

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

2014 OCT 15 PM 2:17

TO: All Councilmembers

FROM: Councilmember Tommy Wells, Chairperson
Committee on the Judiciary and Public Safety

DATE: October 15, 2014

SUBJECT: Report on Bill 20-803, "Human Rights Amendment Act of 2014"

OFFICE OF THE
SECRETARY

The Committee on the Judiciary and Public Safety, to which Bill 20-803, the "Human Rights Amendment Act of 2014" was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

Bill 20-803, the "Human Rights Amendment Act of 2014" was introduced on May 21, 2014, by Councilmember Wells, and referred to the Committee on the Judiciary and Public Safety. On September 29, 2014, the Committee held a public hearing on Bill 20-803 and a related bill, Bill 20-321, the "Human Rights Notice Requirement Act."¹ A summary of the testimony provided at the hearing is found below in section V.

Bill 20-803 would make four changes to existing law related to the Human Rights Act and the Office of Human Rights ("OHR"). First, it would require that the Director of OHR have a demonstrated background in human rights law. Second, it would repeal an exemption allowing religiously affiliated educational institutions to discriminate against gay and lesbian student groups. Third, it would require that OHR include specific information about investigations and inquires in the District. Finally, the bill has been amended to incorporate Bill 20-321, the

¹ Bill 20-321 was introduced on June 4, 2013 by Councilmember Barry.

“Human Rights Notice Requirement Act,” which would exempt complaints filed under the Human Rights Act from the D.C. Official Code § 12-309 notice requirement.

1. The Director shall have a demonstrated professional background in human rights law.

OHR is empowered to mediate, conciliate, and award compensatory damages and civil penalties². Given the extensive administrative power granted to OHR and the Commission on Human Rights, it is important that the Director have a background that will allow him or her to effectively navigate the highly technical legal issues that can occasionally arise in the course of investigating and prosecuting claims of unlawful discrimination.

On the recommendation of the executive, the committee print has been amended to clarify that the human rights background required of the Director is the definition contained in the Human Rights Act³, and not the international definition employed by entities such as the United Nations.⁴

2. Repealing the “Armstrong Amendment” which grants religious schools in the District to discriminate against gay and lesbian student groups.

Section 241(1) of the Human Rights Act states that it is a discriminatory practice for education institutions:

To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, source of income, or disability of any individual; (D.C. Official Code § 2-1402.41(1)).

In paragraph (3) of the same section, there is a specific exemption for educational institutions:

(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition --

(A) the use of any fund, service, facility, or benefit; or

² The ability to order compensatory damages and penalties lies with the Commission on Human Rights (D.C. Code § 2-1403.13), which adjudicates complaints to OHR that result in probable cause findings (D.C. Code § 2-1411.03(8)).

³ D.C. Code § 2-1401.01.

⁴ See, e.g. “Universal Declaration of Human Rights” <http://www.un.org/en/documents/udhr/>.

(B) the granting of any endorsement, approval, or recognition,

to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.
(D.C. Official Code § 2-1402.41(3)).

In 1989, Congress inserted this exemption in the “Nation’s Capital Religious Liberty and Academic Freedom Act (“Religious Liberty Act”)”.⁵ Congress intruded in local law in response to the 1987 D.C. Circuit Court of Appeals ruling in *Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*, which upheld the District Court’s interpretation of the Human Rights Act to mean that Georgetown University was required to offer gay and lesbian student groups the same use rights and facilities as other officially recognized student groups.⁶ The ruling stopped short of requiring that the school fund or extend official recognition as a student group, holding instead that Georgetown could not deny access to the same resources and facilities to the gay student group that it offered to officially recognized groups.

In response to the ruling, Congress attached a rider to the 1989 budget appropriation for the District, conditioning the appropriation on the Council amending the Human Rights Act to include language allowing religious institutions to discriminate against gay and lesbian student groups by denying them use of school facilities, effectively removing the Human Rights Act protections that the D.C. Circuit Court of Appeals recognized in *Georgetown*. This amending language is colloquially referred to as the Armstrong Amendment⁷. Instead of complying, the D.C. Council successfully sued on First Amendment grounds in *Clarke v. United States*, arguing that conditioning the District’s budget on the passage of a particular law violated the Councilmembers’ freedom of speech by constraining their votes^{8,9}. Undeterred by the *Clarke* decision that Congress could not compel the Council to enact the Armstrong Amendment via the appropriations process, Congress instead relied on its ability to amend D.C. code directly by legislation, which it did in 1989 via the Religious Liberty Act¹⁰.

The Religious Liberty Act took the *Georgetown* ruling even further and turned worked around *Clarke* by allowing educational institutions affiliated with a religious organizations to deny use of funds, facilities, services, and benefits to student groups organized for “promoting, encouraging, or condoning and homosexual acts, lifestyle, orientation, or belief.”¹¹

Bill 20-803 would repeal the Religious Liberty Act, restoring the Human Rights Act protections intended by the Council¹². In so doing, educational institutions affiliated with

⁵ 102 Stat. 2269.

