

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Florida Commission on Human Relations

SPONSOR(S): Civil Justice & Claims Subcommittee, Antone

TIED BILLS: None **IDEN./SIM. BILLS:** SB 300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	MacNamara	Bond
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Commission on Human Relations (Commission) administers the state's civil rights laws and serves as a resource for businesses, individuals, and groups to prevent costly and damaging discriminatory activities. Complaints of discrimination related to employment, housing, certain public accommodations, and state employee whistle-blower retaliation are handled by the Commission.

The bill:

- Changes quorum requirements for the Commission to be based on the number of currently appointed commissioners;
- Authorizes the Commission to recommend up to 10 nominees for the Florida Civil Rights Hall of Fame;
- Specifies the applicable statute of limitations for bringing a cause of action pursuant to the Florida Civil Rights Act;
- Deletes the registration requirements for facilities and communities claiming the housing for older persons exemption and eliminating related forms, fees, and fines;
- Deletes the investigation requirement for the Commission after receiving a complaint of discrimination by certain public accommodations; and
- Aligns time periods in state employee whistle-blower cases with time periods in other cases investigated by the Commission.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: 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., creates the Florida Civil Rights Act of 1992; Part II creates 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 housed in the Department of Management Services.² The department 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. The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida. At least one member of the Commission, as required by law, must be 60 years of age or older. The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination and act upon complaints alleging any discriminatory practice.³

Quorum for Commission Meeting

The Commission is comprised of 12 members.⁴ Currently, the Commission has 8 commissioners serving on its board.⁵ Of these 8 commissioners, only 2 are in terms that have not yet expired; the other 6 commissioners are continuing to serve until they are either reappointed or until their seats are filled by another appointment.

Current law provides that seven members constitute a quorum for the Commission to conduct business.⁶ Due to the low number of commissioners currently serving, the Commission has difficulty in meeting the seven member quorum requirement and continually cancels and reschedules meetings. If 2 members were to resign, the Commission could no longer conduct official business at all. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.⁷

Effect of Bill: Quorum for Commission Meeting

The bills amends s. 760.03, F.S., to provide that a quorum for a Commission meeting consists of a majority of the currently appointed members. At the current time, this would allow the Commission to conduct business with 5 members present, rather than 7 members. The bill also provides that the panels created by the Commission would be able to establish a quorum to conduct business with three members of the panel.

¹ s. 760.03, F.S.

² s. 760.04, F.S.

³ s. 760.06, F.S.

⁴ s. 760.03(1), F.S.

⁵ *Meet the Commissioners*, Florida Commission on Human Relations, http://fchr.state.fl.us/about_us/meet_the_commissioners (last accessed October 25, 2017).

⁶ s. 760.03(5), F.S.

⁷ Among others, ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within DBPR), 456.011(3) (Boards and Commissions within DOH), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

Florida Civil Rights Hall of Fame

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.⁸ 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.⁹ The Commission oversees and administers the Hall of Fame. The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.¹⁰ 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.¹¹

With its limited resources, the Commission has struggled to make the minimum number of 10 recommendations each year. Since its inception, the Commission has received:

- 2012- 21 nominations
- 2013- 20 nominations
- 2014- 6 nominations
- 2015- 9 nominations
- 2016- 9 nominations
- 2017- 12 nominations

Effect of Bill: Florida Civil Rights Hall of Fame

The bill amends s. 760.065(3)(a), F.S., to provide that the Commission may recommend up to 10 nominees each year for the Governor's consideration. This change prevents the Commission from violating the law when it submits less than 10 recommendations due to a lack of nominees.

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.¹² The complaint must be filed within 365 days and name the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation and describe the violation.¹³ The Commission must determine within 180 days whether or not reasonable cause exists to believe that a discriminatory practice occurred.¹⁴

If the Commission makes a "reasonable cause" determination, the claimant may then bring a civil action or request an administrative hearing.¹⁵ A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.¹⁶ If the Commission does not find reasonable cause, the claimant may still request an administrative hearing, but is precluded from

⁸ s. 760.065, F.S.

