# *Fiscal Note & Local Impact Statement*

*127 th General Assembly of Ohio*

Ohio Legislative Service Commission
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BILL: **Am. Sub. S.B. 248** DATE: **December 18, 2008**

STATUS: **As Enacted – Effective April 7, 2009** SPONSOR: **Sen. Austria**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **To create a public records exemption for Armed Forces discharges and alter other laws and benefits affecting specified Armed Forces personnel**

## *State Fiscal Highlights*

| STATE FUND | FY 2009 – FUTURE YEARS |
|---|---|
| **Adjutant General – General Revenue Fund** | |
| Revenues | - 0 - |
| Expenditures | Increase in annual costs to administer the Ohio Military Medal of Distinction program |
| | Small increase in FY 2009 to prepare Ohio National Guard Youth ChalleNGe Program feasibility report |
| **Department of Development – Housing Trust Fund (Fund 6460)** | |
| Revenues | Potential minimal loss in copy fee revenue |
| Expenditures | - 0 - |
| **Attorney General – Victims of Crime/Reparations Fund (Fund 4020)** | |
| Revenues | Potential gain in fine revenue from newly created offenses |
| Expenditures | - 0 - |

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- The Adjutant General's Department (ADJ) would incur costs for administering the Ohio Military Medal of Distinction program for Ohioans killed in the line of military duty. ADJ would also likely be responsible for the cost of the medals awarded, at approximately $25 apiece. The total medal cost could range from a few thousand dollars to several hundred thousand dollars depending on the number of medals awarded.

- The bill requires ADJ to examine and make recommendations on the feasibility of establishing an Ohio National Guard Youth ChalleNGe Program. There could be minimal one-time costs for preparing this report and furnishing it to the President of the Senate, the Speaker of the House, and the Governor.

- The bill creates two new criminal penalties: one first-degree misdemeanor and one second-degree misdemeanor. If there are new prosecutions as a result, it may lead to some amount of new revenue in the state's Victims of Crime/Reparations Fund (Fund 4020).

- The bill allows parties requesting military discharge records to receive them at cost, paying no additional fees. This could result in a minimal loss of revenue to the Housing Trust Fund (Fund 6460).

## *Local Fiscal Highlights*

| LOCAL GOVERNMENT | FY 2008 |
|---|---|
| **FY 2009** | |
| Revenues | - 0 - |
| Expenditures | Potential one-time $150-$500 increase in FY 2009 for certain counties to purchase redaction software |
| **County Courts** | |
| Revenues | Potential gain in fine and court cost revenue resulting from newly created offenses |
| Expenditures | Potential increase in prosecution costs for new misdemeanor offenses |

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

- The bill makes military discharge records available for limited public inspection for 75 years after they are filed. Authorized individuals may receive complete copies of discharge records; nonauthorized individuals may obtain copies with the sensitive information redacted. Authorized and nonauthorized individuals are required to pay the cost of the copy.

- Although there appear to be very few such instances, counties that do not already have redacting software could incur a one-time cost of between $150 and $500 to acquire the software necessary to produce records for nonauthorized individuals.

- The bill creates two new forms of criminal offenses concerning the use of a dead veterans' persona that might lead to increased prosecution expenses, with the potential for some offsetting court cost and fine revenue.

# *Detailed Fiscal Analysis*

***Overview***

The Public Records Law generally requires public offices to maintain public records, make them available for inspection, and provide certified copies of these documents at cost. The Public Records Law also lists the types of records that are excluded from the definition of public records. The bill provides that Armed Forces discharges filed with county recorders—known as DD-214s—are exempted from the Public Records Law for 75 years except for requests by an authorized person or a person seeking a redacted copy of the record. During this time, a county recorder's office must make the complete discharge record available only to authorized parties or to others whom may request and receive a redacted version of the document.

***Impact on county recorders***

A redacted document would contain only the subject's name, rank, date of birth, date of discharge, and type of discharge. Providing redacted copies of discharge records could require some county recorders to buy software that costs between $150 and $500, depending upon the type of software and the number of licenses purchased. According to the County Recorders Association, however, the majority of county recorders already possess this software.

Currently, county recorders provide one free copy to a veteran when he or she files a DD-214. Otherwise, a fee is charged. The fee for copying Armed Forces instruments is $1—half of which is retained by the county recorder and half of which is deposited in the state's Housing Trust Fund—plus 50 cents per page. Under the bill, both authorized and nonauthorized parties would receive one free copy of a requested discharge and pay only the actual cost for all other copies—no additional fees would be charged. As such, this provision could cause a minimal loss of revenue to the state Housing Trust Fund. The impact on the fund, which pays for a variety of housing assistance programs offered to qualified individuals and organizations, would depend on the number of records requests made.

