

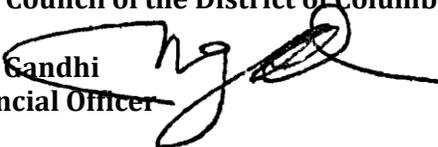
Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: November 29, 2012

SUBJECT: Revised Fiscal Impact Statement - "Returning Citizens Anti-Discrimination Act of 2012"

REFERENCE: Bill Number 19-17, Draft Committee Print shared with the Office of Revenue Analysis on November 28, 2012

This fiscal impact statement reflects the changes made to the bill in the draft Committee Print, and replaces the statement issued on March 10, 2011.

Conclusion

Funds are not sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill. Implementation of the bill will increase personnel costs at the Office of Human Rights by approximately \$137,000 in FY 2013 and by approximately \$1 million over the four-year financial plan period.

The implementation of the bill is subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Background

The bill prohibits¹ discrimination in employment and housing based on a person's arrest or conviction, unless there is a demonstrable relationship between the employment or housing access sought and the person's arrest or conviction. At present, 19 classes are protected from unlawful

¹ The bill amends the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*)

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Revised FIS: B19-17, "Human Rights for Ex-Offenders Amendment Act of 2011," draft Committee Print shared with the Office of Revenue Analysis on November 28, 2012.

discrimination in employment, housing, public accommodations, and educational institutions.² The addition of "arrest record or conviction record" would raise the number of protected classes to 20. To afford protections to persons who have formerly been arrested or convicted, or both, the bill imposes various requirements on prospective employers, employment agencies, landlords, and real estate leasing agencies (hereafter referred to as "Employer or Landlord). Should an Employer or Landlord rescind a conditional employment or housing contract based on a person's arrest or conviction record, the Employer or Landlord must provide the person with a written statement of denial, explaining the relation between the decision to deny employment or housing and the person's arrest or conviction history.

Evaluation criteria and exemptions

The bill requires the Employer or Landlord to consider six criteria in determining access to employment and housing for people who have arrest or conviction records.³ The bill clarifies that an Employer or Landlord may inquire into or consider a person's background after an offer for employment or housing is extended, and may withdraw such an offer if the person's arrest or conviction bears relevance to the offer determined through the criteria outlined in the bill. An Employer or Landlord may also terminate an existing employment or housing relationship if new information about the person's prior arrest or conviction comes into light, and bears relevance to the employment or housing relationship. An Employer or Landlord may also rely on information from the Court system in making his determination.

The bill exempts law enforcement agencies, schools and facilities that serve the elderly from its requirements. The bill also exempts an Employer or Landlord from its requirements for crimes of murder, arson, robbery, assault with a deadly weapon, or sexual offenses.

Administration

Under the bill, the Office of Human Rights (OHR) will receive, mediate, investigate, and adjudicate discrimination complaints under the provisions of the bill. OHR will take proper enforcement action including assessment of civil penalties in all cases where the agency determines that an Employer or Landlord has committed a violation of this act. OHR has one month to respond to complaints filed under the provisions of the bill.

Remedies

The bill authorizes OHR to take affirmative action if it determines that there was unlawful discriminatory practice. Such actions may include the hiring, reinstatement or upgrading of employees, with or without back pay, the restoration to the membership in any respondent labor organization, admission to or participation in a program. OHR may also find the need for a payment of compensatory damages including reasonable attorney fees and costs.

² The 19 classes are: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, and place of residence or business.

³ These include the specific duties and responsibilities of the position being sought or held; the bearing, if any, that the applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities; the time that has elapsed since the occurrence of the criminal offense; the age of the person at the time of the occurrence of the criminal offense; the frequency and seriousness of the criminal offense; any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and the public policy that it is generally beneficial for persons with criminal records to obtain employment.

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The bill also requires that an Employer or Landlord who violated this act shall be subject to a civil penalty for a first violation of \$5,000 per claimant, \$ 10,000 per claimant for a second violation, and \$20,000 per claimant for each subsequent violation. OHR shall collect the penalty from the violator and distribute the funds collected among any employee, potential employee, tenant, or potential tenant who filed a claim regarding a violation of this act.

Finally, the bill creates a private cause of action for the person claiming to be aggrieved by an unlawful discriminatory practice under the bill, and allows damages and other remedies as may be deemed appropriate by a court of competent jurisdiction. Such complaint with a court cannot be filed concurrently with a complaint filed at OHR, nor later than one year of the discrimination or the discovery, nor two years later than the discriminatory act or the discovery if the discrimination involves housing.

The bill requires the Mayor to issue the necessary rules to implement its provisions.

Financial Plan Impact

Funds are not sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the proposed legislation.

