



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** Sub. H.B. 176 of the 128th G.A.      **Date:** June 24, 2009  
**Status:** As Reported by House State Government      **Sponsor:** Reps. Stewart and McGregor

**Local Impact Statement Procedure Required:** No — Minimal cost

**Contents:** Prohibits discrimination based on sexual orientation or gender identity

### State Fiscal Highlights

#### STATE FUND

#### FY 2010 – FUTURE YEARS

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#### General Revenue Fund (GRF) and/or Other State Funds

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Revenues

- 0 -

Expenditures

(1) Potential increase estimated at up to \$300,000 in Ohio Civil Rights Commission annual operating expenses to hire as many as 4 additional investigators; (2) No increase in costs to pay moneys owed for certain discriminatory practices, as the bill generally codifies executive order ban

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Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- **Ohio Civil Rights Commission.** Ohio Civil Rights Commission staff has estimated that the bill: (1) may result in roughly 300-350 new case filings annually based on an allegation of sexual orientation or gender identity discrimination, and (2) could necessitate the hiring of four additional full-time investigators at an annual cost estimated at \$300,000. Whether the Commission would have sufficient state and/or federal funds appropriated for the purpose of adding any necessary additional investigators is uncertain.
- **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 2009 – FUTURE YEARS

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### Courts of Common Pleas (adjudicating civil actions alleging discriminatory practices)

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Revenues - 0 -

Expenditures Potential, likely no more than minimal, annual increase to adjudicate certain discriminatory practices allegations

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### Counties, Municipalities, Townships, and School Districts (as respondent in discrimination complaint)

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Revenues - 0 -

Expenditures Potential increase to pay moneys owed for certain discriminatory practices, likely to be minimal at most annually, assuming local governmental agencies will generally comply with prohibition

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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 or gender identity will generally be resolved by the filing of a complaint with the Ohio Civil Rights 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 and gender identity to the list of prohibited practices, thus expanding the circumstances in which a local government may incur financial liabilities for engaging in such practices. The ongoing fiscal effect on local governments is anticipated to 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 gender identity, and (2) local governments will generally comply with the prohibition against discrimination based on sexual orientation and gender identity and as a result should rarely find themselves owing an individual money for having violated the prohibition.

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## Detailed Fiscal Analysis

### Overview

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

- Adds "sexual orientation" and "gender identity" 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 and gender identity.

### 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).<sup>1</sup> The GAO report focused on employment-based sexual orientation discrimination allegations.<sup>2</sup> In 2001, according to data provided by the jurisdictions queried in the GAO report, sexual orientation filings ranged anywhere from 1.3% to 9.0% of all employment discrimination cases, with the average and median percentages at 3.05% and 2.55%, respectively.

### Ohio Civil Rights Commission

#### Employment-based complaint filings

In calendar year 2008, the Commission received a total of 3,886 employment discrimination filings. If, subsequent to the bill's enactment, Ohio's experience mirrors the above-noted 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 99 (2.55%) and 118 (3.05%) more filings for the Commission to resolve annually. However, Commission staff recently conveyed to LSC fiscal staff that the addition of "sexual orientation" and "gender identity" to the list of covered characteristics may in

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<sup>1</sup> The GAO used a sample population comprised of the following jurisdictions as a basis for its findings: California; Connecticut; Washington, D.C.; Hawaii; Massachusetts; and Minnesota.

<sup>2</sup> In conversations with staff of the Ohio Civil Rights Commission, LSC fiscal staff learned that the majority of their discrimination filings are employment- and housing-based. Therefore, this fiscal note utilizes employment- and housing-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 the extension of credit, but the fiscal impact appears likely to be negligible.

fact yield more new filings than the GAO report projects, possibly somewhere in the neighborhood of 300-350 new case filings annually.<sup>3</sup>

Based on the Commission's 2008 filing data, and, more significantly, the recent discussions with Commission staff, LSC fiscal staff have discerned that new complaint filings based on an allegation of sexual orientation or gender identity discrimination may: (1) increase the Commission's total annual caseload by around 7%, and (2) require four additional full-time investigators to process those new complaints. An investigator for the Commission costs an average of \$75,000 annually and handles 80-100 cases per year, potentially resulting in a \$300,000 (4 FTEs x \$75,000) increase in the Commission's annual operating expenses. Whether the Commission would have sufficient state and/or federal funds appropriated for the purpose of adding any necessary additional investigators is uncertain.

### **Case closures**

Complaints filed and subsequently closed by the Commission fall into the following general pattern:

- 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 or gender identity 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**

#### **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

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<sup>3</sup> While there is arguably a notable difference between the figures provided in the GAO report and the estimates provided to LSC staff by the Commission, for now, LSC fiscal staff bases the findings in this fiscal note on the Commission estimates on the grounds that they are more recent and specific to the state of Ohio.

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 and gender identity to the list of prohibited practices, thus expanding the circumstances in which a local government may incur financial liabilities for engaging in such practices.

The Commission prepared a report for LSC fiscal staff of the charges filed against counties, townships, municipalities, and school districts during calendar year 2007. The Commission reported that a total of 478 employment-based discrimination charges were filed against local governments, 9.79% of all charges of discrimination filed for that year. As previously noted, by adding sexual orientation and gender identity to the Ohio Civil Rights Commission Law Act, in the range of 300-350 employment-based sexual orientation and gender identity discrimination complaints could be filed with the Commission per year. Extrapolating from that data, one could estimate that between 29 and 34 of those charges (9.79%) would be filed against certain local governmental entities. Predicting the timing and frequency with which such a charge would be resolved in favor of the complainant and against a particular responding local government, and the amount of money that the latter may be required to pay the complainant, is problematic.

LSC fiscal staff's research, 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 and gender identity. 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 and gender identity discrimination against county employees.
- Local governments will generally comply with the prohibition against discrimination based on sexual orientation and gender identity and as a result should rarely find themselves owing an individual money for having violated the prohibition.