⁶ 536 A.2d 1 (1987).

⁷ Louis Michael Seidman, *The Preconditions for Home Rule*, 39 Cath. U.L. Rev. 373, 379 (1990).

⁸ 886 F.2d 404 (1989).

⁹ *Id.* at 414.

¹⁰ *Supra* FN 4.

¹¹ Pub. L. 101-168, § 141(b); D.C. Official Code § 2-1402.41(3), Nov. 21, 1989

¹² Pursuant to section 602(3) of the Home Rule Act (87 Stat. 774; D.C. Official Code § 1-1-206.02), the Council of the District of Columbia may repeal acts of Congress where those acts are restricted in their application only to the District.

religious organizations would not be allowed to prohibit gay and lesbian student groups from using the schools facilities and services, although those institutions, per the *Georgetown* ruling, would not be required to extend official recognition or accompanying funding to GLBT student groups.

At the hearing, the executive raised concerns in submitted comments that repealing the amendment could make the District vulnerable to First Amendment challenges “if the Human Rights Act absent the exemption were interpreted to require a religiously affiliated educational institution to provide equal funding to an organization that holds . . . views that conflict with a sincerely held religious belief of that school.”¹³ First, the Committee notes that the relevant section of the Human Rights Act does not include withholding funding as a prohibited discriminatory practice,¹⁴ and so the scenario presented by the executive is unlikely to manifest under the law alone. Additionally, the repeal of the Armstrong Amendment would have no effect on the *Georgetown* ruling. Under that opinion, religiously affiliated schools are not required to fund or officially recognize gay and lesbian student groups.¹⁵ It is the Committee’s expectation that repealing the Armstrong Amendment would allow the District to prohibit discrimination by religious schools only to the extent required by *Georgetown*.

3. OHR annual reports must include Director’s inquiries.

One of the overarching responsibilities of OHR is to conduct investigations into “any racial, religious, and ethnic group tensions, prejudice, intolerance, bigotry, and disorder; and on any form of, or reason for, discrimination.”¹⁶ The bill would require that the annual report that OHR provides to the Council include specific information about the disposition of investigations.¹⁷

In practice, the investigations that OHR conducts are more nuanced than the requirements of section 2-1403.01(b) would suggest. In addition to this general authority to conduct inquiries, OHR has used the administrative rulemaking process to establish an investigatory mechanism called a “Director’s Inquiry.”¹⁸ This administrative investigatory, pre-complaint tool is employed on a discretionary basis by the OHR director, and is subject to confidentiality restrictions built into work-share agreements with EEOC and HUD.

On the recommendation of the executive, the committee print includes an amendment to exclude potentially prejudicial or confidential information in concluded investigations from the reporting requirement. This exemption will allow OHR to protect parties in investigations from having potentially prejudicial information exposed to public view via their annual reporting

¹³ Testimony of Monica Palacio, Director of the Office of Human Rights, at 12.

¹⁴ D.C. Code § 2-1402.41 identifies the following as discriminatory practices : “To deny, restrict, or to abridge or condition use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person.” The Committee reads nothing in that language of the statute that would suggest its repeal would compel a religious institution to provide funding to a gay or lesbian student group. To the contrary, the *Georgetown* ruling indicated that a school would not be required to provide such funding (536 A.2d at 10).

¹⁵ 536 A.2d at 10

¹⁶ D.C. Code § 2-1403.01(b)

¹⁷ *Id* at (g)

¹⁸ 4 DCMR 903, et. seq.

process. The print also includes an exemption for information in investigations that might fall under work-share agreements with federal agencies.

4. Actions brought under the Human Rights Act are exempt from 12-309 notice requirements.¹⁹

D.C. Official Code § 12-309 requires that people bringing actions against the District of Columbia provide notice within six months of the date of the harm. Parties who fail to meet this notice requirement face an absolute bar in their suits against the District. The committee print exempts parties suing the District under the Human Rights Act from the notice requirement of section 12-309.

Section 12-309 requires that any actions for unliquidated damages against the District include notice in writing of the approximate time, place, cause, and circumstance of the harm. District courts have read and applied this requirement strictly, applying an absolute bar for the plaintiffs who do not meet its requirements.²⁰ The notice requirement was originally intended to (1) permit the District of Columbia to conduct an early investigation into the facts and circumstances surrounding a claim, (2) protect the District of Columbia against unreasonable claims, and (3) encourage prompt settlement of meritorious claims.²¹ In practice, the notice requirement serves as a way for the District to limit its liability when otherwise meritorious claimants are barred because they are unaware of the requirement.²²

The Council has already determined that certain categories of claims are important enough to merit exemption from 12-309 requirements. In the Whistleblower Protection²³ Amendment Act of 2009, the Council exempted all related actions from section 12-309 requirements. The Human Rights Act was passed with the goal of affecting “an end in the District of Columbia to discrimination for any reason other than that of individual merit.”²⁴ The limitations of section 12-309 undermine this purpose. Accordingly, the committee print incorporates the provisions of Bill 20-321 to waive the notice requirements of section 12-309 in claims brought under the Human Rights Act.