The fiscal impact of the proposed legislation is driven primarily by the number of new discrimination complaints that are expected to be generated by the addition of "arrest or conviction" to the list of protected classes enumerated in the D.C. Human Rights Act of 1977.

When a discrimination complaint case is presented, OHR must docket the case and determine if the complaint meets jurisdictional requirements. Then OHR attempts to mediate the case before a full investigation occurs. If the case is not mediated successfully, OHR conducts an investigation to determine if there is probable cause. Next, OHR attempts to resolve the case by conciliation. If conciliation does not work, the case goes to adjudication before the D.C. Commission on Human Rights ("Commission"). Adding a category to the protected classes in the District would cause a nontrivial increase in the workload of OHR and the Commission by increasing the number of intakes, mediations, investigations, conciliations, and adjudications.⁴

A comparison to other jurisdictions reveals that the scope of the proposed legislation would make the District one of only five other states that ban discrimination by public and private employers against people with conviction records.⁵ In addition, the proposed legislation would ban discrimination based on arrest or conviction records in the areas of housing, public accommodations, and education.

The Office of Revenue Analysis estimates that under the proposed legislation an additional 100 to 130 cases would be filed with OHR each year. This estimate is based on the effect of similar

⁴ In cases involving alleged discrimination by District government entities, there could be additional costs to District resources because of the involvement of the Office of Attorney General (OAG) in investigating complaints and providing legal representation in any proceedings.

⁵ The five states are Hawaii, Kansas, New York, Pennsylvania, and Wisconsin. Source: Legal Action Center, "Overview of State Laws That Ban Discrimination By Employers," http://www.lac.org/toolkits/standards/Fourteen_State_Laws.pdf

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legislation on OHR's workload. For example, "Criminal Background Checks for the Protection of Children Act of 2004"⁶ requires criminal background checks for individuals seeking a paid or unpaid position with a District agency that provides direct services to children and youth. If a job applicant is denied employment based on the outcome of the background check, that applicant has the right to appeal the decision with the Commission. In FY 2010, OHR received 64 appeals as a result of this Act.⁷

The proposed legislation has a much larger scope, since it would protect individuals with conviction and arrest records from unlawful discrimination in employment in both the public and private sectors, as well as in housing, public accommodations, and educational institutions. As such, OHR could expect to see 50 to 100 percent more than the current appeals caseload, which would imply an addition of 100 to 130 cases.⁸

The average number of complaints filed with OHR each year currently stands at approximately 450.⁹ OHR investigators have an average caseload of 50 to 60 cases each. In order to handle an additional 100 to 130 cases that could result from enactment of the legislation, OHR would need to hire two additional Equal Employment Opportunity specialists to perform investigation and mediation duties.

Additionally, the proposed legislation would result in an increase in the number of administrative hearings heard by the Commission, for which OHR has budgetary oversight. Approximately 10 to 15 percent of complaints filed with OHR are referred to the Commission¹⁰ for a hearing; therefore, an additional 100 to 130 complaints could result in approximately 10 to 20 more hearings each year. The Commission currently has three administrative judges on staff that handle about 22 hearings each. Given the projected increase in hearings, the Commission would need to hire another administrative judge to perform the research and other work associated with the additional hearings.

Estimated Negative Fiscal Impact of Bill 19-17, the "Human Rights for Ex-Offenders Amendment Act of 2012"					
	FY 2013¹	FY 2014	FY 2015	FY 2016	4-Year Total
Two EEO Specialists ²	\$83,137	\$170,125	\$174,074	\$178,124	\$605,461
One Administrative Hearings Judge ²	\$54,135	\$110,778	\$113,349	\$115,987	\$394,249
Total Costs at OHR	\$137,272	\$280,903	\$287,423	\$294,111	\$999,709

Table Notes:

¹ It is assumed the legislation would be implemented on or after March 1, 2013.

² Total personnel costs include the salary and fringe benefits with a 2 percent annual cost of living increase and a 2 percent annual increase in fringe benefit costs.

⁶ Effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §4-1501.01 *et seq.*)

⁷ Source: Communication with OHR, March 8, 2011.

⁸ This estimate is also consistent with the estimated complaint rate of .004 percent to .02 percent that resulted from the inclusion of the transgendered population as a protected group under the D.C. Human Rights Act in 2005. According to OHR, the current estimated ex-offender population in DC is approximately 60,000. Assuming the addition of "arrest and conviction records" as a protected class would result in a similar high-end complaint rate, this new base would add an additional 120 complaints.

⁹ Between FY 2008 and FY 2010, an average of approximately 450 complaints was filed annually. (Source: OHR, March 4, 2011.)

¹⁰ Source: Communication with OHR on March 7, 2011.