

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 29, 2011

TO: Honorable John Davis, Chair, House Committee on Economic & Small Business Development

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

IN RE: HB665 by Villarreal (Relating to the prohibition of employment discrimination on the basis of sexual orientation or gender identity or expression.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB665, As Introduced: a negative impact of (\$1,290,347) through the biennium ending August 31, 2013.

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
2012	(\$668,732)
2013	(\$621,615)
2014	(\$621,615)
2015	(\$621,615)
2016	(\$621,615)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2011
2012	(\$668,732)	7.0
2013	(\$621,615)	7.0
2014	(\$621,615)	7.0
2015	(\$621,615)	7.0
2016	(\$621,615)	7.0

Fiscal Analysis

The bill would amend the Labor Code relating to the prohibition of employment discrimination on the basis of sexual orientation or gender identity or expression.

The bill would define gender identity or expression and sexual orientation. The bill would amend related sections to expand current law to recognize discrimination based on sexual orientation or gender identity or expression in areas of discriminatory notice or advertisement, bona fide employment plans, employer locations, imbalance plans, controlled substances, burden of proof, test scores, complaints, previously-exempt employees of the state or political subdivisions of the state, and local commissions. In addition, the bill's provisions would be applicable only to discriminatory conduct occurring on or after the effective date. Conduct occurring before that date is governed by the

law in effect on the date the conduct occurred and the former law is continued in effect for that purpose.

This bill would take effect September 1, 2011.

Methodology

According to the analysis of the Texas Workforce Commission (TWC), the bill recognizes two new protected classes under state discrimination laws. TWC's Civil Rights Division (CRD) does not currently process federal Equal Employment Opportunity Commission (EEOC) complaints for discrimination based on sexual orientation or gender identity or expression and therefore there is no readily available resource to predict the number of complaints that would be received on a statewide basis. As Title VII of the Civil Rights Act does not recognize that persons who have been discriminated against on the basis of sexual orientation, or gender identity, or expression constitute federally protected classes, the resolution of charges of employment discrimination will not be covered under the fixed price cooperative agreement between TWC and the EEOC. As a result, TWC's analysis assumes that costs related to processing cases as a result of implementing the provisions of the bill would be funded from the General Revenue Fund.

According to the analysis provided by the TWC, only three Texas municipalities (Austin, Dallas, and Fort Worth) have passed city ordinances recognizing sexual orientation as a protected class. Due to this inadequately small sample size, TWC considered practices in other states and determined that California's circumstances would provide a more representative estimate of similar complaints that TWC could expect to see filed in Texas. For the purposes of this analysis, TWC averaged the total number of complaints filed in California from FY 2004 through FY 2006 and used this number to estimate the number of complaints expected to be filed in Texas. This analysis assumes complaints would be filed at a similar rate as in California.

From FY 2004 through FY 2006, California processed a total of 2,173 EEOC complaints based on sexual orientation/gender identity (California combines the two categories). This averages to 724.33 complaints per fiscal year. In this period, California had an average population of approximately 36,553,215 based on U.S. Census data as of July 1, 2007. For that same period, Texas had a total population of 23,904,380. If Texas complaints were to mirror California complaints, the estimated number of complaints each year would be 473.68. Steps to estimate number of complaints each year: (1) California population = 36,553,215; (2) Complaints filed in California = 724.33; (3) Texas population = 23,904,380; and (4) Divide Texas population by California population, and then multiply by complaints filed in California to get an estimate of complaints that would be filed in Texas. $(23,904,380/36,553,215) \times 724.33 = 473.68$.

For TWC to process 474 complaints each year would require five new investigators, one new supervisor, and one new administrative support position in the business unit, for a total of seven new FTE's: One Investigator VI (\$81,000 each year); five Investigator V's (\$58,000 each year); and one Administrative Asst IV (\$40,000 each year), totaling \$411,000 per each year of the five-year period. Additional operating costs include: benefits at \$114,505 each fiscal year; indirect costs at \$82,200 each fiscal year; and travel at \$1,800 each fiscal year. Nonrecurring expenses for new employee equipment (personal computer, workstation, chair, cabling, and phone lines) is estimated at \$47,117 in FY 2012. A recurring amount of \$12,110 each fiscal year of the five-year period is required for utilities, phone service, maintenance, and supplies. In FY 2012: Salaries (\$411,000) + Benefits (\$114,505) + Indirect Costs (\$82,200) + Travel (\$1,800) + Other Operating (\$59,227) = \$668,732 and in FYs 2013-2016: Salaries (\$411,000) + Benefits (\$114,505) + Indirect Costs (\$82,200) + Travel (\$1,800) + Other Operating (\$12,110) = \$621,615 each fiscal year.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 320 Texas Workforce Commission

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