

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 310

SPONSOR: Commerce and Economic Opportunities Committee and Senator Dawson

SUBJECT: Wage Discrimination

DATE: March 1, 2002

REVISED: 03/05/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 310 requires the Secretary of Labor and Employment Security to appoint a 9-member Equal Pay Commission to conduct a study and submit a report on wage disparities in the public and private sectors between men and women and between minorities and nonminorities.

This committee substitute creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Wage Discrimination

The United States Congress and the Legislature have enacted contemporaneous laws prohibiting certain types of employment discrimination. These federal and state laws allow aggrieved persons to file complaints seeking relief from unlawful employment discrimination.

The Florida Commission on Human Relations is the agency created by the Legislature to hear state complaints under the Florida Civil Rights Act of 1992 (ss. 760.01-760.11 and 509.092, F.S.). The act prohibits employment discrimination based on an individual's race, color, religion, sex, national origin, age, handicap, or marital status. The act applies to each employer in the state employing 15 or more employees, each employment agency, labor organization, and joint labor-management committee, state government, and each governmental entity or agency (s. 760.02, F.S.). Covered employers may not hire, discharge, segregate or classify, refer for employment, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the individual's race, color, religion, sex, national origin, age, handicap, or marital status (s. 760.10, F.S.).

Under the act, the commission investigates complaints of employment discrimination. If, as a result of an investigation, the commission determines there is reasonable cause to believe a discriminatory practice occurred, the aggrieved person may bring a civil action against the employer, employment agency, labor organization, or joint labor-management committee named in the complaint or request an administrative hearing. The act authorizes various forms of relief from the effects of a discriminatory employment practice including back pay, compensatory damages, and punitive damages (s. 760.11(4)-(6), F.S.).

In addition, employers are prohibited from discriminating between employees on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions (s. 448.07, F.S.). The statute, however, exempts wages paid to employees under a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any reasonable factor other than sex when exercised in good faith (s. 448.07(2)(a), F.S.). To enforce the statute, aggrieved employees may recover, through a civil action, the difference between the amount the employee was paid and the amount he or she should have been paid (s. 448.07(3), F.S.).

The United States Equal Employment Opportunity Commission (EEOC) is the federal agency created by Congress to hear employment discrimination complaints. The EEOC hears complaints alleging violations of several federal acts that prohibit employment discrimination. Under Title VII of the Civil Rights Act of 1964 (42 U.S.C. ch. 21), as amended, the EEOC enforces federal laws that prohibit discrimination in hiring, promotion, discharge, pay, fringe benefits, job training classification, referral, and other aspects of employment on the basis of race, color, religion, sex, or national origin. In 1991, Congress expanded the remedies available in employment discrimination cases brought under Title VII. Under the Civil Rights Act of 1991, (42 U.S.C. ss. 1981a and 2000e-2), compensatory and punitive damages may be awarded in cases of intentional employment discrimination.

The EEOC also enforces the Equal Pay Act of 1963 (29 U.S.C. s. 206), as amended, which prohibits employers from discriminating between employees on the basis of sex in the payment of wages. Under the federal act, employers may not pay wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. The act exempts wages paid under a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex.

In addition, the Office of Federal Contract Compliance Programs enforces Executive Order No. 11246 (1965), as amended, which prohibits covered federal contractors and subcontractors (for contracts in excess of \$10,000) from discriminating on the basis of race, color, religion, sex, or national origin.

The preamble to the committee substitute declares that, despite these federal and state laws banning discrimination in employment and pay in both the public and private sectors, wage

differentials persist between women and men and between minorities and nonminorities in the same jobs and in jobs that are dissimilar but require equivalent composites of skill, labor, effort, responsibility, and working conditions.

Secretary of Labor and Employment Security

The head of the Department of Labor and Employment Security is the Secretary of Labor and Employment Security. The secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor (s. 20.171(1), F.S.).

