

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 23, 2013

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1146 by Johnson (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 HB1146, As Introduced: a negative impact of (\$1,335,547) through the biennium ending August 31, 2015.

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
2014	(\$688,280)
2015	(\$647,267)
2016	(\$647,267)
2017	(\$647,267)
2018	(\$647,267)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2011
2014	(\$688,280)	7.0
2015	(\$647,267)	7.0
2016	(\$647,267)	7.0
2017	(\$647,267)	7.0
2018	(\$647,267)	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.

The bill would take effect September 1, 2013.

Methodology

According to the Texas Workforce Commission (TWC), the bill recognizes two new protected classes under state discrimination laws. TWC's Civil Rights Division 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. Accordingly, this 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.

This analysis is based on data and assumptions provided by TWC. For the purpose of this analysis, 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. TWC averaged the total number of complaints filed in California from FY 2008 through FY 2010 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 2008 through FY 2010, California processed a total of 2,345 sexual orientation cases based on California Department of Fair Employment and Housing Employment Cases. This averages to 782 complaints per fiscal year. If Texas complaints were to mirror California complaints, the estimated average number of complaints each year would be 529 according to TWC.

For the purpose of this analysis, the cases were based on the actual number of sexual orientation cases filed under California Law; and the assumptions that 1) California's civilian labor force is similar to Texas' civilian labor force; and 2) that individuals covered by the bill would file complaints at the same rate as individuals covered by California Law. Steps to estimate the number of complaints each year: (1) the civilian labor force covered by California Law totals 17,698,611; (2) the sexual orientation cases filed in California total 782; (3) the rate of sexual orientation cases in California equate to 0.004 percent (1 in every 22,632 cases); (4) the estimated portion of Texas civilian labor force for fiscal years 2014-2018 and is applied to the

rate of 0.004 percent to determine the estimated new cases. TWC estimates the portion of the Texas civilian labor force that would be covered by Texas law (covering employers with 15 or more employees) in calendar years 2014-2018 would be 11,538,342 in 2014; 11,761,570 in 2015; 11,962,089 in 2016; 12,161,490 in 2017; and 12,363,788 in 2018. Averaging the results of these amounts each year at the rate of 0.004 percent results in the 529 average used in this analysis. Although this average is based on calendar years, this analysis assumes the same average would be valid for fiscal years 2014-2018.

This analysis assumes that in order for TWC to process 529 complaints each fiscal year, the agency would require five new investigators, one new supervisor, and one new administrative support position in the business unit, for a total of seven new Full-Time-Equivalent (FTEs) positions including one Investigator VI (\$65,004 each year); five Investigator V's (\$56,772 each year); and one Administrative Assistant IV (\$36,012 each year), totaling \$384,876 per each year of the five-year period. Additional operating costs include benefits at \$114,462 each fiscal year; and indirect costs at \$72,357 each fiscal year. Nonrecurring expenses for new employee equipment (personal computer, workstation, chair, cabling, and phone lines) is estimated at \$30,135 in FY 2014. A recurring amount of \$75,572 each fiscal year of the five-year period is required for professional fees and services, travel, utilities, phones, maintenance and consumable supplies.

Technology

TWC estimates one-time technology costs of \$10,878 in fiscal year 2014 associated with computer leases for seven new staff.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 320 Texas Workforce Commission

LBB Staff: UP, NV, RB, MW, AG