

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **S.B. 305** DATE: **May 13, 2008**
STATUS: **As Introduced** SPONSOR: **Sen. D. Miller**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Prohibit discrimination on the basis of sexual orientation**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF) and/or Other State Funds	
Revenues	- 0 -
Expenditures	(1) No discernible effect on Ohio Civil Rights Commission's annual costs to investigate discriminatory practices; (2) No increase in costs to pay moneys owed for certain discriminatory practices, as bill generally codifies executive order ban

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

- **Ohio Civil Rights Commission.** Based on discussions with Ohio Civil Rights Commission staff, LSC fiscal staff have discerned that any increase in filings based on an allegation of sexual orientation discrimination will: (1) represent a relatively small percentage increase in the context of the Commission's total annual caseload, and (2) not significantly impact its workload or related annual operating expenses.
- **State as respondent.** An executive order currently in effect established a policy that bans discrimination of current or prospective state employees on the basis of sexual orientation or gender identity. Presumably, the state currently faces certain potential financial liabilities if a state agency is found to have violated the policy against discrimination based on sexual orientation or gender identity. The bill then could arguably be seen as generally codifying the executive order.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Court of Common Pleas (adjudicating civil actions alleging discriminatory practices)	
Revenues	- 0 -
Expenditures	Potential, likely no more than minimal, annual increase to adjudicate certain discriminatory practices allegations
Counties, Municipalities, Townships, and School Districts (as respondent in discrimination complaint)	
Revenues	- 0 -
Expenditures	Potential increase to pay moneys owed for certain discriminatory practices, likely to be minimal at most, assuming local governmental agencies will generally comply with prohibition

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

- **Court of common pleas.** LSC fiscal staff's research suggests that allegations of discriminatory practices on the basis of sexual orientation will generally be resolved by the filing of a complaint with the Commission as opposed to the filing of a civil action in the appropriate court of common pleas. Assuming this were true, then the bill's effect on the caseloads and related annual operating expenses for any given court of common pleas is likely to be minimal at most.

- **Local governmental entity as respondent.** The bill adds sexual orientation to the list of prohibited practices, thus expanding the circumstances in which a local government may incur financial liabilities for engaging in such practices. LSC fiscal staff's research to date, however, suggests that the ongoing fiscal effect on local governments will be minimal because: (1) some local governments have already enacted ordinances, code provisions, or internal policies prohibiting such discriminatory actions based on sexual orientation, and (2) local governments will generally comply with the prohibition against discrimination based on sexual orientation and as a result should rarely find themselves owing an individual money for having violated the prohibition.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Adds "sexual orientation" to the covered characteristics that can be the basis for unlawful discriminatory practices under the existing Ohio Civil Rights Commission Law.
- Provides that the Ohio Civil Rights Commission must exercise certain of its existing powers and duties also with respect to discrimination on the basis of sexual orientation.

Discrimination practices

The Ohio Civil Rights Commission (hereinafter referred to as the Commission) furnished LSC fiscal staff with data gathered by the federal government's General Accounting Office (GAO). The GAO report¹ focused on employment-based sexual orientation discrimination allegations.² In 2001, according to data provided by the states queried in the GAO report, sexual orientation filings ranged anywhere from 1.3% to 9% of all employment discrimination cases, with the average and median percentages at 3.05% and 2.55%, respectively.

Ohio Civil Rights Commission

For the calendar year 2007, the Commission received 4,884 total employment discrimination filings; this number has remained relatively constant for several years. If one assumes that, subsequent to the bill's enactment, Ohio's experience will mirror the GAO findings, then adding sexual orientation to a list of covered characteristics that can be the basis for unlawful discriminatory practices under the existing Ohio Civil Rights Commission Law will generate somewhere between 126 (2.55%) and 149 (3.05%) more filings for the Commission to resolve annually.

Based on discussions with Commission staff, LSC fiscal staff have discerned that any increase in filings based on an allegation of sexual orientation discrimination will: (1) represent a relatively small percentage increase in the context of the Commission's total annual caseload, and (2) not significantly impact its workload or related annual operating expenses.

¹ In gathering its data, the GAO used a sample population comprised of the following states as a basis for its findings: California; Connecticut; Washington, DC; Hawaii; Massachusetts; and Minnesota.

² In conversations with staff of the Ohio Civil Rights Commission, LSC fiscal staff learned that the majority of their discrimination filings are employment-based. Therefore, this fiscal note utilizes employment-based discrimination as the context for its findings. It is important to note, however, that, if enacted, the bill could affect the number of filings in other prohibited areas of discrimination such as housing and the extension of credit, but the fiscal impact appears likely to be negligible.

The Commission's termination of complaints generally is as follows:

- 25%-30% result in a finding of probable cause or are resolved through mediation, settlement, or conciliation.
- 11%-15% are closed for administrative reasons.
- 58%-60% are dismissed because of insufficient evidence.

Courts of common pleas

Under current law, an aggrieved individual generally has the right to file an action in the appropriate court of common pleas. Commission staff has indicated to LSC fiscal staff, however, that the filing of a civil action is more often the exception rather than the rule, and that the Commission's findings are quite often accepted and not appealed. During the course of our research, it was also suggested the resolution of discriminatory practices on the basis of sexual orientation would follow a similar path, the filing of a complaint with the Commission as opposed to the filing of a civil action in the appropriate court of common pleas. Assuming this were true, then the bill's effect on the caseloads and related annual operating expenses for any given court of common pleas is likely to be minimal at most.

Governmental entities as respondents

The Commission prepared a report for LSC fiscal staff examining all of the statewide discrimination charges filed against counties, townships, municipalities, and school districts during calendar year 2007. Again, focusing on employment-based discrimination allegations, the Commission reported that a total of 478 charges were filed against local governmental entities, which is 9.79% of all charges of discrimination filed with the Commission for that year, and that by adding sexual orientation to the Ohio Civil Rights Commission Law Act in the range of 126-149 employment-based sexual orientation discrimination complaints would be filed with the Commission per year. From that data, the Commission projected it would be reasonable to expect between 12 and 16 of those charges (9.79%) would be filed against certain local governmental entities.

State as respondent

Effective May 17, 2007, Governor Strickland signed an executive order expiring on his last day as Governor of Ohio unless rescinded before that, establishing a policy that bans discrimination of current or prospective state employees on the basis of sexual orientation or gender identity. Presumably, the state currently faces certain potential financial liabilities if a state agency is found to have violated the policy against discrimination based on sexual orientation or gender identity. The bill then could arguably be seen as generally codifying the executive order.

Local government as respondent

Under current law, unchanged by the bill, a local governmental entity currently faces potential financial liabilities if that entity is found to have engaged in certain prohibited discriminatory practices. The bill adds sexual orientation to the list of prohibited practices, thus expanding the circumstances in which a local government may incur financial liabilities for engaging in such practices. LSC fiscal staff's research to date, however, suggests that the ongoing fiscal effect on local governments will be minimal for the following reasons.

- Some local governments have already enacted ordinances, code provisions, or internal policies prohibiting such discriminatory actions based on sexual orientation. For example, the cities of Columbus, Cleveland, Cincinnati, Dayton, and Toledo all have ordinances or codes that prohibit sexual orientation in employment-based situations. Additionally, Franklin and Cuyahoga counties both have internal policies in place to combat sexually oriented discrimination against county employees.
- Local governments will generally comply with the prohibition against discrimination based on sexual orientation and as a result should rarely find themselves owing an individual money for having violated the prohibition.

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