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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 11
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Antonio

Local Impact Statement Procedure Required: No

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Highlights

- The number of new charges that could be filed with the Ohio Civil Rights Commission alleging discrimination on the basis of sexual orientation or gender identity or expression is estimated at up to between 100 and 350 annually. 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 staff and 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 Analysis

The bill adds sexual orientation and gender identity or expression to the list of protected classes in existing prohibitions against unlawful discriminatory practices. 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 report¹

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.

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 on the basis of these additional characteristics may result in an increase in the number of discrimination charges filed annually with the Commission. Any additional administrative costs that the Commission may incur to comply with the bill's provisions are likely to be absorbed utilizing existing resources.

In FY 2018, the Commission terminated 2,660 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.

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 new discriminatory practices under the bill 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 available staff and appropriated resources.

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

State and local governments as respondents or defendants

State of Ohio

Effective January 14, 2019, Governor DeWine 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. A similar executive order became effective January 21, 2011, and expired on former Governor Kasich's last day in office.

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, the timing and magnitude of which is indeterminate. Otherwise, the bill could 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. The timing and magnitude of such costs is indeterminate. 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.