



THE PRINCE GEORGE'S COUNTY GOVERNMENT


Office of Audits and Investigations


October 8, 2021

FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Senior Legislative Budget and Policy Analyst

FROM: Isabel Williams 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-097-2021, Office of Human Rights

CB-097-2021 (*proposed by*: The Chair, at the request of the County Executive)

Assigned to the Committee of the Whole

AN ACT CONCERNING THE OFFICE OF HUMAN RIGHTS for the purpose of amending certain definitions, clarifying investigative and conciliation procedures, creating the judicial election process, and updating general language to conform with the Federal Fair Housing Act.

Fiscal Summary

Direct Impact:

Expenditures: Negative due to an increase in OHR personnel costs.

Revenues: None immediately, but may result in additional revenue in the future.

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Indirect Impact:

Likely negative indirect impact due to potential increased cases for the Office of Law.

Legislative Summary:

CB-097-2021, presented by Chair Hawkins at the request of the County Executive, was presented on September 28, 2021 and referred to the Committee of the Whole (COW). The proposed legislation would update County Code sections related to the Office of Human Rights to conform to the U.S. Department of Housing and Urban Development (HUD)'s Federal Fair Housing Act, amend certain definitions, clarify investigative and conciliation procedures, and create the judicial election process.

Current Law/Background:

The Human Relations Commission (now the Office of Human Rights) was established by CB-1-1972, and operates in accordance with Subtitle 2, Division 12 (Section 2-185 through Section 2-192) of the County Code. Under Section 2-192 of the County Code, the stated function of the OHR is to eliminate discrimination, infringements of civil rights, as well as to investigate and hold hearings related to allegations and violations of civil rights and/or liberties.

The OHR is responsible for investigating discrimination complaints within the County, leading anti-human trafficking efforts in the County (CR-74-2013), providing language access for County Services (CB-62-2017), managing an immigration deportation defense program, and developing initiatives to build positive community relations and combat hate and violence through community education and outreach. Under section 2-187 of the County Code, the OHR is composed of 13 members, appointed by the County Executive, and confirmed by the Council. The OHR may adopt and publish its own rules, establish hearing panels and subcommittees, and direct staff to make studies.

The County Executive may designate the Executive Director of the OHR, and the OHR has the authority to make studies and surveys, hold informal hearings, investigate complaints, and transmit appropriate matters to the County Attorney. Currently the OHR recognizes discrimination based on race, religion, color, sex, national origin, age (except as required by State or federal law), occupation, familial status, marital status, political opinion, personal appearance, sexual orientation, or physical or mental handicap, in such a way that such person is adversely affected in the areas of housing and residential real estate, employment, law enforcement, education, financial lending, public accommodations, or commercial real estate.¹

¹ County Code, §2-186(a)(3)

The OHR enforces prohibitions on discrimination under Division 12 of the County Code in the areas of education, employment, financial lending, housing, law enforcement, and public accommodations. The OHR also enforces the County’s Fair Criminal Record Screening Standards law, investigating allegations of prohibited inquiries, retaliation, and/or employment decisions that were made due to criminal records. The OHR is responsible for ensuring language access, which was established by CB-062-2017 and codified in Division 45 (§§2-513 through 2-518) of Subtitle 2 of the County Code. Both oral and written language service requirements are imposed under the law.

Resource Personnel:

- Terry Bell, County Council Liaison, Office of the County Executive
- Renee Battle-Brooks, Executive Director, Office of Human Rights
- V’Hesspa Glenn, Investigator, Office of Human Rights

Discussion/Policy Analysis:

Most of the amendments proposed in CB-097-2021 are made to align with the Fair Housing Assistance Program (FHAP). The purpose of the FHAP is to aid and reimburse local fair housing enforcement agencies.² Through the FHAP, HUD funds state and local agencies that administer fair housing laws that HUD has determined to be substantially equivalent to the Fair Housing Act.³

CB-97-2021 will add and define the term “aggrieved person,” as well as the terms “mediation,” and “residential real estate” (see pages 2-5). The intent of the changes is to ensure substantial equivalency with the Fair Housing Act. The proposed amendment also clarifies reporting requirements (page 6, lines 30-31), establishes service requirements for the initiation of an investigation (page 7, lines 15-18), clarifies the procedure for the investigation and possible dismissal of a complaint (page 8, lines 1-16), allows conciliation agreements related to housing discrimination cases to provide for binding arbitration (page 9, lines 9-12). It further makes a number of changes to the provisions of Division 12, Subdivision 5 “Prohibited Acts in Housing and Residential Real Estate” to align with federal law (pages 9-16). Finally, CB-097-2021 add provisions to Division 12, Subdivision 4 “Investigative Procedures” related to: (1) permitting the election of judicial determination in certain housing discrimination cases (page 16, lines 17-24); (2) providing for a Commission hearing in the absence of an such an election (page 16, lines 25-28); (3) providing for the County, through its Office of Law, to commence and maintain a civil action on behalf of an aggrieved person in certain circumstances (page 16, line 29 through page 17, line 19); providing for the resolution of conflicting provisions of law (page 17, lines 20-30).

