SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	H. 3927 Introduced on February 6, 2025
Subject:	Diversity, Equity, and Inclusion
Requestor:	House Education and Public Works
RFA Analyst(s):	Vesely
Impact Date:	March 5, 2025

Fiscal Impact Summary

This bill enacts the Ending Illegal Discrimination and Restoring Merit-Based Opportunity Act as cited in Section 1. Section 2 of the bill establishes several types of prohibitions on every state agency and all political subdivisions, including all institutions of higher learning and school districts, regarding diversity, equity, and inclusion (DEI) practices as defined in the bill. Each department, office, and subdivision is prohibited from spending any authorized or appropriated funds until it submits a report to the General Assembly certifying compliance with these requirements during the preceding fiscal year. The State Auditor must periodically conduct compliance audits of each department or office at least once every four years, and violations must be cured within 180 days or the State Fiscal Accountability Authority (SFAA), after being informed by the State Auditor of the failure to cure, may direct the State Treasurer to withhold distributions to the agency until the violations are cured. Further, all agencies and subdivisions must require contractors, subcontractors, and grant recipients to certify that they do not operate any programs that promote DEI before entering into a contract or awarding any grant.

Section 3 of the bill states that it is the state's policy to protect the civil rights of all citizens and provides direction to all agencies and institutions on this policy. The Attorney General is directed to submit a report of the General Assembly containing recommendations for enforcing civil rights laws and taking other measure to encourage the private sector to end illegal discrimination preferences, including DEI. Section 4 provides that the act does not apply to lawful state or private sector employment and contracting preferences for veterans of the U.S. Armed Forces or persons protected by the Randolph-Sheppard Act, specifies that the act does not prevent engagement in First Amendment-protected speech, and does not create any private right or benefits. The Attorney General is directed to enforce the provisions of the act and may bring an action for injunctive or declaratory relief, make recommendations to the General Assembly to improve compliance, and develop a process and platform whereby complaints may be filed. Section 5 of this bill specifies this bill takes effect upon approval by the Governor and first applies to FY 2025-26 and School Year 2025-26.

Revenue and Fiscal Affairs (RFA) requested input from all state agencies, counties, school districts, and the Municipal Association of South Carolina (MASC) on behalf of municipalities regarding the potential fiscal impact. Of the 64 responding entities, 45 agencies and several local governments indicate that that this bill will have no or minimal impact on their internal operations as they do not any have personnel practices that would need to be changed. However, 19 agencies and a few local subdivisions raised concerns that the provisions of Section 1-1-1920, regarding the required certification from contractors or grant recipients that they do not operate any program that promotes DEI, may have a significant impact on government operations. The fiscal impact will vary widely depending on the number of contracts, vendors, and grants that an agency or local government issues. Many entities noted that determining the impact will require further analysis of operations and contracts. Given these uncertainties, the total potential expenditure impact on state and local government is undetermined. Detailed responses for those entities that provided a cost or noted specific concerns are provided in the Explanation of Fiscal Impact section below.

From a statewide procurement perspective, in order to meet the requirements of the bill, SFAA expects a significant increase in workload to resolicit all state contracts. The agency is unable to quantify the potential impact of resoliciting all state contracts but believes that it would be considerable. SFAA indicates that the bill may also have significant impacts depending on whether contracts are allowed to expire or if they are terminated immediately for any entities that do not certify to the requirements, which could result in litigation for breach of contract. Additionally, SFAA notes that the provisions of this bill may have significant disruptive consequences for the state due to technology contracts that, unless private sector businesses agree to change their DEI policies and certify compliance with the bill, would not be able to be continued by state or local governments. Finally, SFAA expressed concerns that the provisions of Section 1-1-1920 may have an expenditure impact if bill results in fewer firms competing for state contracts, which could increase acquisition costs to the state.

