

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 300

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rouson and others

SUBJECT: Florida Commission on Human Relations

DATE: February 12, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Fav/CS
2.	Davis	Cibula	JU	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 300 amends several statutes involving the Florida Commission on Human Relations. The Commission is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

The bill revises time period investigation requirements in the Whistle-blower's Act to better align with similar time periods in other cases investigated by the Commission.

The bill also reduces quorum meeting requirements for the Commission and revises the number of nominees that the Commission must recommend each year to the Governor for the Florida Civil Rights Hall of Fame.

The bill amends civil rights administrative and civil remedies. The Commission must provide notice to an aggrieved person under specified circumstances and notify the person that he or she must file a civil action within 1 year or the action will be barred.

Additionally, the bill deletes registration requirements for facilities that claim an exemption for housing older persons and eliminates related fees and fines.

Finally, the bill deletes a requirement that the Commission or the Attorney General investigate public housing discrimination complaints. Deleting this requirement will allow the commission

to move more quickly into informal methods to resolve the issue. The bill also increases the time from 30 days to 45 days for the Commission or Attorney General to resolve the dispute.

The bill takes effect on July 1, 2018.

II. Present Situation:

Florida Commission on Human Relations

Chapter 760, F.S., provides a forum for all individuals in Florida to be protected against discrimination in areas of employment, housing, certain public accommodations, and other opportunities based on race, color, religion, sex, national origin, age, handicap, marital, or familial status. Part I of Chapter 760, F.S., is known as the Florida Civil Rights Act of 1992; Part II is known as the Florida Fair Housing Act.

The Florida Commission on Human Relations (Commission) is authorized to carry out the purposes of chapter 760, F.S.¹ The Commission is also authorized to investigate allegations of violations of the Whistle-blower's Act. The Commission is housed in the Department of Management Services (DMS).² DMS does not exercise any control or supervision over the Commission.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.³ The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within Florida.⁴ At least one member of the Commission must be 60 years of age or older.⁵ The Commission is empowered to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice,⁶ as defined by the Florida Civil Rights Act of 1992.⁷

Quorum for Commission Meeting

While the Commission is comprised of 12 members, as of January, 2018, only eight commissioners are serving on its board.⁸ Two of the eight commissioners are serving in terms that have not yet expired. The remaining six commissioners are continuing to serve until they are reappointed to another term or until the seats are filled by another appointee.⁹

¹ Sections 760.03 and 760.05, F.S.

² Section 760.04, F.S.

³ Section 760.03(1), F.S.

⁴ Section 760.03(2), F.S.

⁵ *Id.*

⁶ Section 760.02(4), F.S., defines "discriminatory practice" to mean any practice made unlawful by the Florida Civil Rights Act of 1992.

⁷ Section 760.06(5), F.S.

⁸ Florida Commission on Human Relations, *SB 300/HB 307 Bill Analysis* (2018) (copy on file with the Senate Committee on Judiciary).

⁹ *Id.*

Current law provides that seven members constitute a quorum for the Commission to conduct business.¹⁰ Due to the low number of commissioners currently serving, the Commission has difficulty meeting the seven member quorum requirement and often cancels and reschedules meetings. If two members were to resign or were unable to attend a meeting, the Commission could no longer conduct official business.¹¹ Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.¹²

Florida Civil Rights Hall of Fame

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.¹³ The purpose of the program is to recognize those persons, living or deceased, who have made significant contributions to the state as leaders in the struggle for equality and justice for all persons.¹⁴ The Commission oversees and administers the Hall of Fame, excluding the normal costs of operations, repairs, and maintenance, which is the responsibility of DMS.¹⁵ The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.¹⁶ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.¹⁷

With its limited resources and because the Commission was not provided any fiscal or staff resources to carry out this responsibility, the Commission has struggled to make the minimum number of 10 recommendations each year.¹⁸

Florida Civil Rights Act

A person aggrieved by a violation of ss. 760.01-760.10, F.S., may file a complaint with the Commission pursuant to the Florida Civil Rights Act.¹⁹ The complaint must be filed within 365 days of the alleged violation, naming the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation and describing the

¹⁰ Section 760.03(5), F.S.

¹¹ *See supra* note 8.

¹² Among others, ss. 43.20(4) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within Department of Business and Professional Regulation), 456.011(3) (Boards and Commissions within Department of Health), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

¹³ Section 760.065, F.S.; *see* ch. 2010-53, Laws of Fla.

¹⁴ Section 760.065(1), F.S.

¹⁵ Section 760.065(5), F.S.

¹⁶ Section 760.065(3)(a), F.S.

¹⁷ Section 760.065(3)(b), F.S.

¹⁸ *See supra* note 8.

