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Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, on behalf of the Ohio Civil Rights Commission (OCRC), thank you for allowing the agency this opportunity to share our thoughts on Substitute House Bill (HB) 352. OCRC would like to thank the sponsors, the Ohio Chamber of Commerce, and the Ohio Employment Lawyers Association for their willingness to hear our concerns about previous iterations of this bill. The Commission believes the version of the legislation before you provides an opportunity to improve Ohio public policy, specifically through the adoption of administrative exhaustion.

For OCRC, the most important provision of the bill is its adoption of administrative exhaustion for OCRC. This bill utilizes the approach of requiring complainants to first file with OCRC, similar to the process by which federal law requires complainants to initially file with the EEOC before filing a federal Title VII action. Requiring complainants to first file with the OCRC will give all parties the option of engaging in OCRC's free Alternative Dispute Resolution programs. All charges will also have the opportunity to go through our more cost-efficient investigative and administrative process. While all charges will have to be filed with OCRC initially, complainants and their attorneys would still have an option to elect to file a private civil action by requesting a "Notice of Right to Sue" from OCRC.

Crucially, an exhaustion requirement would also allow the state to study and measure employment discrimination in our state through superior data collection. OCRC is tasked with

studying the problem of discrimination in our state, but it is impossible to truly do so when there is no way to know the actual number and type of cases directly filed as private civil actions. Under current law, there is no collection of data on the number and nature of civil rights cases moving through the courts of common pleas. Exhaustion will give OCRC the tools to keep records of all case filings, even if they are subsequently withdrawn to file a private court action. Moreover, OCRC will potentially be able to use data and charge filings to track and identify trends, issues, and concerns relating to employment discrimination.

Because of the current absence of data on cases going straight to the courts of common pleas, we have no way of knowing how many additional cases will be filed when this legislation takes effect. However, we can be sure that the number of cases would increase. OCRC anticipates that some cases would resolve quickly through our mediation program and that some complainants would quickly request a right to sue and would not proceed to a full investigation. Still, OCRC also anticipates that the bill's changes, particularly the extension of OCRC's statute of limitations from six months to two years, would lead to additional cases being filed that would require a full investigation. All of these additions are against a backdrop of an ongoing fiscal strain for our agency. OCRC has operated under a funding deficit for several years and since SFY 2016, annual case filings have increased by approximately 20%¹. Statewide budget cuts in SFY 2020 and SFY 2021 have only exacerbated these issues. However, even under these scarce resources, OCRC has consistently endeavored to increase and maintain efficiency. But it should be noted that OCRC staff is currently taxed and does not have considerable capacity to absorb much in the way of additional administrative or investigative burden.

Considering the present constraints and anticipated increases, it may be necessary to increase OCRC staff levels for two additional administrative positions and at least two additional investigative staff to administer HB 352.

¹ Case filings dipped in March 2020-July 2020, which we believe to be due to the impact of the pandemic. However, case filings seem to be resuming normal levels and we believe SFY 2021 will be back to recent averages.

At least one new administrative staff member would be necessary in our Central Office to handle the requests and issuances of the “right to sue” notices and case compliance administration. Depending on the increase in caseload, OCRC believes at least one additional administrative staff person would be necessary in our regional offices as well. At current pay and benefits levels, these two additional staff members would require an additional \$132,000 (\$66,000/year/administrative staff member, inclusive of benefits) of funding per year.

As detailed earlier, it is impossible to predict the number of additional cases that would require investigations under HB 352. However, OCRC expects that in order to maintain an average annual caseload of approximately 90 cases per investigator, a minimum of two additional investigators at an additional cost of \$190,000 (at approximately \$80,000/year/investigator, inclusive of benefits) would be needed annually for each 5% increase to the number of charges filed.

While OCRC understands that state resources are scarce, especially in light of the impact that the pandemic has had on the state’s financial resources, OCRC believes this investment in the administrative exhaustion policy is worth making. OCRC’s process is the most efficient and cost-effective method of handling civil rights allegations. Moreover, it would mean an improvement to OCRC’s ability to complete our statutory mission to study and eradicate discrimination in our state.

Sincerely,



Angela Phelps-White
Executive Director
Ohio Civil Rights Commission