A few agencies reported that the bill may impact state revenue from federal grants if grant recipients are unable or unwilling to certify to the requirements in the bill. Additionally, the Retirement System Investment Commission (RSIC) indicates that the bill is not expected to impact their operations as they are restricted to consideration of only pecuniary factors in evaluating their contracts. However, if the provisions of this bill are construed to apply to RSIC, the agency indicates that it may need to bring these activities in-house, which may lack the economies of scale and access to types of investments that it gains currently through its external investment managers and, therefore, negatively affect state retirement investments.

Explanation of Fiscal Impact

Introduced on February 6, 2025
State Expenditure
This bill establishes restrictions on every state agency and all political subdivisions, including all institutions of higher learning and school districts, regarding DEI practices as defined in the bill. The bill prohibits promoting differential treatment or special benefits to individuals on the basis of race, sex, ethnicity, gender, or sexual orientation, to include hiring or employment practices, policies and procedures, or trainings, programs, or activities designed or implemented in reference to these previously stated identities. The bill also prohibits establishing or maintaining offices that promote DEI, bans compelling or preferential consideration for DEI statements, bans requirements to participate in DEI-related training, and prohibits hiring or assigning employees or third parties that promote DEI. Further, all agencies and subdivisions must require contractors,

subcontractors, and grant recipients to certify that they do not operate any programs that promote DEI before entering into a contract or awarding any grant.

All departments, offices, or subdivisions are prohibited from spending authorized or appropriated funds until a report is submitted to the General Assembly certifying compliance with the requirements of this bill during the preceding fiscal year. The bill requires the State Auditor to periodically conduct compliance audits of each department or office at least once every four years, and violations must be cured within 180 days or SFAA, after being informed by the State Auditor of the failure to cure, may direct the State Treasurer to withhold distributions to the violating agency until the violations are cured.

State Fiscal Accountability Authority. SFAA provides state agencies and subdivisions with procurement services. From a statewide procurement perspective, in order to meet the requirements of the bill, SFAA expects a significant increase in workload to resolicit all state contracts. The agency is unable to quantify the potential impact of resoliciting all state contracts but believes that it would be considerable. SFAA indicates that the bill may also have significant impacts depending on whether contracts are allowed to expire or if they are terminated immediately for any entities that do not certify to the requirements, which could result in litigation for breach of contract. Additionally, SFAA notes that the provisions of this bill may have significant disruptive consequences for the state due to technology contracts that, unless private sector businesses agree to change their DEI policies and certify compliance with the bill, would not be able to be continued by state or local governments. Finally, SFAA expressed concerns that the provisions of Section 1-1-1920 may have an expenditure impact if bill results in fewer firms competing for state contracts, which could increase acquisition costs to the state.

Attorney General. The Attorney General is required to enforce the provisions of the bill, make recommendations to the General Assembly to improve compliance, and develop a platform whereby complaints of potential offenders of this act may be filed. The Attorney General must consult with relevant agency leaders for a report of compliance recommendations 120 days after the effective date of this act. The agency anticipates that this bill will have a significant fiscal impact and will require additional attorneys and other staff to fulfill the new responsibilities. The Attorney General indicates that a total of 9.0 FTEs will be needed due to the administrative and enforcement responsibilities of this bill. This includes an estimated $874,000 in annual salary costs and an estimated $402,000 in fringe for a total compensation cost of $1,276,000 for three attorneys, three senior consultant policy analysts, an investigator, a program coordinator, and a program assistant for reviewing agencies for potential violations of this bill. In addition, the agency anticipates an expenditure impact of $95,000 for equipment and other operating costs. Therefore, the anticipated expenditure impact to the Attorney General is $1,371,000 beginning in FY 2025-26. The agency anticipates requesting General Fund appropriations for these expenditures.