For the reasons explained above, the Committee recommends approval of Bill 20-803.

II. LEGISLATIVE CHRONOLOGY

May 21, 2014	Bill 20-803, “Human Rights Amendment Act of 2014,” is introduced by Councilmember Wells at the Office of the Secretary.
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¹⁹ This section of the bill was originally introduced separately as Bill 20-321, the “Human Rights Notice Requirement Amendment Act of 2013.”

²⁰ See *Owens v. District of Columbia*, 993 A.2d 1085, 1088 (2010) – “We have repeatedly held that compliance with the statutory notice requirement is mandatory.”

²¹ *Id.*

²² Testimony of Jonathan C. Puth at 2.

²³ Sec. 2(c), Whistleblower Protection Amendment Act of 2009, effective March 11, 2010 (D.C. Law 18-117; D.C. Official Code § 1-615.54(a)(3)).

²⁴ D.C. Code § 2-1401.01.

May 28, 2014 Referred to the Committee on Judiciary and Public Safety

May 30, 2014 Notice of Intent to act on Bill 20-803 is published in the *District of Columbia Register*.

June 6, 2014 Notice of a Public Hearing is published in *District of Columbia Register*.²⁵

September 12, 2014 Notice of a Public Hearing is published in the *District of Columbia Register*.

September 29, 2014 The Committee on the Judiciary and Public Safety holds a public hearing on Bill 20-803.

October 15, 2014 The Committee on the Judiciary and Public Safety marks-up Bill 20-803.

III. POSITION OF THE EXECUTIVE

Monica Palacio, Director of the Office of Human Rights, testified on behalf of the executive on Bills 20-803 and 20-321.

On Bill 20-803, Director Palacio testified in support of the provision requiring the Director to have a demonstrated background in “human rights law.” The Director recommended amending the background requirement to clarify the definition of “human rights” that the Director must demonstrate.²⁶ Director Palacio offered comments clarifying the procedures OHR follows when conducting investigations and inquiries, and recommended that Section 3 of the bill be amended to offer protection to both OHR and the subjects of its investigations to guarantee that potentially prejudicial or damaging information is not made public.²⁷ Director Palacio made comments providing background information on the development of the religious institutions exemption, including the various court cases that saw its inclusion into the D.C. Code. The Director expressed uncertainty over how the Human Rights Act might be applied in the absence of religious institutions exemption, while also acknowledging the exemption created a “gray area” with regard to the application of the Human Rights Act to religious institutions.

With regard to Bill 20-321, Director Palacio noted that the bill was unlikely to have much effect on OHR, because the administrative statute of limitations on discrimination complaints is still six months.

²⁵ The hearing for Bill 20-803 and Bill 20-321 was initially scheduled for June 26, 2014, but was cancelled.

²⁶ The Committee acted on this advice, incorporating the suggested changes into the Print.

²⁷ The Committee acted on this advice, narrowing the scope of the required disclosure and including exemptions that OHR may utilize to withhold information under certain circumstances.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission; ANC 3F07 Commissioner Bob Summersgill testified on his own behalf. His testimony is included in the summary below.

V. SUMMARY OF TESTIMONY AND STATEMENTS

The Committee on the Judiciary and Public Safety held a public hearing on Bills 20-803 and 20-321 on Monday, September 29, 2012. The testimony summarized below is from that hearing. A copy of the witness list is attached to this report and the hearing record is available from the Office of the Secretary. The hearing may be viewed online at . . .

Bob Summersgill, Advisory Neighborhood Commissioner, ANC 3F07. Mr. Summersgill testified in support of Bill 20-803. He provided history and background on the circumstances surrounding the passage of the Armstrong Amendment, and urged the Committee to repeal it. He also spoke in support of the requiring the Director of OHR to have a demonstrated background in human rights law, supplementing his comments with written candidate responses to a GLAA questionnaire.

Richard J. Rosendall, President, Gay and Lesbian Activists Alliance. Mr. Rosendall testified in support of Bill 20-803. He illustrated the importance of requiring a professional background in human rights law in order to rectify the issue of the position of OHR director being awarded as an act of political patronage. Mr. Rosendall's testimony also illustrated the need for requiring particularized information about Director's Inquiries included in OHRs annual reports to the Council. Finally, Mr. Rosendall testified to the importance of repealing the Armstrong Amendment, describing the code section as "a relic of a battle won long ago." Mr. Rosendall offered comment on Bill 20-321, recommending that the period for notifying the District could be extended from 180 days to 270, if necessary, but generally expressing support for the measure as written.

Lawrence J. Morris, General Counsel, The Catholic University of America. Mr. Morris testified in opposition to the bill. Mr. Morris highlighted passages in the school's Community Pledge that emphasize the school's commitment to work against discrimination. Mr. Morris cited the school's interpretation of the first amendment and the Religious Freedom Restoration Act as legal support for the school's practice of discriminating against gay and lesbian student organizations.

