MEASURE NUMBER:SB 725STATUS: OriginalSUBJECT:Discrimination in property transactionsGOVERNMENT UNIT AFFECTED:Bureau of Labor and Industries and Department of Justice,PREPARED BY:John F. BordenREVIEWED BY:Robin LaMonte and Doug WilsonDATE:May 11, 2007

EXPENDITURES: See Comments <u>2007-2009</u>

2009-2011

**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 measure modifies Oregon's statutes regarding discrimination in property transactions. The Bureau of Labor and Industries (BOLI) could be responsible for investigating the housing discrimination complaints under this measure. The measure establishes new civil penalties. If either a complainant or a respondent elect to have a complaint heard in circuit court, BOLI will represent the complainant at no cost to the complainant. BOLI or the Attorney General may file a civil action on behalf of an aggrieved party. A circuit court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails if the court determines that BOLI had no objectively reasonable basis for ascertaining the claim or appealing the adverse decision of a trial court. The measure would also require the Department of Consumer and Business Services (DCBS) to adopt an interagency agreement with BOLI that would require DCBS to refer complaints regarding architectural barriers related to the design or construction of legally covered multifamily dwellings reported to it by BOLI to the appropriate local agency. The agreement also would require DCBS to refer to BOLI similar complaints that it learns about in the course of performing its regulatory duties.

Currently, BOLI investigates approximately five housing discrimination complaints a year based on Oregon law. The U.S. Department of Housing and Urban Development (HUD) enforces federal law in Oregon and investigates 76 to 120 federal cases per year.

If this measure is determined by HUD to be "substantially equivalent" to federal law, which means that Oregon law provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act, then BOLI would be able to contract with HUD to investigate federally-based housing discrimination complaints that are currently being investigated by HUD. HUD would provide BOLI with a federal (noncompetitive) grant under the Fair Housing Assistance Program (FHAP) to BOLI to pay for the initial program development, outreach and education, complaint processing, administrative costs, special enforcement efforts, training, and other projects designed to enhance the Bureau's administration and enforcement of Oregon's fair housing law. BOLI had a similar contract with HUD prior to 1992 when at that time state and federal law were substantially equivalent.

According to BOLI, a HUD contract would provide \$1,800 for each case investigated and an additional \$500 for each case on which specific charges were issued in order to initiate an administrative hearing. Administrative costs would be reimbursed at a flat rate of \$15,000 or 10% of the prior year's annual payments (if 100 complaints or more are processed). There would be an additional \$25,000 paid for training investigators. In addition, grant funds may be available for "special enforcement efforts" which can total up to 20% of the prior year's payments. Of note, HUD would continue to enforce federal law until such time as a contract was signed.

BOLI estimates that the fiscal impact of this measure could be approximately \$600,000 Federal Funds per biennium, but the actual amount of revenue would depend upon the actual number of cases. This figure is based on a per case cost of \$2,142 for 280 cases. BOLI has stated that it may need to hire one additional investigator to handle the increased workload. The Legislative Fiscal Office (LFO) notes that the receipt of these funds may be used by BOLI in lieu of its General Fund appropriation related to the enforcement of current Oregon law. The amount of savings, according to BOLI, would be approximately \$30,000 General Fund.

BOLI may assess civil penalties, with such revenue first directed to reimburse associated BOLI costs with any remainder being paid to the Department of State Lands, Common School Lands Fund. BOLI does not anticipate assessing few, if any, civil penalties.

The Oregon Judicial Department expects a minimal, indeterminate workload impact and does not expect the impact to reach the \$50,000 threshold for referral to the ways and Means Committee.

The Department of Consumer and Business Services, Department of Justice and the Department of State Lands all state that this measure would not have a fiscal impact on their respective agencies.

This measure currently does not have a subsequent referral to the Joint Committee on Ways and Means. This is appropriate at this time. BOLI would require legislative approval to apply for the HUD/ Fair Housing Assistance Program grant. If approved by the legislature, and the grant awarded or contract signed, the Bureau would need to return to the Legislative Emergency Board or a subsequent legislative session for Federal Funds expenditure limitation and position authority.