⁹ *Id.*

¹⁰ s. 760.065(3)(a), F.S.

¹¹ s. 760.065(3)(b), F.S.

¹² s. 760.11(1), F.S.

¹³ *Id.*

¹⁴ s. 760.11(3), F.S.

¹⁵ s. 760.11(4), F.S.

¹⁶ s. 760.11(5), F.S.

commencing a civil action.¹⁷ If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.¹⁸

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between these parts of the Florida Civil Rights Act.¹⁹ 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."²⁰ 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. The court held that the four-year statute of limitations for a cause of action based on statutory liability²¹ applies when the Commission fails to make a determination.²²

Effect of Bill: Florida Civil Rights Act

The bill amends s. 760.11(8), F.S., to provide that a cause of action filed pursuant to this subsection is subject to the same one-year statute of limitations as claims that receive a determination of reasonable cause. Moreover, the Commission is required to promptly notify the individual of the Commission's failure to determine reasonable cause and inform the individual of their options as a result. The one-year period for filing an action begins to run the date the Commission certifies that the notice was mailed.

Florida Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act.²³ It is the state's policy to provide for fair housing throughout the state.²⁴ 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.²⁵ The complainant must file the complaint within 1 year after the alleged discriminatory practice has occurred.²⁶ The Commission has 100 days after receipt of the complaint to complete its investigation and issue a determination.²⁷ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²⁸

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 created exemptions for which charges of housing discrimination do not apply.²⁹ 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 less families.³⁰ Certain housing for older persons is also exempt from charges of discrimination based on familial status.³¹

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

¹⁷ s. 760.11(7), F.S.

¹⁸ s. 760.11(8), F.S.

¹⁹ 768 So.2d 432 (Fla. 2000).

²⁰ *Id.* at 434-435.

²¹ s. 95.11(3)(f), F.S.

²² 768 So.2d at 439.

²³ ss. 760.20-760.37, F.S.

²⁴ s. 760.21, F.S.

²⁵ s. 760.34(1), F.S.

²⁶ s. 760.34(2), F.S.

²⁷ s. 760.34(1), F.S.

²⁸ *Id.*

²⁹ s. 760.29, F.S.

³⁰ ss. 760.29(1)(a)1 and 2, F.S.

³¹ s. 760.29(4), F.S.

occupied by at least one person age 55 years or older. 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. These facilities and communities must register with the Commission and renew such registration every two years and pay a \$20 fee for registration and renewal.³² The Commission may impose an administrative fine of up to \$500 for submission of false information,³³ but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015. 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."³⁴ The registry is not determinative as to whether the community actually qualifies from 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 a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

Effect of Bill: Florida Fair Housing Act

The bill deletes s. 760.29(4)(c), F.S., thereby repealing 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.

The bill also amends s. 760.31(5), F.S., relating to the powers and duties of the Commission. The bill deletes language requiring the Commission to create forms and procedures and setting the fee for the registration of facilities and communities claiming the housing for older persons exemption. The language is no longer needed as the registration requirement is being deleted.

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.³⁵ 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 from non-members for business purposes.³⁶ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement denying use and access to the club for a discriminatory purpose.³⁷

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.³⁸ 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 of its intention to resolve the complaint.³⁹ If the Commission or the Attorney General decides to resolve the complaint, it must

³² s. 760.29(4)(c), F.S.

³³ *Id.*

³⁴ *SB 1716/HB 1255- Florida Civil Rights and Discrimination Cases- Chapter 760 Changes*, p. 6, Florida Commission on Human Relations. A copy of the document is on file with the Civil Justice & Claims Subcommittee.

³⁵ s. 760.60(1), F.S.

³⁶ *Id.*

³⁷ *Id.*

³⁸ s. 760.60(2), F.S.