¹⁹ Section 760.11(1), F.S.

violation.²⁰ The Commission must determine within 180 days whether reasonable cause exists to believe that a discriminatory practice occurred.²¹

If the Commission makes a "reasonable cause" determination, the claimant may then bring a civil action against the person named in the complaint in any court of competent jurisdiction or request an administrative hearing under provisions of ch. 120, F.S.²² A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.²³ If the Commission does not find reasonable cause, the claimant may still request an administrative hearing under provisions of ch. 120, F.S.²⁴ If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.²⁵

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between the Commission finding reasonable cause and the statute of limitations.²⁶ The Court stated that the "[a]ct...does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms."²⁷ The Court held that the one-year statute of limitations for filing civil actions in s. 760.11(5), F.S., does not apply if the Commission fails to make a determination within 180 days. Instead, the Court held that the four-year statute of limitations for a cause of action based on statutory liability²⁸ applies when the Commission fails to make a determination of reasonable cause.²⁹

State Employee Whistle-Blower Act

The Commission is authorized to investigate any allegation of an adverse action taken against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.³⁰ If someone is retaliated against, he or she may file a written complaint with the Commission or the Office of the Chief Inspector General in the Governor's office within 60 days after the adverse action.³¹

Within 3 working days, the Commission or the Office of the Chief Inspector General must acknowledge receiving the complaint and provide copies of the complaint to each of the parties.³² The Commission must then further notify, within 15 days, the complainant that the

²⁰ *Id.*

²¹ Section 760.11(3), F.S. In the event that any other agency of the state or of any other unit of state government has jurisdiction of the subject matter of any complaint filed with the Commission and has legal authority to investigate the complaint, the Commission may refer such complaint to the agency for an investigation. *See* s. 760.11(2), F.S.

²² Section 760.11(4), F.S.

²³ Section 760.11(5), F.S.

²⁴ Section 760.11(7), F.S.

²⁵ Section 760.11(8), F.S.

²⁶ *Joshua v. City of Gainesville*, 768 So. 2d 432, 434-435 (Fla. 2000).

²⁷ *Id.*

²⁸ Section 95.11(3)(f), F.S.

²⁹ *Joshua*, 768 So. 2d at 439.

³⁰ Section 112.31895(2), F.S. *See also* s. 112.3187, F.S.

³¹ Section 112.31895(1)(a), F.S.

³² Section 112.31895(1)(b), F.S.

complaint has been received.³³ The Commission must then complete the fact-finding process within 90 days after receiving the complaint and provide the agency head and the complainant a report that may include recommendations to the parties or a proposed resolution of the complaint.³⁴

If the Commission is unable to conciliate a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation.³⁵ The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and the reasons for terminating the investigation.³⁶

If an agency does not implement the recommended action of the Commission within 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission (PERC)³⁷ or petition the agency for corrective action.³⁸ A complainant may file a complaint against the employer-agency with the PERC after the termination of an investigation by the Commission.³⁹ This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.⁴⁰

Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act.⁴¹ It is the state's policy to provide for fair housing throughout the state.⁴² The Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the Commission.⁴³ The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.⁴⁴ The Commission has 100 days after receipt of the complaint to complete its investigation and give notice in writing to the person aggrieved whether it intends to resolve it.⁴⁵ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.⁴⁶

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature

³³ Section 112.31895(2)(b), F.S.

³⁴ Section 112.31895(2)(c), F.S.

³⁵ Section 112.31895(3)(d), F.S.

³⁶ *Id.*

³⁷ PERC is created pursuant to ch. 447, Part II, F.S., and has jurisdiction over certain state employment cases, including career service appeals, veterans preference appeals, Drug-Free Workplace Act appeals, age discrimination appeals, and Whistle-Blower Act appeals.

³⁸ Section 112.31895(3)(e)3., F.S.

³⁹ Section 112.31895(4)(a), F.S.

⁴⁰ *Id.*

⁴¹ Sections 760.20-760.37, F.S.

⁴² Section 760.21, F.S.

⁴³ Section 760.34(1), F.S.

⁴⁴ Section 760.34(2), F.S.

⁴⁵ Section 760.34(1), F.S.

⁴⁶ *Id.*

created exemptions for which charges of housing discrimination do not apply.⁴⁷ For example, a single-family house sold or rented by its owner is exempted, as well as rooms or units in dwellings that provide housing for four or fewer families.⁴⁸

Certain housing for older persons is also exempt from charges of discrimination based on familial status.⁴⁹ Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or, if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older.⁵⁰ The housing facility or community must also adhere to senior housing policies and procedures and comply with rules developed by the U.S. Department of Housing and Urban Development pursuant to 24 C.F.R. 100.⁵¹ These facilities and communities must register with the Commission and renew such registration every two years and pay a fee that does not exceed \$20 for registration and renewal.⁵² The Commission may impose an administrative fine of up to \$500 for the knowing submission of false information, but there is no penalty for failure to register with the Commission.⁵³ Failure to register does not prohibit a community from claiming the exemption.⁵⁴

The Commission made an executive decision in September, 2015, and has not charged the \$20 registration or renewal fee for facilities and communities. The Commission reports that the "registration program does not enhance or benefit the Commission in implementing its statutory requirements or carrying out its mission-critical responsibilities."⁵⁵ The registry does not determine whether a community actually qualifies for the housing for older persons exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if someone files a complaint against it. The facility or community would have to prove that it meets the exemption. The same standard holds true for a facility or community that has not registered.