Melody Webb, Legal Director, Employment Justice Center. Ms. Webb testified in support of Bill 20-321. Ms. Webb testified that many litigants wishing to bring actions against the District were *pro se* and therefore unaware of the notice requirement.

Jason Zuckerman, Metropolitan Washington Employment Lawyers Association. Mr. Zuckerman testified in support of Bill 20-321. Mr. Zuckerman testified about his experience passing the Whistleblower Protection Act (which is also exempted from section 12-309 reporting

requirements), and noted that its passage did not result in an increase in claims against the District.

Jennifer Klar, Metropolitan Washington Employment Lawyers Association. Ms. Klar testified in support of Bill 20-321. Ms. Klar offered testimony demonstrating specific instances of otherwise meritorious litigants being barred from pursuing actions against the District because of technical lack of compliance with section 12-309.

Jonathan Puth, Metropolitan Washington Employment Lawyers Association. Mr. Puth testified in support of Bill 20-321. Mr. Puth testified that the restriction embodied in the section 12-309 notice requirements ran counter to the stated goals of the Human Rights Act.

Valencia Rainey, Metropolitan Washington Employment Lawyers Association. Ms. Rainey testified in support of Bill 20-321. Ms. Rainey testified that section 12-309 can impose a significant burden on potentially meritorious plaintiffs.

The following written testimony was submitted after the hearing:

Michael Scott, Director, D.C. Catholic Conference. Mr. Scott submitted comments in opposition to Bill 20-803. Mr. Scott expressed concern that repealing the D.C. code section exempting religious schools from complying with the Human Rights Act could have an impact on schools other than colleges and universities, citing potential impacts to various institutions including kindergartens and nurseries. Mr. Scott also expressed his organization's objection to the bill on the grounds that it violated their freedom of free exercise of religion under the First Amendment.

Patrick J. Reilly, President, Cardinal Newman Society. Mr. Reilly wrote in opposition to Bill 20-803. Mr. Reilly wrote to endorse the testimony offered by Mr. Morris and he stated that the passage of Bill 20-803 would require Catholic University to institute a practice that went against its own teaching, and described the bill as religious persecution.

VI. IMPACT ON EXISTING LAW

Bill 20-803 makes one change to the Office of Human Rights Establishment Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.01), three changes to The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.*), and one change to D.C. Code § 12-309.

Section 2 of the bill amends section 202 of the Establishment of the Office of Human Rights Act of 1999, effective October 20, 1999 (D.C. Official Code 2-1411.01), to include language that the Director of the Office of Human Rights have a demonstrated background in human rights law. Section 2 includes a sub-section clarifying that "human rights law" means human rights as defined in the Human Rights Act.

Section 3 of the bill amends section 241 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1402.41) to repeal section 241(3)(D.C. Official Code § 2-1402.41(3)), which exempts religiously-affiliated educational institutions from complying with the Human Rights Act where gay, lesbian, bisexual, and transgender student groups are concerned.

Section 3 also amends section 301(g) (D.C. Official Code § 2-1403.01(g)) to require that OHR include specific information relating to ongoing and concluded investigations in its annual report to the Council. This section includes two subsections that list exemptions to this requirement that would allow OHR to withhold information on ongoing investigations where that information might prejudice or undermine the integrity of the investigation.

Section 3 concludes by amending section 316 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1403.16) to include language that exempts lawsuits brought under those sections from the 12-309 notice requirement.

Section 4 is a conforming amendment to section D.C. Code Section 12-309 to reflect that actions brought under both the Human Rights Act (D.C. Official Code § 2-1401 et seq) and the Whistleblower Protection Act (D.C. Official Code § 1-615.51 et seq) are exempted from the notice requirement that it establishes.

VII. FISCAL IMPACT

The attached October 15, 2014 Fiscal Impact Statement from the Chief Financial Officer states that funds are sufficient to implement Bill 20-803. This legislation requires no additional resources or personnel

VIII. SECTION-BY-SECTION ANALYSIS

- | | |
|------------------|--|
| <u>Section 1</u> | States the short title of the bill as the “Human Rights Amendment Act of 2014”. |
| <u>Section 2</u> | Amends the Office of Human Rights Establishment Act of 1999 to require the Director of the Office of Human Rights to have a demonstrated background in human rights law, and defines “human rights law.” |
| <u>Section 3</u> | Amends the Human Rights Act of 1977 to: <ul style="list-style-type: none">(a) Repeal Section 241(3);(b) Require OHR to include investigation specific updates in its annual report, with exceptions;(c) Exempt actions brought under the Human Rights Act from the D.C. Official Code § 12-309 notice requirement. |

Section 4 Amends D.C. Code § 12-309 to reflect exemptions for actions brought under the Human Rights Act and the Whistleblower Protection Act.

Section 5 Adopts the fiscal impact statement.