III. Effect of Proposed Changes:

The committee substitute creates the Equal Pay Commission Act and requires the Secretary of Labor and Employment Security to appoint a 9-member commission, known as the "Equal Pay Commission," to study wage disparities in the public and private sectors between men and women and between minorities and nonminorities. The commission is to be appointed within 90 days after the committee substitute becomes a law to include the following members:

- Two representatives of business in the state, appointed from among individuals nominated by state business organizations and business trade associations.
- Two representatives of labor organizations nominated by state labor federations. For purposes of these appointments, a "state labor federation" must be chartered by a federation of national or international unions; must admit local unions into membership; and must exist primarily to carry on educational, legislative, and coordinating activities.
- Two representatives from organizations with objectives that include the elimination of pay disparities between men and women or between minorities and nonminorities. These organizations must have undertaken advocacy, educational, or legislative initiatives in pursuit of those objectives.
- Three individuals from higher education or research institutions who have expertise in the collection and analysis of data concerning pay disparities and whose research has already been used in efforts to promote the elimination of those disparities.

The committee substitute requires the commission, by January 2003, to submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of Labor and Employment Security. The report must comprise a full and complete study of the extent of wage disparities, in both the public and private sectors, between men and women and between minorities and nonminorities; the factors that cause or tend to cause wage disparities, including segregation between women and men and between minorities and nonminorities across and within occupations, payment of lower wages for work in female-dominated occupations, child-rearing responsibilities, and education and training; and the consequences of wage disparities on the economy and on affected families.

The committee substitute also requires the report to identify actions, including proposed legislation, which are likely to lead to the elimination and prevention of wage disparities.

The committee substitute authorizes per diem and travel expenses for commission members, but requires commission members to serve without compensation.

The committee substitute assigns the Department of Labor and Employment Security as the agency responsible for providing staff and administrative support for the commission. The committee substitute also provides the department an appropriation of \$175,000 from the General Revenue Fund to implement the committee substitute during the 2002-2003 fiscal year.

The committee substitute provides that the statutory authority creating the commission will expire June 30, 2003, thereby dissolving the commission, presumably after the commission has completed its study and submitted its report.

The committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Through the creation of the Equal Pay Commission, which is directed to complete a full and complete study of wage disparities in the public and private sectors between men and women and between minorities and nonminorities, the committee substitute increases the amount of research available to businesses and the Legislature on the extent, potential causes, and consequences of wage disparity.

C. Government Sector Impact:

Based upon the fiscal impact of other recent commissions and task forces staffed by the Department of Labor and Employment Security, the department estimates it would need approximately \$250,000 to support the Equal Pay Commission during fiscal year 2002-2003. If the commission extended its work beyond fiscal year 2002-2003, a smaller amount may be necessary in subsequent fiscal years. This amount includes such items as staffing of the commission, an executive director and an assistant director, travel expenses, meeting space, court reporting, and miscellaneous supplies. Alternatively, if

the department were to staff the commission within existing resources (without adding the additional 2 FTEs), the department estimates a fiscal impact of approximately \$175,000 for fiscal year 2002-2003.

The committee substitute requires the commission to submit its report by January 2003. The commission, therefore, is expected to require staff and administrative support for about 7 to 8 months if the report is timely submitted. The committee substitute provides an appropriation of \$175,000, representing a pro rata share of the department's cost estimate for the provision of staff and administrative support for a full year.

VI. Technical Deficiencies:

The potential dissolution of the Department of Labor and Employment Security presents some logistics difficulties which can be addressed indirectly with transfer clauses in that legislation, should this study panel be made a part of that transfer.

VII. Related Issues:

The budget estimate for this bill contemplates the use of a court reporter. The creation of study groups by statute for time-limited purposes is commonplace. The use of court reporter transcribed proceedings is quite uncommon unless there is a consequence for which judicial notice is contemplated. Transcription by a less expensive means of audio or videotape usually suffices.

The United States Department of Labor's Bureau of Labor Statistics collects, updates, and analyzes a wealth of data on employment trends in the domestic labor market. Additional studies are also undertaken by the University of Florida's business statistics program and the Legislature's Office of Economic and Demographic Research. The Department of Management Services annually publishes an annual workforce report that discusses many of the trends and conditions on state employment.¹

VIII. Amendments:

#1 by Governmental Oversight and Productivity:
Deletes the two full-time equivalent positions from the bill.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹ State of Florida, Department of Management Services, *Annual Workforce Report*, Calendar Year 2000.