Commission on Higher Education. This bill requires CHE to review its internal policies in case any are in violation of the provisions of this bill and certify contractors or grant recipients do not operate any prohibited DEI programs. CHE indicates that this bill will increase the administrative workload significantly, and the commission expects to request 2.0 FTEs to lead compliance efforts with the commission's vendors and agreements, at a total compensation cost of $167,000. Equipment and software for outfitting these FTEs is expected to total $8,000 annually. Therefore, the total expenditure impact for CHE is at least $175,000 annually, beginning in FY 2025-26. CHE also states that costs may potentially rise if vendors are found to be noncompliant with the provisions of this bill. If vendors were to be eliminated from consideration due to their internal policies, it is possible that this reduced competition could make procurement more expensive in the future. For information, CHE currently works with 128 vendors. Finally, CHE indicates that inter-state reciprocal programs may need to be studied for compliance under this legislation.

Department of Commerce. This bill requires the South Carolina Department of Commerce to review its grant recipients and ensure that they do not have DEI policies are prohibited by the provisions of this bill. Commerce states that this bill will have a fiscal impact, however, the impact is not quantifiable at this time. Commerce has also expressed uncertainty regarding the impact that this bill may have on the department's ability to provide commercial incentives to companies that locate or expand in South Carolina.

Department of Public Health. DPH interprets this bill as requiring the agency to ensure all entities receiving funds from DPH does not have a DEI policy in place. DPH states that this bill would pose a significant, but undetermined, administrative burden as the number of staff and resources necessary to verify that each payee does not have a DEI policy in place is unknown. Additionally, DPH noted that these provisions may significantly impact functioning of agency operations due to the importance of essential vendors to provide technology services, operational needs, and maintain both the electronic health records and the vital records system. Verifying that these vendors do not violate the provisions of this bill may be time consuming and difficult or could disrupt agency operations by preventing payments to essential vendors. If this workload becomes significant, then DPH expects to request additional General Funds appropriations.

First Steps. First Steps indicates that the impact of implementing the requirements of Section 1-1-1910 are minimal and can be managed with existing staff and resources. However, the time and resources required to bring the agency to compliance with Section 1-1-1920, which includes provisions making sure contractors, vendors, and grant recipients do not have DEI policies, is undetermined and may require considerable time and resources to evaluate. It is currently unknown if any current contractors or vendors or grant recipients have DEI policies in place, and if they would be willing to comply with the certification requirements of this bill.

Office of Resilience. Resilience expects that while existing team members may be able to identify potential violations of this policy, the agency would need an additional 2.0 FTEs to investigate, evaluate, and ensure compliance with these provisions. Resilience estimates that the personnel cost of these FTEs would be $86,000 salary and $56,000 fringe for a total compensation cost of approximately $142,000. Additionally, there would be one-time equipment costs of $4,000 and recurring costs of $22,000 for these new FTEs. Therefore, the expected expenditure impact of this bill to Resilience is $168,000 in FY 2025-26 and $164,000 thereafter. Resilience expects to request General Fund appropriations for these expenditures.

Retirement System Investment Commission. RSIC indicates that the agency is currently only allowed to consider pecuniary factors when making investment decisions for South Carolina's defined benefit retirement plans. RSIC believes that the existence or non-existence of DEI programs at a prospective investment manager would not be considered as a pecuniary factor, so RSIC believes that the provisions of this bill dealing with contractors would not apply. However, if the provisions of this bill were construed to apply to RSIC, it would significantly alter operations of the agency. Based on RSIC's review of current external investment managers, RSIC anticipates that approximately 90 percent of these managers have policies that may not be certified. Additionally, RSIC's investment consultants, its custody bank, and other third-party service providers would likely not be certified under this bill. RSIC indicates that most of its potential partners would not likely be certified under this bill.

Therefore, if RSIC is obligated to comply with provisions of this bill, RSIC would need to bring the investment and management of the retirement system's assets in-house. RSIC believes that this would require at least 75.0 FTEs with a total expenditure impact of at least $83,500,000 to attempt to manage the portfolio of retirement system assets as it is currently managed. However, RSIC indicates that this may still lack the economies of scale and access to types of investments that it gains currently through its external investment managers, which may have a significant fiscal impact to the revenues related to long-term return on investments as discussed in the State Revenue section of this analysis.