Section 6 Provides the effective date.

IX. COMMITTEE ACTION


On October 15, 2014, the Committee met to consider B20-803, the “Human Rights Amendment Act of 2014.” The meeting was called to order at 12:30 p.m. After ascertaining a quorum (Chairperson Wells and Councilmembers Bonds, Cheh, and Evans present), Chairperson Wells moved the print with leave for staff and the general counsel to make technical and conforming changes. After an opportunity for discussion, the vote on the print was unanimous. Chairperson Wells then moved the report with leave for staff to make technical, editorial, and conforming changes. After an opportunity for discussion, the vote on the report was unanimous. The meeting adjourned at 12:45 p.m.

X. ATTACHMENTS

1. Bill 20-803 as introduced.
2. Witness list.
3. Fiscal impact statement.
4. Legal sufficiency determination by the General Counsel.
5. Comparative Print.
6. Committee Print for Bill 20-803.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council
From : 
Nyasha Smith, Secretary to the Council
Date : May 27, 2014
Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Wednesday, May 21, 2014. Copies are available in Room 10, the Legislative Services Division.

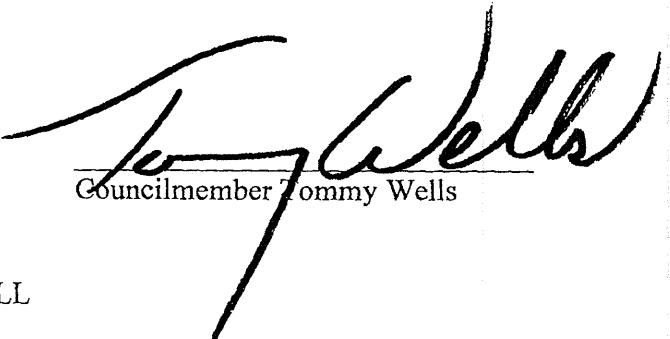
TITLE: "Human Rights Amendment Act of 2014", B20-0803

INTRODUCED BY: Councilmember Wells

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

Attachment

cc: General Counsel
Budget Director
Legislative Services


Councilmember Tommy Wells

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Tommy Wells introduced the following bill, which was referred to the Committee on _____.

To amend the Office of Human Rights Establishment Act of 1999 to require the Director of the Office to have a demonstrated professional background in human rights law, and to amend the Human Rights Act of 1977 to require the annual report include information on investigations and public hearings undertaken by the Office, and to repeal the exemption allowing religiously-affiliated educational institutions to discriminate on the basis of sexual orientation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Human Rights Amendment Act of 2014".

Sec. 2. Section 202 of the Office of Human Rights Establishment Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.01), is amended by adding a new subsection (c) to read as follows:

"(c) The Director shall have a demonstrated professional background in human rights law."

Sec. 3. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.*) is amended as follows:

(a) Section 241(3) (D.C. Official Code § 2-1402.41(3)), is repealed.

1 (b) Section 301(g) is amended by striking the phrase “of this chapter,” and insert
2 the phrase “of this chapter, including the investigations and public hearings conducted
3 pursuant to subsection (b) of this section,” in its place.

4 Sec. 4. Fiscal impact statement.

5 The Council adopts the fiscal impact statement in the committee report as the
6 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
7 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
8 206.02(c)(3)).

9 Sec. 5. Effective date.

10 This act shall take effect following approval by the Mayor (or in the event of a
11 veto by the Mayor, action by the Council to override the veto), a 30-day period of
12 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
13 Rule Act, approved December 24, 1973 (87 Stat 813; D.C. Official Code § 1-
14 206.02(c)(1)), and publication in the District of Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA

Committee on the Judiciary and Public Safety

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Agenda

**Councilmember Tommy Wells, Chairperson
Committee on the Judiciary and Public Safety**

Announces a Public Hearing on

Bill 20-321, "Human Rights Act Notice Requirement Amendment Act of 2013"

Bill 20-803, "Human Rights Amendment Act of 2014"

Bill 20-884, "Bicycle and Motor Vehicle Collision Recovery Act of 2014"

Monday, September 29, 2014

12:30 p.m., Room 500, John A. Wilson Building

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Agenda and Witness List

A. Call to Order and Opening Remarks

B. Bill 20-321 "Human Rights Act Notice Requirement Amendment Act of 2013" Bill 20-803 "Human Rights Amendment Act of 2014"

Public Witnesses

- | | |
|-------------------------|--|
| 1. Michael Sindram | DC Justice For All/ Disabled Veteran |
| 2. Bob Summersgill | ANC 3F07 |
| 3. Richard J. Rosendall | President, Gay and Lesbian Activists Alliance |
| 4. Larry Morris | General Counsel, Catholic University of America |
| 5. Melody Webb | Employment Justice Center |
| 6. Jason Zuckerman | MWELA |
| 7. Jenifer Klar | Public Witness |
| 8. Valencia Rainey | Metropolitan Washington Employment Lawyers Association (MWELA) |
| 9. Jonathan Puth | MWELA |

