

Ohio Civil Rights Commission

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Local Fiscal Highlights

LOCAL GOVERNMENT		FY 2009 – FUTURE YEARS
Counties, Municipalities, and Townships		
Revenues		- 0 -
Expenditures	(1) Potential increase to review and defend certain building permit applications; (2) Potential increase for courts of common pleas to adjudicate additional discrimination complaints	

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- As a result of the bill's ADA building permit provision: (1) local boards of building standards may expend additional time and effort prior to issuing certain permits, (2) local boards of building standards may be more likely to be named as a defendant in certain discrimination complaints, and (3) courts of common pleas may experience an increase in the number of discrimination complaints filed annually, if the Ohio Civil Rights Commission loses its existing enforcement authority. Any of these above-noted outcomes may increase local expenditures, the annual magnitude of which for any affected political subdivision is uncertain.

Detailed Fiscal Analysis

Unlicensed contractors

Background

The Ohio Construction Industry Licensing Board (OCILB) licenses specialty contractors in the heating, ventilating and air conditioning (HVAC), refrigeration, plumbing, hydronics, and electrical trades who perform *commercial* work in Ohio. OCILB administers these licenses through separate HVAC, Refrigeration, Plumbing, Electrical, and Administrative sections. Under current law, no person can act as or claim to be a specialty contractor in one of the above five trades unless that person is licensed by OCILB. Currently, OCILB oversees approximately 20,000 active contractor licenses. The bill contains a number of provisions to reign in unlicensed contractors.

Currently, OCILB has little recourse against contractors operating without a license. OCILB may investigate a complaint concerning an unlicensed contractor and, if there is reasonable evidence, forward the complaint to the appropriate local prosecutor for criminal charges. Unlicensed contractors can be found guilty of a minor misdemeanor on a first offense and a fourth-degree misdemeanor (M4) on a subsequent offense. A minor misdemeanor carries no jail term and a maximum fine of \$150, while an M4 carries a maximum jail term of 30 days and a maximum fine of \$250. Although OCILB refers approximately 150 complaints to local prosecutors in a typical year, such cases can be difficult to successfully prosecute. One reason is that the contracting work that instigated the investigation has already been completed by the time the prosecutor receives the complaint from OCILB. Another reason is that some prosecutors appear to be either unaware of the law or do not have the resources to take on these cases.

New OCILB disciplinary measures

To more effectively pursue unlicensed contractors, the bill permits the appropriate section of OCILB to investigate any person who allegedly has operated as a contractor without a license. If there is reasonable evidence to support that conclusion, the bill requires the appropriate section to hold a hearing to determine if a violation has occurred. If the section finds that a violation has occurred, it may impose civil penalties of up to \$1,000 per violation per day. Any civil penalties or fines would be deposited into the Industrial Compliance Operating Fund (Fund 5560), OCILB's operating fund. Assuming there continues to be a volume of approximately 150 such cases per year, civil penalty revenue could easily be in the hundreds of thousands of dollars annually. However, over time it may be that the revenue these civil penalties generates declines as compliance increases.

In addition to this increased authority, the bill requires the appropriate OCILB section to give the Attorney General the names of those who fail to pay any civil penalties resulting from OCILB investigations. In these situations, individuals would also be liable for any fee assessed by the Attorney General for collection of civil penalties owed. Attorney General fees would likely be deposited into the General Reimbursement Fund (Fund 1060).

Overall, any increase in the volume of hearings would likely pose no additional cost to OCILB since existing hearing officers would be used for any additional hearings that occur. OCILB would continue to refer unlicensed contractors for prosecution, but on a case-by-case basis given the difficulties in prosecuting such individuals.

Possible impact on contractor licensure

As previously mentioned, OCILB currently oversees approximately 20,000 active contractor licenses. This number may well increase as knowledge of the new disciplinary measure included in the bill spreads through the industry. If so, there would be a gain in license fee revenue to the Industrial Compliance Operating Fund in addition to any civil penalties collected as a result of OCILB investigations. Contractors licensed by OCILB pay a \$50 initial license and examination fee and a \$60 annual renewal fee.

Contractor definition

Current law defines a contractor as any individual or business entity that works *for compensation*. The bill removes this qualification from the definition of a contractor. This change is intended to prevent situations in which an unlicensed contractor claims to have not been compensated for their work in an effort to avoid licensure requirements such as paying license fees, obtaining liability insurance, and completing continuing education. By specifying that a contractor must be licensed whether or not they are compensated, contractor licensure may increase, which in turn would increase revenue to the Industrial Compliance Operating Fund.

