate from the standards if adhering strictly with the standards would result in an "undue burden," which is defined as significant difficulty or expense. The newly adopted federal regulations require that the documentation by the agency supporting the procurement shall explain why, and to what extent, compliance with the standards is not possible. The bill amends other parts of Subchapter 2 to clarify that the requirement of equivalency between sighted and visually impaired individuals is qualified by the exceptions provided by the newly adopted federal regulations. All federal regulations referenced in Subchapter 2 will be as they existed on January 1, 2013.

The bill also adds a provision to Subchapter 2 stating that if technology that allows access for blind or visually impaired individuals is not reasonably available in any form, these individuals shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013. The federal law defines "reasonable accommodation" to include job restructuring, part time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The bill provides that the Department of Information Systems shall modify the technology clause used in state procurement contracts to conform to the new law.

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Revenue Impact :

None

Taxpayer Impact :

None

Resources Required :

None

Time Required :

None

Procedural Changes :

None

Other Comments :

None

Legal Analysis :

The bill has a section, not to be codified, stating that the act applies retroactively to information technology procured, upgraded, modified or replaced on or after July 30, 1999. The Arkansas Supreme Court has held that retroactivity is a matter of legislative intent, and that statutes will be presumed to act prospectively unless retroactive effect is stated or implied by the General Assembly so clearly and unequivocally as to eliminate any doubt. Jackson v. Sparks Regl. Med. Ctr., 375 Ark. 533, 294 S.W.3d 1 (2009). The retroactivity language in SB440 is clear and unequivocal.

The bill has an emergency clause making it effective either upon approval by the Governor or upon the expiration of the time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.