Government Witness

- | | |
|-------------------|----------------------------------|
| 1. Mónica Palacio | Director, Office of Human Rights |
|-------------------|----------------------------------|

C. Bill 20-884, "Bicycle and Motor Vehicle Collision Recovery Amendment of 2014"

Public Witnesses

- | | |
|--------------------|---|
| 1. Michael Sindram | DC Justice For All/ Disabled Veteran |
| 2. D. Cory Bilton | Associate, Mesirow & Associates, PLLC |
| 3. Shane Farthing | Executive Director, Washington Area Bicyclist Association |
| 4. Megan Kanagy | DC Bicycle Advisory Council Representative |
| 5. Ben Somberg | Public Witness |

- | | |
|--------------------------------|--------------------------------------|
| 6. Tracy Loh | All Walks DC |
| 7. Jessica Tunon | DC Pedestrian Advisory Council |
| 8. George Tobias | DC Pedestrian Advisory Council |
| 9. Lawrence Anthony Richardson | State Farm Insurance |
| 10. Noel Patterson | Allstate Insurance |
| 11. Wayne E. McOwen | DC Insurance Federation |
| 12. Bruce Deming, Esq. | Law Offices of Bruce S. Deming, Esq. |
| 13. Jim Tageleri | Trial Layers Association |

D. Adjournment

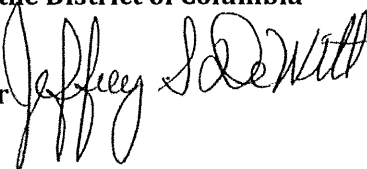
Government of the District of Columbia
Office of the Chief Financial Officer



Jeff DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeff DeWitt
Chief Financial Officer 

DATE: October 15, 2014

SUBJECT: Fiscal Impact Statement – Human Rights Amendment Act of 2014

REFERENCE: Bill 20-803, Draft Committee Print as shared with the Office of Revenue Analysis on October 10, 2014

Conclusion

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill.

Background

In 1987, the D.C. Court of Appeals ruled¹ that a religiously affiliated educational institution could not discriminate based on sexual orientation, except when funding students or student groups. In 1989, the Congress passed a law² broadening the exemptions for religious institutions to allow for discrimination. The law allows these institutions to deny, restrict, abridge, or condition the use of any fund, service, facility, or benefit, to a person or persons organized for or engaged in promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.³

The bill removes this exemption from District law, reverting to the court allowed discrimination based on sexual orientation for funding of students or student groups.

The bill also removes the statute of limitations to file a discrimination case against the District of Columbia Government, requires the Director of the Office of Human Rights (OHR) to have

¹ *Gay Rights Coalition of Georgetown University Law Center, et al., v. Georgetown University, et al.*, 536 A.2d 1 (D.C. 1987).

² District of Columbia Appropriations Act, 1990, effective November 21, 1989 (Public Law 101-168; 103 Stat. 1267).

³ The exemptions also cover or the granting of an endorsement, approval, or recognition to such person or persons. (D.C. Official Code § 2-1402.41).

The Honorable Phil Mendelson

FIS: Bill 20-803, "Human Rights Amendment Act of 2014," Draft Committee Print as shared with the Office of Revenue Analysis on October 10, 2014

experience in human rights law,⁴ and asks OHR's annual reports to Council include information on all concluded hearings and investigations⁵ performed by OHR, including Director's inquiries.

Financial Plan Impact

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill. OHR will be able to absorb any costs associated with implementation of the bill.

It is important to note that the provision removing the exemption from discrimination based on sexual preference for religiously affiliated educational institutions is controversial and could result in an immediate influx of complaints to OHR. This will need to be monitored for the pressures it could place on OHR's investigative staff.

⁴ Human rights law background means experience in District or federal laws related to discrimination.

⁵ An exception is granted for any investigation or inquiry where disclosure of the investigation could undermine the integrity of the investigation or violate a work-sharing agreement with the Equal Employment Opportunity Commission or any other federal agency.



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Tommy Wells

FROM: V. David Zvenyach, General Counsel



Certified by V. David Zvenyach
General Counsel
Council of the District of Columbia

DATE: October 14, 2014

**RE: Legal sufficiency determination for Bill 20-803, the
Human Rights Amendment Act of 2014**

The measure is legally and technically sufficient for Council consideration.

Bill 20-790 amends section 202 of the Office of Human Rights Establishment Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.01), to require that the Director of the Office of Human Rights have a demonstrated professional background in District or federal human rights law.

Bill 20-790 also amends the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.*) ("HRA"), to:

- (1) Repeal the exemption allowing religiously affiliated educational institutions to discriminate on the basis of sexual orientation;
- (2) Specify that information regarding closed investigations and inquiries conducted by the Director of the Office Human Rights must be transmitted by the Mayor to the Council in the annual report required by section 301(g) (D.C. Official Code § 2-1403.01(g)) of the HRA; and
- (3) Provide that the notice requirement in D.C. Official Code § 12-309 does not apply to claims brought under the HRA.

