



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 160 of the 132nd G.A.

**Status:** As Introduced

**Sponsor:** Rep. Antonio

**Local Impact Statement Procedure Required:** No

**Subject:** Prohibits discrimination based on sexual orientation or gender identity or expression

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### State & Local Fiscal Highlights

- The Ohio Civil Rights Commission has estimated that it will receive roughly 300 to 350 new charges annually alleging discrimination on the basis of sexual orientation or gender identity or expression. Any resulting costs that the Commission may incur are expected to be absorbed by existing staff and budgetary resources.
- It appears there will be few additional civil actions filed with any given court of common pleas, with courts generally likely to absorb the work and costs using existing appropriated resources.
- Presumably, the state and local governments generally will comply with the bill's discrimination provisions, with any alleged violations occurring relatively infrequent. The timing and magnitude of any legal judgments or settlements related to a discrimination violation is indeterminate.

### Detailed Fiscal Analysis

The bill generally expands existing prohibitions against various unlawful discriminatory practices to include sexual orientation and gender identity or expression. The bill also provides that the Ohio Civil Rights Commission (hereinafter referred to as the "Commission") must exercise certain of its existing powers and duties also with respect to discrimination on the basis of sexual orientation and gender identity or expression.

#### **General Accounting Office employment discrimination report<sup>1</sup>**

In July 2013, the federal government's General Accounting Office (GAO) released a report of employment discrimination based on sexual orientation and gender identity. The report summarized its 2012 survey of 21 states (plus the District of Columbia) that prohibited sexual orientation-based employment discrimination, 18 of which also prohibited employment discrimination on the basis of gender identity.

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<sup>1</sup> <https://www.gao.gov/assets/660/656443.pdf>.

According to the data in the report covering 2007 through 2012, sexual orientation filings ranged anywhere from 1.79% to 6.78% of all employment discrimination cases, with the average and median percentages at 3.95% and 4.11%, respectively. Filings related to gender identity generally accounted for less than 1% of cases. The general conclusion was that the ". . . data showed that there were relatively few employment discrimination complaints based on sexual orientation and gender identity filed in these states during this time period."

## **Ohio Civil Rights Commission**

### **Employment-based complaint filings**

The bill's prohibition against discrimination based on sexual orientation or gender identity or expression may result in an increase in the number of discrimination charges filed annually with the Commission. In conversations with staff of the Commission, LSC fiscal staff learned that the majority of their discrimination filings are employment-based. From FY 2012 through FY 2016, charges of discrimination in matters related to employment accounted for an average of 76% (2,504) of all cases terminated annually. Over that same five-year span, the Commission terminated, on average, 3,296 discrimination cases annually. 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.

In FY 2016, the Commission terminated 2,355 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 and gender identity to a list of covered characteristics that can be the basis for unlawful discriminatory practices under the existing law will generate around 100 or 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 or expression to the list of covered characteristics may in fact yield more new filings than projected from the GAO report, possibly somewhere in the neighborhood of 300 to 350 new case filings annually. According to the Commission, this additional caseload is expected to be undertaken without the need for additional staff. Any additional administrative costs that the Commission may incur to comply with the bill's provisions are likely to be absorbed utilizing existing resources.

### **Courts of common pleas**

Under current law, an individual alleging discrimination has the right to file an action in the appropriate court of common pleas, although the filing of a civil action is more often the exception rather than the rule. Presumably, the resolution of discriminatory practices on the basis of sexual orientation or gender identity or

expression 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. This suggests that the courts generally will be able to absorb additional cases using currently appropriated resources.

## **State and local governments as respondents or defendants**

### **State of Ohio**

Effective January 21, 2011, Governor Kasich 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. Presumably, the state currently faces certain financial liabilities if a state agency is found to have violated the policy against sexual orientation, but not gender identity or expression. In that sense, it is possible that the state could incur additional costs related to the adjudication and settlement of a case alleging discrimination based on gender identity or expression. Otherwise, the bill could arguably be seen as largely codifying the executive order.

### **Local governments**

Under current law, unchanged by the bill, a local government (county, municipality, township, school district, or special district) faces potential financial liabilities if found to have engaged in certain prohibited discriminatory practices. As a result, the bill could potentially lead to a civil action being brought against a local government based on the covered characteristics of sexual orientation or gender identity or expression. In such cases, the local government could incur costs related to the adjudication and settlement of a case, which may include attorney fees incurred by the injured party in addition to any damages awarded. It should be noted that some governments, including the cities of Columbus, Cleveland, Cincinnati, Dayton, and Toledo, have already enacted ordinances, code provisions, or internal policies prohibiting such discriminatory actions based on sexual orientation or gender identity or expression.