

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 18, 2005

TO: Honorable Helen Giddings, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB143 by Farrar (Relating to the prohibition of employment discrimination on the basis of sexual orientation or gender identity.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB143, As Introduced: a negative impact of (\$261,283) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|--------------------|---|
| 2006 | (\$130,901) |
| 2007 | (\$130,382) |
| 2008 | (\$130,382) |
| 2009 | (\$130,382) |
| 2010 | (\$130,382) |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from GENERAL REVENUE FUND 1 | Change in Number of State Employees from FY 2005 |
|--------------------|--|---|
| 2006 | (\$130,901) | 1.9 |
| 2007 | (\$130,382) | 1.9 |
| 2008 | (\$130,382) | 1.9 |
| 2009 | (\$130,382) | 1.9 |
| 2010 | (\$130,382) | 1.9 |

Fiscal Analysis

The provisions of the bill amend the Texas Labor Code and prohibit an employer from considering an applicant's sexual orientation as a condition of employment. The following employers are excluded from prohibition: (1) religious organizations encompassed by Section 11.20 of the Tax Code, as well as (2) any school, institution of higher learning, or other educational institution that is (a) entirely or substantially controlled, managed, owned, or supported by such a religious organization; or (b) has a curriculum directed toward a particular religion.

The provisions of the bill allow for an individual to file an employment discrimination complaint based upon sexual orientation or gender identity under Chapter 21 of the Texas Labor Code and prohibit retaliation or coercion against individuals who file a charge of discrimination based on sexual orientation or gender. It would also prohibit quotas or preferential treatment based on sexual

orientation or gender.

According to the Texas Workforce Commission Civil Rights Division (TWC CRD), it would investigate the complaint and issue a determination as it does for discrimination complaints currently under Chapter 21 of the Texas Labor Code. Actions taken could include issuing of a charge, administrative hearings or filing of civil actions, subpoena enforcement, temporary injunctions, and enforcement of orders and conciliation agreements. An individual who is seeking employment or is employed in Texas and has an employment harm or action taken against him/her may file a complaint based on sexual orientation or gender identity.

According to the Texas Workforce Commission (TWC), since Title VII of the Civil Rights Act does not recognize sexual orientation as a protected class, resolution of charges of employment discrimination will not be covered under the contract for payment between TWC and the Equal Employment Opportunity Commission and must be financed from the General Revenue Fund.

The bill takes effect September 1, 2005.

Methodology

According to TWC, the provisions recognize a new protected class under state discrimination laws. The Civil Rights Division (CRD) does not currently process Equal Employment Opportunity Commission complaints for discrimination based on sexual orientation, and therefore there is no readily available resource to predict the number of complaints that will be received on a statewide basis.

TWC estimates that it would receive 134 complaints related to employment related discriminations. TWC indicates it would need 1.9 FTEs for Investigator III positions with annual salary and benefit costs totaling \$94,923 with other related costs totaling \$35,978 in fiscal year 2006 and \$35,459 in subsequent years to resolve complaints.

To determine the estimated number of complaints, TWC has extrapolated the number of employment discrimination complaints from the cities of Austin (7 employment discrimination complaints based on sexual orientation) with a population of 678,198, Dallas (4 employment discrimination complaints based on sexual orientation) with a population of 1,201,759, and Fort Worth (4 employment discrimination complaints based on sexual orientation) with a population of 555,110. A total of 15 complaints were filed by a citizen pool of 2,435,468 people, 11 percent of the total Texas population of 21,779,893. Assuming that the percentage of complaints filed statewide will mirror the percentages of complaints filed locally, the estimated statewide total of such complaints is 133.5.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 320 Texas Workforce Commission

LBB Staff: JOB, JRO, MW, DE