South Carolina State Library. This bill requires the South Carolina State Library to review its internal policies for violations of the provisions of this bill and certify contractors or grant recipients do not operate any prohibited DEI programs. In order to comply with the administrative workload of these provisions, the State Library anticipates the need to hire 4.0 FTEs at a total cost of $397,000 including salary and fringe benefits as well as furniture, equipment, and software for these FTEs at a one-time cost of $36,000 and recurring cost of $20,000 in software. Therefore, the State Library expects a fiscal impact of $453,000 in FY 2025-26, and $417,000 annually thereafter. The State Library anticipates requesting additional General Funds appropriations for these expenditures.

State Auditor. This bill requires the State Auditor to conduct audits of state agencies to ensure that they are in compliance with the requirements of this bill. The Office of the State Auditor indicates that the stipulated schedule of at least once every four years for each agency may be handled within existing staff and resources, as the State Auditor already conducts extensive internal audits of state agencies. However, if the compliance audit workload becomes too much for existing resources, then the State Auditor expects to request additional staff and funding to maintain its audit capabilities.

SC Educational Television Commission. SCETV indicates that it is currently unable to quantify the fiscal impact that this bill will have for the agency due to uncertainty around procurement and administration of the bill. However, SCETV anticipates that this bill would substantially impact the South Carolina Procurement Code and the minority business enterprise utilization plan. SCETV currently meets the Procurement Code's standard of 10% utilization of minority businesses. Guidance would be necessary to meet the provisions of this bill against the

Procurement Code to manage the distribution of funds to contracts and vendors. Additionally, SCETV notes that the agency has significant ongoing long-term capital projects. This bill may have significant costs to restart these procurement processes and find vendors that could certify under this bill's provisions.

The Medical University of South Carolina. This bill requires MUSC to review its internal policies for any violations of the provisions of this bill and certify contractors or grant recipients do not operate any prohibited DEI programs. MUSC indicates that this bill would increase the administrative workload significantly, and the agency expects to request 3.0 FTEs to lead compliance efforts with the agency's vendors and agreements, at a total salary cost of $258,000 and fringe cost of $148,000. This totals to a compensation cost of $405,000. Therefore, the total expenditure impact for MUSC is $405,000 annually, beginning in FY 2025-26. anticipates requesting additional General Funds appropriations for these expenditures.

Additionally, the Medical University Hospital Administration (MUHA), within MUSC, expects that this bill's provisions will increase the administrative workload significantly, and the agency expects to request 3.0 FTEs to lead compliance efforts with their vendors and agreements, at a total salary cost of $287,000 and a fringe cost of $163,000, for a total of $450,000. Therefore, the total expenditure impact for MUHA is $450,000 annually, beginning in FY 2025-26.

The University of South Carolina. USC indicates that this bill may have a substantial fiscal and operational impact. Extensive compliance, reporting, and audit requirements may place demands on USC administrative staff that could divert funding and attention from core educational missions or strategic initiatives. USC also notes that many of the university's current and potential corporate partners have DEI policies, and these partners may be unwilling to comply with this bill's provisions and instead sever relationships with USC, which will fiscally and operationally impact the university. USC indicates that these corporate relationships could impact research funding, development opportunities, and career pathways for students. USC additionally indicates that this bill's provisions will restrict the number of vendors and contractors that are available to solicit from, potentially raising costs, in addition to increased administrative costs.

Clemson University. Clemson anticipates that the provisions of the bill that require vendors, contractors, and grant recipients to certify that they do not operate DEI policies may limit the number of vendors and contracts available, potentially raising costs. In addition, Clemson indicates that these policies may impact contracts for banking partners, information technology, architecture, and construction, that may have fiscal and operational impacts on the university. Due to the unknown impact of this bill on vendors and contractors, Clemson anticipates this bill will have an undetermined fiscal impact on the university.

The Citadel. The Citadel anticipates that the provisions of the bill requiring vendors, contractors, and grant recipients to certify that they do not operate DEI policies may limit the number of vendors and contracts available for solicitation, potentially raising costs. The Citadel also indicates if existing contractors or vendors are required to and decline to certify with the provisions of this bill, this may lead to operational disruptions in addition to potentially raising costs.

