

HB 1546-FN - AS INTRODUCED

2024 SESSION

24-2517
09/10

HOUSE BILL ***1546-FN***

AN ACT relative to government purchasing.

SPONSORS: Rep. Corcoran, Hills. 44

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits any state, county, or local government entity from contracting with or purchasing goods or services from companies that discriminate in hiring, promotion, or job assignment on the basis of sex, race, sexuality, national origin, ethnicity, or ideology, including but not limited to permitting diversity, equity, and inclusion statements. This bill further provides an enforcement mechanism.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty Four

Be it Enacted by the Senate and House of Representatives in General Court convened:

Prohibition of Certain State Contracts

II. The attorney general is authorized to enforce the provisions of this section.

I. No county shall contract with or purchase goods or services from any company that discriminates in hiring, promotion, or job assignment on the basis of sex, race, sexuality, national origin, ethnicity, or ideology, including but not limited to permitting diversity, equity, and inclusion statements.

1 II. The attorney general or any county attorney is authorized to enforce the provisions of
2 this section.

3 III. Any citizen of the state who is or may be aggrieved or has an interest which is or may be
4 adversely affected may commence a civil action on his or her own behalf to compel compliance with
5 this section.

6 IV. In any action under this section, the attorney general, county attorney, or citizen who
7 brings suit shall have the burden to make a prima facie showing of a violation of this section.

8 V. If the burden of proof set forth in paragraph IV is met, the burden shall shift to the
9 company to prove, by clear and convincing evidence, that the allegation is false.

10 VI. A finding that a company has violated this section shall constitute good cause for
11 invalidating a contract with any such company without paying liquidated damages and for clawing
12 back unearned portions of any payments already made.

13 VII. If a citizen prevails under this section, the state shall reimburse his or her costs of
14 litigation, to the extent not awarded by the court.

15 3 New Chapter; Prohibition of Certain Contracts. Amend RSA by inserting after chapter 53-G
16 the following new chapter:

17 CHAPTER 53-H

18 PROHIBITION OF CERTAIN CONTRACTS

19 53-H:1 Prohibition Against Contracting with Companies with Preferential Treatment or
20 Discrimination.

21 I. No town, city, or unincorporated place shall contract with or purchase goods or services
22 from any company that discriminates in hiring, promotion, or job assignment on the basis of sex,
23 race, sexuality, national origin, ethnicity, or ideology, including but not limited to permitting
24 diversity, equity, and inclusion statements.

25 II. The attorney general, any county attorney, or any city or town attorney, is authorized to
26 enforce the provisions of this section.

27 III. Any citizen of the state who is or may be aggrieved or has an interest which is or may be
28 adversely affected may commence a civil action on his or her own behalf to compel compliance with
29 this section.

30 IV. In any action under this section, the attorney general, county attorney, city or town
31 attorney, or citizen who brings suit shall have the burden to make a prima facie showing of a
32 violation of this section.

33 V. If the burden of proof set forth in paragraph IV is met, the burden shall shift to the
34 company to prove, by clear and convincing evidence, that the allegation is false.

35 VI. A finding that a company has violated this section shall constitute good cause for
36 invalidating a contract with any such company without paying liquidated damages and for clawing
37 back unearned portions of any payments already made.

1 VII. If a citizen prevails under this section, the state shall reimburse his or her costs of
2 litigation, to the extent not awarded by the court.

3 4 Effective Date. This act shall take effect January 1, 2025.

HB 1546-FN- FISCAL NOTE
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FISCAL IMPACT: ☒ **State** ☐ **County** ☒ **Local** ☐ **None**

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	Indeterminable Increase Minimum \$220,000+	Indeterminable Increase Minimum \$215,000+	Indeterminable Increase Minimum \$220,000+
<i>Funding Source(s)</i>	General Fund and Highway Fund Various Agency Funds			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	\$0	\$0	\$0
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill prohibits any state, county, or local government entity from contracting with or purchasing goods or services from companies that discriminate in hiring, promotion, or job assignment on the basis of sex, race, sexuality, national origin, ethnicity, or ideology, including but not limited to permitting diversity, equity, and inclusion statements. This bill further allows the Attorney General and private citizens to sue for violations. Successful private lawsuits require the State to reimburse the citizen's expenses.

The Department of Administrative Services (DAS) states the proposed legislation prohibits government entities from contracting with companies that discriminate in hiring based on various factors. It allows civil enforcement actions by aggrieved citizens against these companies. While the bill focuses on procurement contracts, it lacks clarity on how entities should assess discrimination. The Department assumes no impact on State revenues but anticipates indeterminable impacts on expenditures due to unclear obligations for the State. The Department notes the bill's language may need clarity to ensure it is applied correctly. This further complicates the Department's ability to estimate the fiscal impact of this bill.

The Department of Justice (DOJ) states this bill could impact thousands of contracts across the State, counties, and municipalities, potentially leading to a surge in complaints managed by the Attorney General's Office. Screening for compliance might become essential for State contracts, demanding increased time and resources. However, the Department lacks the capacity to screen county or municipal contracts, likely resulting in numerous complaints needing attention. Consequently, the Attorney General's Office might require extra staff—an additional person for screening contracts and vendors, plus another attorney to handle complaints, pursue action, and address claims for costs from private citizens.

Specifically, the Department will require one Investigative Paralegal and one Attorney. The salary and benefit cost for one Investigative Paralegal, at a labor grade 22, is \$93,000 for FY 2025, \$90,000 for FY 2026, and \$93,000 for FY 2027. Additionally, the salary and benefit cost for an Attorney is \$127,000 for FY 2025, \$125,000 for FY 2026, and \$127,000 for FY 2027. The total fiscal impact for resources in FY 2025 is projected at \$220,000, \$215,000 in 2026, and \$220,000 in 2027. However, the amounts to be paid out to claimants remain indeterminable, resulting in an overall expenditure fiscal impact that cannot be determined.

The New Hampshire Municipal Association states this bill mandates municipalities to investigate vendors before business dealings to bar those discriminating based on various factors. Local governments lack accessible data to accurately assess vendors against these criteria. While the federal government maintains an "excluded parties" database for disbarred contractors to prevent fraud and misconduct, the criteria in this bill wouldn't be captured in this federal database unless a company had a federal contract and underwent a formal review process.

The Judicial Branch is unable to estimate impact of this law change on court filings. Creating a new legal ground suggests civil lawsuits will likely go up. Judicial Branch has provided average cost information for civil cases in the Superior Court:

Superior Court	FY 2024	FY 2025
Complex Civil Case	\$1,321	\$1,347
Routine Civil Case	\$494	\$504
Superior Court Fees	As of 1/12/2020	
Original Entry Fee	\$280	
Third-Party Claim	\$280	
Motion to Reopen	\$160	

The New Hampshire Association of Counties state this bill will not have a fiscal impact on counties.

AGENCIES CONTACTED:

Department of Administrative Services, Justice Department, Judicial Branch, New Hampshire Municipal Association and New Hampshire Association of Counties