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.⁵⁶ This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from non-members for business purposes.⁵⁷ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because

⁴⁷ Section 760.29, F.S.

⁴⁸ Section 760.29(1)(a)1. and 2., F.S.

⁴⁹ Section 760.29(4), F.S.

⁵⁰ Section 760.29(4)(b), F.S.

⁵¹ Section 760.29(4)

⁵² Section 760.29(4)(e), F.S.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See supra* note 8 at 7.

⁵⁶ Section 760.60(1), F.S.

⁵⁷ *Id.*

of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status.⁵⁸ This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.⁵⁹

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.⁶⁰ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant in writing if it intends to resolve the complaint.⁶¹ If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁶²

If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.⁶³ If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁶⁴

III. Effect of Proposed Changes:

State Employee Whistle-blower's Act

Section 1 amends s. 112.31895, F.S., to revise a number of investigation time periods involving the Florida Commission on Human Relations. The changes provide that the Commission or the Office of the Chief Inspector General must respond within 5 working days, instead of 3 working days, after receiving a complaint. The bill deletes language requiring the Commission to further notify the complainant, within 15 days after receiving a complaint, that the complaint has been received. The bill also increases the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint.

The bill standardizes the times before the Commission must terminate an investigation pursuant to s. 112.31895(3)(d) and (e), F.S., to 35 days. The bill also reduces the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission from 60 days to 21 days.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Section 760.60(2), F.S.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Section 760.60(3), F.S.

⁶⁴ *Id.*

Florida Commission on Human Rights

Section 2 amends s. 760.03, F.S., to provide that a quorum for the conduct of official business by the Commission consists of a majority of the currently appointed commissioners. Also, this section provides that panels created by the Commission would be able to establish a quorum to conduct business with three commissioners on the panel.

Section 3 amends s. 760.065, F.S., to provide that the Commission may recommend up to ten nominees for the Florida Civil Rights Hall of Fame each year for the Governor's consideration. This change prevents the Commission from violating the law if it submits fewer than ten recommendations due to a lack of nominees from others.

Section 4 amends s. 760.11, F.S., to provide that if the Commission fails to determine whether there is reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as a claim that receives a determination of reasonable cause. The Commission is required to promptly notify the individual of the Commission's failure to conciliate or to determine reasonable cause, to inform the individual of their options, and to inform the individual that a civil action alleging a violation of the Florida Civil Rights Act is prohibited if not filed within 1 year after the date the Commission certifies that the notice was mailed.

The bill requires that any civil action brought by an individual must be commenced within 1 year after the date the Commission certifies that the notice was mailed.

Fair Housing Act

Section 5 deletes s. 760.29(4)(e), F.S., to repeal the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

Section 6 amends s. 760.31, F.S., to delete the requirement that Commission rules specify the fee, forms, and procedures utilized for registration of facilities and communities claiming an exemption as housing for older persons. This is necessary to conform the statute to the deletion of s. 760.29(4)(e), F.S., in section 5.

Discriminatory Practices in Certain Clubs

Section 7 amends s. 760.60, F.S., to delete the requirement that the Commission or the Attorney General investigate the public accommodation discrimination complaint. The bill also extends from 30 days to 45 days the time for the Commission or the Attorney General to resolve the dispute.

Section 8 provides an effective date of July 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. There is no fiscal impact to the Commission.⁶⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.31895, 760.03, 760.065, 760.11, 760.29, 760.31, and 760.60 of the Florida Statutes.

⁶⁵ See *supra* note 8.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on January 30, 2018:

The Committee Substitute:

- Deletes provisions of original bill expanding time to file a complaint to 365 days regarding a violation of the Whistle-blower’s Act;
- Deletes provisions of original bill expanding statute of limitations to 4 years for filing a civil action regarding a violation of the Florida Civil Rights Act;
- Amends s. 760.11(8), F.S., to:
 - Provide that if the Commission fails to determine whether there is reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as a claim that receives a determination of reasonable cause; and
 - Require the Commission to promptly notify the individual of the Commission’s failure to conciliate or to determine reasonable cause, to inform the individual of their options, and to inform the individual that a civil action alleging a violation of the Florida Civil Rights Act is prohibited if not filed within 1 year after the date the Commission certifies that the notice was mailed.

- B. **Amendments:**

None.