***Misdemeanor penalties concerning the use of a dead military person's persona***

The bill includes two new penalty provisions which may have some small fiscal effect. Under current law, a person may not, without permission and following certain steps, use another individual's persona for a commercial purpose during the individual's lifetime or for a period of 60 years after the date of the individual's death. A civil action may be used to enforce these rights. The bill adds to this by specifying that anyone who unlawfully uses the persona of a deceased member of the Ohio National Guard or the United States Armed Forces is guilty of a misdemeanor of the first degree (M1), which carries a possible jail term and fine of not more than 180 days and less than $1,000. The bill also creates a second-degree misdemeanor (M2)—which carries a possible jail term and fine of not more than 90 days and $750—that applies to anyone who knows but does not report that a dead veteran's persona has been illegally used. Although such violations would be rare, county courts could incur new prosecution costs that might be to some extent offset by gains in court costs and fine revenue, some of which is also transmitted to the state and deposited in the Victims of Crime/Reparations Fund (Fund 4020).

***Tuition rates and discounts***

The bill requires state institutions of higher education to charge in-state tuition rates to nonresident members of the United States Armed Forces and their dependents stationed in Ohio. This requirement would have no new fiscal impact on state institutions, as existing Board of Regents (BOR) residency rules in O.A.C. 3333-1-10 include a similar provision.

***Jury duty exemption***

The bill excuses any member or the spouse of a member of a military organization from jury duty if that member is on active duty. As more people could potentially be excused from duty, the pool of potential jurors would have to be expanded in order to fill a jury. This provision, however, would appear to have little, if any, fiscal effect on the court system.

***USERRA***

The bill states that no person—who is denied reemployment after returning from active military duty—may receive a court-ordered remedy under both state law and the federal "Uniformed Services Employment and Reemployment Rights Act of 1994" (USERRA). Under the bill, any person who does receive two remedies must reimburse the lesser of the two amounts to the payer. For more detail on this subject, please consult the LSC bill analysis. This provision would allow both state and local governments to recoup duplicate settlements paid to individuals under USERRA. As this is a rare occurrence, this provision would have little to no fiscal effect on the state or any local subdivision.

***Ohio Military Medal of Distinction***

The bill creates the Ohio Military Medal of Distinction for members of the Ohio National Guard, United States military reserve, and United States Armed Forces killed in the line of duty. To receive a medal, members must have Ohio residency or certain other connections to Ohio. The Adjutant General's department (ADJ) estimates that the Ohio Military Medals of Distinction could cost approximately $25 apiece. Because the medals would be awarded to deceased individuals, ADJ would likely cover the medal cost. Since the onset of the conflict in Iraq in 2003, 11 Ohio National Guard members and 173 Ohioans who were members of the United States Armed Forces have been killed in the line of duty. These 184 individuals would be eligible for the medal. It would cost approximately $4,600 ($25 x 184) to award the medals to these individuals.

The bill, however, does not include a timeframe for eligibility, so medals could potentially be requested on behalf of individuals killed in any American conflict. The Department of Veterans' Services (DVS) indicates that about 30,000 Ohioans have been killed in the line of duty since World War II. It is unclear how many medals might be requested for Ohioans killed in previous conflicts. The table below provides cost estimates for these medals at various application levels, assuming 30,000 Ohioans are eligible. In addition to the cost of the medals, ADJ would also incur administrative costs for implementing the medal program.

**Cost for Medal of Distinction Awards at Various Application Levels**

| (30,000 Eligible) | | |
|---|---|---|
| **Application Level** | **# of Medals Awarded** | **Cost** |
| 20% | 6,000 | $150,000 |
| 40% | 12,000 | $300,000 |
| 60% | 18,000 | $450,000 |
| 80% | 24,000 | $600,000 |

***National Guard Youth ChalleNGe Study Committee***

The bill requires ADJ to examine and make recommendations on the feasibility of establishing a National Guard Youth ChalleNGe Program in Ohio. This program is under the United States Secretary of Defense and seeks to improve life skills and employment potential of at-risk youth by providing military-based training and supervised work experiences. It also assists participants in receiving high school diplomas or their equivalent. ADJ could incur some minimal administrative costs for preparing this report and furnishing it to the President of the Senate, the Speaker of the House, and the Governor.

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