³⁹ *Id.*

attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁴⁰

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.⁴¹ 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.⁴²

Effect of Bill: Discriminatory Practices in Certain Clubs

The bill amends s. 760.60, F.S., to delete the requirement that the Commission or Attorney General investigate the public accommodation discrimination complaint. This allows the Commission or Attorney General to immediately enter into the informal methods of conference, conciliation, and persuasion after giving notice to the club of the discrimination complaint. The bill also extends the time for the Commission or Attorney General to resolve the dispute by informal methods to 45 days, bringing the time period in line with the time allowance in other mediation activities that the Commission undertakes.

State Employee Whistle-Blower Retaliation

The Commission is authorized to investigate any allegation of an adverse action 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. If a person is retaliated against, he or she can file a written complaint with either the Commission or the Office of the Chief Inspector General (CIG) in the Executive Office of the Governor within 60 days after the adverse action.⁴³

Within 3 days, the Commission or the CIG must acknowledge receiving the complaint and provide copies of the complaint to the parties.⁴⁴ 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 or a proposed resolution.⁴⁵

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. 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 state the reasons for terminating the investigation.⁴⁶

If an agency does not implement the recommended action of the Commission in 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.⁴⁷ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.⁴⁸ This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.⁴⁹

⁴⁰ *Id.*

⁴¹ s. 760.60(3), F.S.

⁴² *Id.*

⁴³ s. 112.31895(1)(a), F.S.

⁴⁴ s. 112.31895(1)(b), F.S.

⁴⁵ s. 112.31895(2)(a), F.S.

⁴⁶ s. 112.31895(3)(d), F.S.

⁴⁷ s. 112.31895(3)(e)3, F.S.

⁴⁸ s. 112.31895(4)(a), F.S.

⁴⁹ *Id.*

Effect of Bill: State Employee Whistle-Blower Retaliation

The bill amends s. 112.31895, F.S., to amend a number of the time periods related to investigations by the Commission. The bill provides that a complainant must file a complaint no later than 365 days after the prohibited personnel action. The bill provides that the Commission or CIG must respond within five working days after receiving a complaint, instead of three working days. The bill deletes language requiring the Commission to further notify the complainant that their complaint has been received within 15 days of receiving the complaint. The bill also amends 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 shortens the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission to 21 days. These changes bring most of the timeframes in line with complaints filed with the Commission pursuant to s. 760.11, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 760.03, F.S., relating to the Commission on Human Relations and staffing.

Section 2: Amends s. 760.065, F.S., relating to the Florida Civil Rights Hall of Fame.

Section 3: Amends s. 760.11, F.S., relating to administrative and civil remedies.

Section 4: Amends s. 760.29, F.S., relating to exemptions.

Section 5: Amends s. 760.31, F.S., relating to powers and duties of the commission.

Section 6: Amends s. 760.60, F.S., relating to prohibited discriminatory practices of certain clubs and remedies.

Section 7: Amends s. 112.31895, F.S., relating to investigative procedures in response to prohibited personnel actions.

Section 8: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There would appear to be an indeterminate negative fiscal impact on Florida Commission on Human Relations by eliminating the registration and renewal fees for facilities claiming housing for older persons exemptions and the administrative fine for submitting false information to the Commission in these exemptions. However, the Commission has indicated that it stopped collecting these fees and fines in 2015. As such, the impact to the operation of the Commission would likely be minimal.

Likewise, there would appear to be an indeterminate positive impact on facilities claiming housing for older persons exemptions since they no longer are subject to a fee to register. However, there would likely be little impact on the private sector because this fee has not been collected since 2015.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates rulemaking authority relating to forms and fees for facilities and communities to register as housing for older persons.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 8, 2018 the Civil Justice & Claims Subcommittee adopted one amendment. The amendment:

- Requires the commission to notify a complainant alleging a violation of the Florida Civil Rights Act should the commission fail to timely determine whether there is reasonable cause. The notice must inform the complainant of his or her available options; and
- Provides that a civil action alleging a violation of the Act must be filed within one year after the commission mailed such notice to the complainant.

The analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.