License assignment

The bill requires (rather than permits, as under current law) each licensee to request that the individual's license be assigned to one business entity with whom the individual is associated as a full-time officer, proprietor, partner, or employee at the time the individual submits the license application. The bill also requires an individual's license to be reassigned to a new business entity or held in escrow when a license becomes invalid if the individual is no longer associated with their current business entity.

Normally, an individual assigns a company name to his or her license and the individual's company will pay the individual's license renewal fee, liability insurance, and continuing education fees. Accordingly, the individual's license should be used exclusively for that company. OCILB noted that individuals not having a business entity assigned on their licenses are able to pull construction permits to perform work for different persons or companies, many of which are either out-of-state or otherwise unlicensed. The provisions described above are intended to stop such activity. They would likely have no fiscal effect on OCILB operations.

Compliance with the Americans with Disabilities Act

Under current law, the standards and rules (e.g., the various building codes) adopted by the Department of Commerce's Board of Building Standards must enable reasonable access and use of facilities by all persons with a disability. These standards and rules must be in agreement with the Americans with Disabilities Act (ADA) and other federal statutes.

The bill specifies that if the owner of a building obtains approval from a local building department to commence construction on that building, certain persons, such as the owner of the building, a registered architect, a registered engineer, and others that prepared the plans, drawings, specifications, or data submitted to obtain such approval, are considered as complying with the ADA for purposes of enforcement by the Ohio Civil Rights Commission (OCRC).

State fiscal effects

It appears that the primary direct state fiscal effect of the bill's ADA building permit provision will be in terms of restricting the Ohio Civil Rights Commission's existing statutory authority to investigate and enforce discrimination allegations in the areas of housing and public accommodation on the basis of disability. Based on a conversation with the Commission's Executive Director, LSC fiscal staff has discerned that: (1) the Commission may in effect lose its statutory authority to investigate and enforce certain ADA-related discrimination complaints, and (2) an existing contract with the U.S. Department of Housing and Urban Development (HUD) to investigate complaints and adjudicate discrimination charges filed by citizens of Ohio pertaining to discrimination in housing could be jeopardized if Ohio is viewed as no longer compliant with federal rules and regulations. This HUD contract generates around \$1.2 million annually in federal moneys that are used to finance the Commission's operating expenses.

The Commission reviews approximately 30 to 40 ADA-related housing discrimination complaints per year. The process through which a complaint makes its way to the Commission begins with an owner and an intent to construct. The owner must submit building plans and specifications to a local licensing board. That board reviews the plans and presumably verifies compliance with ADA, and then awards a license to the owner who may then begin construction. If after construction, the property is suspected of being noncompliant with ADA, a complaint may be filed with the Commission who may in turn open an investigation.

Once an investigation is begun on a property, the Commission will usually hire an architect to inspect the property. If the eventual finding indicates the property is indeed noncompliant with ADA, the likely scenario involves a retrofit; no investigation has, to the best of LSC fiscal staff's knowledge, ever resulted in a demolition. The most common solution involves a retrofit of the property to meet ADA standards. For example, a restroom facility that is not ADA compliant may be retrofitted with a stabilizing bar.

Local fiscal effects

LSC fiscal staff has identified the following ways in which the bill's ADA building permit provision will, or may, affect the state's political subdivisions:

- If a building is deemed as having complied with the federal ADA law for the purposes of enforcement by the Ohio Civil Rights Commission by having a permit issued by a local board of building standards, such boards may feel compelled to subject certain permit applications to closer scrutiny than might otherwise have been the case under current law and practice.
- If a building is deemed as having complied with the federal ADA law for the purposes of enforcement by the Ohio Civil Rights Commission by having a permit issued by a

local board of building standards, it may increase the likelihood that a local board of building standards may be named as a defendant in a complaint alleging discrimination on the basis of disability.

- If the Ohio Civil Rights Commission loses enforcement authority in certain ADA-related complaints, it may make it more likely that certain plaintiffs seek a remedy by filing a civil action in the appropriate court of common pleas.

The likelihood of any of the possible outcomes noted immediately above, as well as any related expenditure effects on any given political subdivision, is uncertain.

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