State Revenue

Office of Resilience. Resilience indicates that this bill may substantially impact the grant revenue South Carolina receives. As the agency reviews contractors, vendors, and grant recipients for DEI policies, if Resilience is unable to determine the certifications needed under this bill, then projects that are currently using federal grant revenue may have to be delayed or cancelled. In turn, federal grant programs that are project-based may be cancelled or South Carolina may otherwise be obligated to return funds if the funds cannot be distributed due to these provisions. According to Resilience, federal grant funds that may be at least partially impacted include approximately $100,000,000 in the American Rescue Plan Act State and Local Recovery Funds (ARPA), approximately $162,000,000 in Community Development Block Grant for Mitigation (CDBG-MIT) federal grants and approximately $151,000,000 in Community Development Block Grant for Disaster Recovery for Hurricane Helene (CDBG-DR). Resilience also expressed concern that the provisions of this bill may limit the ability of South Carolina to enter into or stay in interstate coalitions.

Retirement System Investment Commission. RSIC indicates that the agency is only allowed to consider pecuniary factors when making investment decisions for South Carolina's defined benefit retirement plans. RSIC believes that the existence or non-existence of DEI programs at a prospective investment manager would not be reasonable construed as a pecuniary factor, so RSIC believes that the provisions of this bill dealing with contractors would not apply. However, if the provisions of this bill are construed to apply to RSIC, RSIC would need to bring the investment and management of the retirement system's assets in-house. RSIC indicates that bringing these activities in-house may lack the economies of scale and access to types of investments that it gains currently through its external investment managers. If RSIC has to shift to a simplified stocks/bond approach to investment as part of the transition to internal management, it is expected that RSIC's 30-year annual expected return will fall from 7 percent to 6 percent. This would result in approximately $7,800,000,000 less in expected investment return over a ten-year period. In turn, the reduced rate of return would increase the net present value of the system's liabilities by $8,900,000,000, which may necessitate an increase in contributions from state and local employers to make up the difference. Finally, RSIC indicates that failure to find a certified custody bank or failure to replicate these services internally means the agency would be unable to operate at all. In this analysis, RSIC assumes that their service providers will maintain their DEI policies and practices and not certify compliance.

Medical University of South Carolina. MUSC indicates that the provisions of this bill may lead to a loss of grant funding based on the interpretation of DEI policies in the grants. While current MUSC grants are being reviewed to ensure compliance with federal law and guidelines and there should be no impact to federally funded research grants, there is approximately $20,000,000 of MUSC grants that may have some element of DEI that may be at risk depending on legal interpretation of this bill. MUSC also notes that some grant-funded programs awarded by private foundations may be at risk for the loss of funding due to their DEI components. Finally, MUSC indicates that while "scholarly research" is excluded from prohibited activities, they are uncertain to the extent medical research grants or mentorship training grants for students may be impacted by this bill.

Local Expenditure

This bill establishes restrictions on every state agency and all political subdivisions, including all institutions of higher learning and school districts, regarding DEI practices as defined in the bill. This bill will require local school districts, counties, and municipalities to comply with these requirements. Further, local governments will have to require that contractors, subcontractors, and grant recipients certify that they do not operate any programs that promote DEI before entering into a contract or awarding any grant. The impact on local governments is also expected to vary widely depending on the number of contracts and vendors that must be reviewed.

RFA surveyed all counties and MASC, and the South Carolina Department of Education surveyed the regular and charter school districts for the potential impact of this bill. Two counties and 18 school districts responded. Most respondents did not anticipate a fiscal impact as they do not have policies that would be impacted. Five districts expect that they will need to hire one or more additional staff to comply with the requirements. Two districts and one county expect that the bill will have a significant impact due to the provisions regarding contractors and grants but are unable to quantity the cost.

Local Revenue

N/A

Frank A. Rainwater, Executive Director