2007 Regular Legislative Session FISCAL ANALYSIS OF PROPOSED LEGISLATION Proposed by the Oregon Legislative Figural Office

Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: SB 2 STATUS: A Engrossed

SUBJECT: Prohibits discrimination based on sexual orientation.

GOVERNMENT UNIT AFFECTED: Oregon Judicial Department, Department of Administrative

Services, Bureau of Labor and Industries, Department of Justice

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DATE: April 11, 2007

<u>2007-2009</u> <u>2009-2011</u>

EXPENDITURES:

See Comments

REVENUES:

See Comments

EFFECTIVE DATE: January 1, 2008

GOVERNOR'S BUDGET: This bill is not anticipated by the Governor's recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: This bill prohibits discrimination based on sexual orientation. Sexual orientation is defined as, "an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth." The bill would prohibit discrimination based on a person's sexual orientation in employment, housing, public accommodations, public services, public education, adult foster homes and foster parenting. Permits churches or other religious institutions to take actions based on sexual orientation with respect to employment, housing or the use of public accommodations if the institution (1) has a "bona fide" religious belief about sexual orientation, and (2) the employment, housing or use of facilities in question is closely connected with, or related to, the primary purposes of the church or institution, and is not connected with a commercial or business activity that has no necessary relationship to the institution or the institution's primary purpose. This bill also repeals ORS 236.380.

The Bureau of Labor and Industries (BOLI) is responsible for civil rights investigations. BOLI currently contracts with local jurisdictions, which have similar non discrimination laws, to conduct civil rights investigations on behalf of the local jurisdictions. This bill will shift the authority and responsibility for enforcing this portion of the law to BOLI, which could result in a decrease in Other Funds revenue and an indeterminate increased need for General Fund for the Civil Rights Section of BOLI.

It is anticipated that the Department of Administrative Services, Risk Management Division will have increased costs associated with adding an additional protected class to the current list. It is not clear how many additional discrimination lawsuits the state will be exposed to. The state averages 18 lawsuits per year for each of the protected classes. It is not known whether the addition of this protected class will result

in an increase of these types of lawsuits or if the protected class is small enough that the number of lawsuits filed we be somewhat less than 18. For each case closed by the Risk Management Division, approximately \$17,000 is spent on attorney's fees and \$22,000 is spent on claims costs. These costs are paid out of the state's self insurance pool which is funded by assessments charged to agencies based on the state's overall risk experience. If increased claims are filed against the state it is logical to conclude that the assessment paid to the state's self insurance pool will likewise increase in the next biennium. There is a myriad of factors, such as increases or decreases in other lawsuits against the state, that effect how much this assessment may increase, if it increases at all, and it would be difficult to attribute a specific amount of the increase to claims for this particular class.

The Department of Justice (DOJ) and the Oregon Judicial Department (OJD) anticipate some incremental increase in workload associated with this bill, but the quantity of sexual orientation discrimination lawsuits is not known. DOJ would be responsible for defending the state when the state is the defendant in a lawsuit and in general the costs of defending the state would be included in the Risk Management Division's costs. OJD costs would increase as these types of lawsuits are tried in circuit court, the Court of Appeals, and potentially, the State Supreme Court.

The overall fiscal effect of this bill is indeterminate due to the inability to reliably predict the quantity of sexual orientation discrimination lawsuits that may be filed.