I am available if you have any questions.

VDZ

COMPARATIVE PRINT

BILL 20-803

OCTOBER 15, 2014

DIVISION I. GOVERNMENT OF THE DISTRICT

TITLE 2. GOVERNMENT ADMINISTRATION

CHAPTER 14. HUMAN RIGHTS

UNIT A. HUMAN RIGHTS LAW

SUBCHAPTER II. PROHIBITED ACTS OF DISCRIMINATION

PART E. EDUCATIONAL INSTITUTIONS

D.C. Code § 2-1402.41 (1989)

§ 2-1402.41. Prohibitions.

It is an unlawful discriminatory practice, subject to the exemptions in § 2-1401.03(b), for an educational institution:

(1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, source of income, or disability of any individual; or

(2) To make or use a written or oral inquiry, or form of application for admission, that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, or national origin of an applicant for admission, except as permitted by regulations of the Office.

~~[(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—~~

~~(A) the use of any fund, service, facility, or benefit; or~~

~~(B) the granting of any endorsement, approval, or recognition,~~

~~to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.]~~

DIVISION I. GOVERNMENT OF THE DISTRICT
TITLE 2. GOVERNMENT ADMINISTRATION
CHAPTER 14. HUMAN RIGHTS
UNIT A. HUMAN RIGHTS LAW
SUBCHAPTER III. PROCEDURES

D.C. Code § 1403.01 (1982)

§ 1403.01. Powers of Office and Commission; annual report by Mayor.

(a) The activities of the Office and the Commission, under the provisions of this chapter, shall be considered investigations or examinations of municipal matters, within the meaning of § 5-1021; and the Commission, the individual members thereof, and the Director, shall possess the powers vested in the Council of the District of Columbia.

(b) The Office is hereby empowered to undertake its own investigations and public hearings on any racial, religious, and ethnic group tensions, prejudice, intolerance, bigotry, and disorder; and on any form of, or reason for, discrimination, in accordance with §§ 2-1401.01 and 2-1402.01, against any person, group of persons, organization, or corporations, whether practiced by private persons, associations, corporations, city officials, or city agencies; for the purpose of making appropriate recommendations for action, including legislation, against such discrimination.

(c) The Office and the Commission may make, issue, adopt, promulgate, amend, and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with, the provisions of this chapter. Such rules and procedures and amendments thereto shall be adopted and promulgated in accordance with procedures promulgated pursuant to the D.C. Administrative Procedure Act (§ 2-501 et seq.).

(d) In taking any action authorized or required by the provisions of this chapter, the Commission may act through panels or a division of not less than 3 of its members, a majority of whom shall constitute a quorum.

(e) The Mayor shall recommend to the Council any additional regulations.

(f) Investigations relating to the enforcement of provisions of this chapter shall be given priority over all other duties and activities of the Office.

(g) (1) The Mayor shall report annually to the Council as to the progress with regard to the enforcement of this chapter, and any other activity related to the field of human rights deemed valuable to the Council in the pursuit of its responsibilities.

(2) The annual report required by paragraph (1) of this subsection shall include information regarding concluded investigations, including concluded inquiries by the Director conducted pursuant to subsection (b) of this section; provided, that the Director

may withhold information relating to a concluded investigation or inquiry if the Director finds that including the information in the annual report would:

(A) Undermine the integrity of the concluded investigation or inquiry; or

(B) Violate a work-sharing agreement with the Equal Employment Opportunity Commission, the U.S. Department of Housing and Urban Development; or any other federal agency.

(h) The Office and the Commission shall enforce §§ 34-1240 [repealed], 34-1241 [repealed], 34-1242 [repealed], 34-1243 [repealed] and any other human rights provisions of Chapter 12 of Title 34.

D.C. Code § 1403.16 (2002)

§ 1403.16. Private cause of action.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, unless such person has filed a complaint hereunder; provided, that where the Office has dismissed such complaint on the grounds of administrative convenience, or where the complainant has withdrawn a complaint, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who maintains, in a court of competent jurisdiction, any action based upon an act which would be an unlawful discriminatory practice under this chapter may file the same complaint with the Office. A private cause of action pursuant to this chapter shall be filed in a court of competent jurisdiction within one year of the unlawful discriminatory act, or the discovery thereof, except that the limitation shall be within 2 years of the unlawful discriminatory act, or the discovery thereof, for complaints of unlawful discrimination in real estate transactions brought pursuant to this chapter or the FHA. The timely filing of a complaint with the Office, or under the administrative procedures established by the Mayor pursuant to § 2-1403.03, shall toll the running of the statute of limitations while the complaint is pending.

(b) The court may grant any relief it deems appropriate, including, the relief provided in §§ 2-1403.07 and 2-1403.13(a).

(c) D.C. Official Code § 12-309 shall not apply to any action brought against the District of Columbia under this section.