² <https://www.chathamcountync.gov/Home/ShowDocument?id=10655>

³ https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP

HUD provides FHAP funding annually on a noncompetitive basis to state and local agencies that are fully certified and administer fair housing laws that provide rights and remedies.⁴ The determination of substantial equivalence requires certification by HUD.⁵ Upon certification, HUD may assign cases within that area to the State or local agency.

The federal regulation governing the certification process is found in Title 24 of the CFR, which states, “Substantial equivalency certification is granted if the Department determines that a state or local agency enforces a law that is substantially equivalent to the Fair Housing Act with regard to substantive rights, procedures, remedies, and the availability of judicial review.”⁶ The Department developed a two-phase process of substantial equivalence, adequacy of law and adequacy of performance.⁷ The adequacy of law requirement stipulates that the fair housing law must, on its face, be substantially equivalent to the rights, procedures, remedies, and the availability of judicial review as the Fair Housing Act.⁸ This requirement necessitates changes to the County Code. The changes are intended to mirror the Fair Housing Act, but they do not necessarily have to be the same. Once enacted, the legislation must be reviewed and approved by HUD for substantial equivalence to obtain interim certification status. This also serves as a capacity building phase, which can last from one to three years. Full certification can take up to three years.

Outside of the changes made to align with the Fair Housing Act, the most consequential amendments of CB-097-2021 are the changes to investigative procedures for the Office of Human Rights. Section 2-203.1 details the election of judicial determination. As noted above, under CB-097-2021, after the Executive Director of the Office Human Rights determines reasonable cause exists in a complaint, the respondent may elect to have the claims decided under civil action. The bill allows respondents 20 days after notice occurs to elect how to proceed with the case. Section 2-203.3 allows the Office of Law to commence a civil action on behalf of the aggrieved person if authorized by the Executive Director of the Office of Human Rights.

Other Jurisdictions

While other jurisdictions are in the process of enacting legislation, only the Maryland Commission on Civil Rights (MCCR) is certified as a partner of the FHAP.⁹ In Virginia, both the Virginia Department of Professional and Occupational Regulation Fair Housing Administration/Fair Housing Office and the Fairfax County Human Rights Commission are FHAP partners. Completing the FHAP certification process would make the County the first municipality to obtain certification within the State of Maryland.

⁴ Id.

⁵ Id.

⁶ <https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol1/xml/CFR-2017-title24-vol1-part115.xml#seqnum115.200>

⁷ Id.

⁸ Id.

⁹ https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#MD

Fiscal Impact:

Direct Impact

Enactment of CB-097-2021 will likely result in the need for additional expenditures for staffing of OHR due to increased enforcement activity, but the exact amount cannot be determined at this time. A more precise estimate may come from the Office of Management and Budget. Full compliance with the bill will require OHR to hire additional staff. OHR expressed the intention to minimize this cost by utilizing cross-training, maximizing the free training and other resources that will be provided by HUD as part of the certification process, and potentially initially hiring investigators as contractors. OHR was allocated an additional funds of \$150,000 for operating expenses for FY 2021, which will offset some of the additional costs. Full compliance with the FHAP will likely require the County Council to increase the compliment to accommodate additional staffing requirements in the future.

It should be noted that if certified as a FHAP partner, the County may receive funding that would offset the additional expenditures associated with fair housing enforcement. Through FHAP, HUD reimburses both interim and certified substantially equivalent state and local agencies in their fair housing enforcement efforts, consistent with congressional appropriations.¹⁰

Indirect Impact

Enactment of CB-097-2021 will likely result in a negative indirect fiscal impact. In addition to the likelihood of additional OHR investigations created by the amendments to Division 12, upon full certification, the legislation also allows cases to be referred to the Office of Law. This will likely result in a negative fiscal impact to the operating costs of the Office of Law.

Appropriated in the Current Fiscal Year Budget:

In part (\$150,000)

Effective Date of Proposed Legislation:

The proposed Bill shall take effect forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please reach me via phone or email.

¹⁰ https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP