

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 300

INTRODUCER: Senators Rouson and Campbell

SUBJECT: Florida Commission on Human Relations

DATE: January 29, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 300 amends the Whistle-Blower's Act to increase the length of time a person alleging a prohibited personnel action has to file a complaint with the Florida Commission on Human Relations (Commission) or the Chief Inspector General and amends various other time period requirements.

The bill also changes quorum requirements for the Commission and revises the number of nominees that the Commission recommends for the Florida Civil Rights Hall of Fame.

Additionally, the bill revises the statute of limitations for bringing cause of action under the Florida Civil Rights Act, deletes registration requirements for facilities claiming the housing for older persons exemption, and deletes requirement that the Commission or the Attorney General investigate public housing discrimination complaints.

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.<sup>1</sup> 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).<sup>2</sup> 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.<sup>3</sup> The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within Florida.<sup>4</sup> At least one member of the Commission must be 60 years of age or older.<sup>5</sup> The Commission is empowered to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice,<sup>6</sup> as defined by the Florida Civil Rights Act of 1992.<sup>7</sup>

### **Quorum for Commission Meeting**

While the Commission is comprised of 12 members, it currently has only eight commissioners serving on its board.<sup>8</sup> All of the terms for the eight commissioners terms have expired. The commissioners are continuing to serve until they are either reappointed or until their seats are filled by another appointment.<sup>9</sup>

Current law provides that seven members constitute a quorum for the Commission to conduct business.<sup>10</sup> 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 two members were to resign, the Commission could no longer conduct official business at all.<sup>11</sup> Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.<sup>12</sup>

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<sup>1</sup> Section 760.03, F.S.

<sup>2</sup> Section 760.04, F.S.

<sup>3</sup> Section 760.03(1), F.S.

<sup>4</sup> Section 760.03(2), F.S.

<sup>5</sup> *Id.*

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

<sup>7</sup> Section 760.06(5), F.S.

<sup>8</sup> *See Meet the Commissioners*, Florida Commission on Human Relations, available at [http://fchr.state.fl.us/about\\_us/meet\\_the\\_commissioners](http://fchr.state.fl.us/about_us/meet_the_commissioners) (last visited on Jan. 26, 2018).

<sup>9</sup> Florida Commission on Human Relations, *SB 300/HB 307 Bill Analysis* (2017) (copy on file with the Governmental Oversight and Accountability Committee).

<sup>10</sup> Section 760.03(5), F.S.

<sup>11</sup> *See supra* note 9.

<sup>12</sup> 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.

### **Florida Civil Rights Hall of Fame**

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.<sup>13</sup> 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.<sup>14</sup> The Commission oversees and administers the Hall of Fame, excluding the normal costs of operations, repairs, and maintenance, which is the responsibility of DMS.<sup>15</sup> The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.<sup>16</sup> 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.<sup>17</sup>

With its limited resources, the Commission has struggled to make the minimum number of 10 recommendations each year.<sup>18</sup>

### **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.<sup>19</sup> 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 violation.<sup>20</sup> The Commission must determine within 180 days whether reasonable cause exists to believe that a discriminatory practice occurred.<sup>21</sup>

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.<sup>22</sup> A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.<sup>23</sup> If the Commission does not find reasonable cause, the claimant may still request an administrative hearing under provisions of ch. 120, F.S.<sup>24</sup> If the Commission fails to make a

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<sup>13</sup> Section 760.065, F.S.; *see* ch. 2010-53, L.O.F.

<sup>14</sup> Section 760.065(1), F.S.

<sup>15</sup> Section 760.065(5), F.S.

<sup>16</sup> Section 760.065(3)(a), F.S.

<sup>17</sup> Section 760.065(3)(b), F.S.

<sup>18</sup> *See supra* note 9.

<sup>19</sup> Section 760.11(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> 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.

<sup>22</sup> Section 760.11(4), F.S.

<sup>23</sup> Section 760.11(5), F.S.

<sup>24</sup> Section 760.11(7), F.S.

determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.<sup>25</sup>

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between the Commission finding reasonable cause and the statute of limitations.<sup>26</sup> 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."<sup>27</sup> 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 liability<sup>28</sup> applies when the Commission fails to make a determination.<sup>29</sup>

### **Florida Fair Housing Act**

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act.<sup>30</sup> It is the state's policy to provide for fair housing throughout the state.<sup>31</sup> 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.<sup>32</sup> The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.<sup>33</sup> 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.<sup>34</sup> The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup>

Certain housing for older persons is also exempt from charges of discrimination based on familial status.<sup>38</sup> 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.<sup>39</sup> The housing

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<sup>25</sup> Section 760.11(8), F.S.

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

<sup>27</sup> *Id.*

<sup>28</sup> Section 95.11(3)(f), F.S.

<sup>29</sup> *Joshua*, 768 So. 2d at 439.

<sup>30</sup> Sections 760.20-760.37, F.S.

<sup>31</sup> Section 760.21, F.S.

<sup>32</sup> Section 760.34(1), F.S.

<sup>33</sup> Section 760.34(2), F.S.

<sup>34</sup> Section 760.34(1), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 760.29, F.S.

<sup>37</sup> Section 760.29(1)(a)1. and 2., F.S.

<sup>38</sup> Section 760.29(4), F.S.

<sup>39</sup> Section 760.29(4)(b), F.S.

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.<sup>40</sup> 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.<sup>41</sup> The Commission may impose an administrative fine of up to \$500 for submission of false information, but there is no penalty for failure to register with the Commission.<sup>42</sup> Failure to register does not prohibit a community from claiming the exemption.<sup>43</sup>

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."<sup>44</sup> The registry is not determinative as to whether the 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 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.

### **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.<sup>45</sup> 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.<sup>46</sup> 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 of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status.<sup>47</sup> This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup> If the Commission or the Attorney General

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<sup>40</sup> Section 760.29(4)

<sup>41</sup> Section 760.29(4)(e), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *See supra* note 9.

<sup>45</sup> Section 760.60(1), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Section 760.60(2), F.S.

<sup>50</sup> *Id.*

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.<sup>51</sup>

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.<sup>52</sup> 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.<sup>53</sup>

### **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.<sup>54</sup> 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.<sup>55</sup>

Within three working days, the Commission or the CIG must acknowledge receiving the complaint and provide copies of the complaint to the parties.<sup>56</sup> The Commission must then further notify, within 15 days, the complainant that their complaint has been received.<sup>57</sup> 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.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup>

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

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<sup>51</sup> *Id.*

<sup>52</sup> Section 760.60(3), F.S.

<sup>53</sup> *Id.*

<sup>54</sup> Section 112.31895(2), F.S. *See also* s. 112.3187, F.S.

<sup>55</sup> Section 112.31895(1)(a), F.S.

<sup>56</sup> Section 112.31895(1)(b), F.S.

<sup>57</sup> Section 112.31895(2)(b), F.S.

<sup>58</sup> Section 112.31895(2)(c), F.S.

<sup>59</sup> Section 112.31895(3)(d), F.S.

<sup>60</sup> *Id.*

the Public Employees Relations Commission (PERC)<sup>61</sup> or petition the agency for corrective action.<sup>62</sup> A complainant may file a complaint against the employer-agency with the PERC after the termination of an investigation by the Commission.<sup>63</sup> This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.<sup>64</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 112.31895, F.S., to provide that a complainant must file a complaint no later than 365 days after the prohibited personnel action.

The bill provides that the Commission or the CIG must respond within 5 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 from 60 days to 21 days.

**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 each year for the Governor's consideration. This change prevents the Commission from violating the law if it submits less than ten recommendations due to a lack of nominees.

**Section 4** amends s. 760.11, F.S., to provide that a civil action alleging a violation of the Florida Civil Rights Act must commence no more than 4 years after the date that the alleged violation occurred.

**Section 5** deletes s. 760.29(4), 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.

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<sup>61</sup> 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.

<sup>62</sup> Section 112.31895(3)(e)3., F.S.

<sup>63</sup> Section 112.31895(4)(a), F.S.

<sup>64</sup> *Id.*

**Section 6** amends s. 760.31, F.S., to delete 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.

**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 the time for the Commission or the Attorney General to resolve the dispute by informal methods from 30 days to 45 days.

**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.<sup>65</sup>

#### **VI. Technical Deficiencies:**

None.

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<sup>65</sup> See *supra* note 9.



**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.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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