DIVISION I. GOVERNMENT OF THE DISTRICT

TITLE 2. GOVERNMENT ADMINISTRATION

CHAPTER 14. HUMAN RIGHTS

UNIT B. OFFICE OF HUMAN RIGHTS

D.C. Code § 2-1411.01 (1999)

§ 2-1411.01. Establishment of the Office of Human Rights.

(a) Pursuant to § 1-204.04(b), there is hereby established, in the Executive Branch of the government of the District of Columbia, an Office of Human Rights under the supervision of a Director, who shall carry out the functions and authorities assigned to the Office. The Office of Human Rights ("Office") is established as a separate agency as of October 1, 1999.

(b) The Director shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration.

(c) (1) The Director shall have a demonstrated professional background in human rights law.

(2) For the purposes of this subsection, the term "human rights law" means District or federal laws related to discrimination by reason of 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 intrafamily offense, and place of residence or business.

DIVISION I. GOVERNMENT OF THE DISTRICT TITLE 12. RIGHT TO REMEDY CHAPTER 3. LIMITATION OF ACTIONS

D.C. Code § 12-309 (1988)

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

(a) ~~An action~~ Except as provided in subsection (b) of this section, an action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section.

(b) This section shall not apply to claims brought under § 2-1403.16 or § 1-615.54.

1 Committee on the Judiciary and Public Safety
2 Committee Print
3 October 15, 2014
4
5

6 A BILL
7

8 20-803
9

10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
11
12

13
14 To amend the Office of Human Rights Establishment Act of 1999 to require the Director
15 of the Office to have a demonstrated professional background in human rights
16 law; to amend the Human Rights Act of 1977 to require the annual report include
17 information on investigations and inquiries undertaken by the Director or the
18 Office; to repeal the exemption allowing religiously-affiliated educational
19 institutions to discriminate on the basis of sexual orientation; and to clarify that
20 the section 12-309 notice requirement does not apply to Human Rights Act
21 claims.
22

23 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

24 That this act may be cited as the “Human Rights Amendment Act of 2014”.

25 Sec. 2. Section 202 of the Office of Human Rights Establishment Act of 1999,
26 effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.01), is
27 amended by adding a new subsection (c) to read as follows:

28 “(c)(1)The Director shall have a demonstrated professional background in human
29 rights law.

30 “(2) For the purposes of this subsection, the term “human rights law”
31 means District or federal laws related to discrimination by reason of race, color, religion,
32 national origin, sex, age, marital status, personal appearance, sexual orientation, gender
33 identity or expression, familial status, family responsibilities, matriculation, political

34 affiliation, genetic information, disability, source of income, status as a victim of an
35 intrafamily offense, and place of residence or business.

36 Sec. 3. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law
37 2-38; D.C. Official Code § 2-1401 *et seq.*), is amended as follows:

38 (a) Section 241(3) (D.C. Official Code § 2-1402.41(3)), is repealed.

39 (b) Section 301(g) (D.C. Official Code § 2-1403.01(g)) is amended as follows:

40 (1) The existing text is designated paragraph (1);

41 (2) A new paragraph (2) is added to read as follows:

42 “(2) The annual report required by paragraph (1) of this subsection shall
43 include information regarding concluded investigations, including concluded inquiries by
44 the Director conducted pursuant to subsection (b) of this section; provided, that the
45 Director may withhold information relating to a concluded investigation or inquiry if the
46 Director finds that including the information in the annual report would:

47 (A) Undermine the integrity of the concluded investigation or inquiry; or

48 (B) Violate a work-sharing agreement with the Equal Employment
49 Opportunity Commission, the U.S. Department of Housing and Urban Development; or
50 any other federal agency.”.

51 (c) Section 316 (D.C. Code § 2-1403.16) is amended by adding a new subsection
52 (c) to read as follows:

53 “(c) D.C. Official Code § 12-309 shall not apply to any action brought against the
54 District of Columbia under this section.”.

55 Sec. 4. Section 12-309 of the District of Columbia Official Code is amended as
56 follows:

57 (a) The existing text is designated as subsection (a).

58 (b) Subsection (a) is amended by striking the phrase “An action” and inserting the
59 phrase “Except as provided in subsection (b) of this section, an action” in its place.

60 (c) A new subsection (b) is added to read as follows:

61 “(b) This section shall not apply to claims brought under § 2-1403.16 or § 1-
62 615.54.”.

63 Sec. 5. Fiscal impact statement.

64 The Council adopts the fiscal impact statement in the committee report as the
65 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
66 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
67 206.02(c)(3)).

68 Sec. 6. Effective date.

69 This act shall take effect following approval by the Mayor (or in the event of a
70 veto by the Mayor, action by the Council to override the veto), a 30-day period of
71 congressional review as provided in section 602(c)(1) of the District of Columbia Home
72 Rule Act, approved December 24, 1973 (87 Stat 813; D.C. Official Code § 1-
73 206.02(c)(1)), and publication in the District of Columbia Register.