



S.636 (Comrie)/A.5981 (Paulin)

STAFF CONTACT : Frank Kerbein | Director, Center for Human Resources | 518.455.7180

BILL S.636 (Comrie)/A.5981 (Paulin)
SUBJECT Requires certain companies and corporations to report certain data regarding the gender, race and ethnicity of their employees
DATE March 28, 2023
OPPOSE

The Business Council of New York State, on behalf of its more than 3,500 members, opposes Bill S.636 (Comrie)/A.5981 (Paulin). This bill proposes to amend the Business Corporation Law to require certain organizations that submit a federally required EEO-1 form to also submit the form to the Department of State. The Secretary of State would then publish the data on the gender, race, and ethnicity of each corporation's employees on the secretary of state's official website.

For background, employers with 100 or more employees that are subject to Title VII are required to file EEO-1 reports annually. Employers with 50 or more employees that hold certain federal contracts are also required to file EEO-1 reports annually even if they have under 100 employees. EEO-1 reports must be filed for each of an employer's locations (or "establishments") and include information on the number of employees working at the establishment as of a moment in time, reported by Job Category, and including information regarding the employees' sex and race or ethnicity. In addition to separate reports for every establishment, the annual filing must also include a so-called Type 2 Consolidated Report, which aggregates all of the data for all of the establishments.

By law, the Equal Employment Opportunity Commission (EEOC) is prohibited from making public an employer's EEO-1 data. This is in recognition of both longstanding EEO law and Freedom of Information Act law that recognizes that "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4).

This bill proposes to upend this long held and legitimate belief that this company information is privileged and confidential and should be used exclusively by governmental organizations to determine - on a macro scale - progress in equal employment opportunity presented by federal contractors. An individual organizations EEO-1 report cannot be used to make valid decisions regarding that organization's efforts at equal employment and, in fact, may lead to

incorrect conclusions. Making this information public would have no public value, would have no effect on improving equal employment opportunities and would be counter to long standing law and regulation.

For these reasons, The Business Council, on behalf of its more than 3,500 members opposes this bill.