

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 853 Housing Discrimination
SPONSOR(S): Civil Justice & Claims Subcommittee; Davis
TIED BILLS: IDEN./SIM. BILLS: SB 306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	10 Y, 4 N, As CS	Tuszynski	Bond
2) Judiciary Committee	14 Y, 1 N	Tuszynski	Poche

SUMMARY ANALYSIS

The Florida Commission on Human Relations (Commission) was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws, including the Florida Fair Housing Act (FFHA). Modeled upon the federal Fair Housing Act, the FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. A person aggrieved by a discriminatory housing practice may file a complaint with the Commission, and later pursue administrative or civil action if the Commission is unable to obtain the respondent's compliance with the FFHA.

The Commission is certified as a "substantially equivalent" agency by the United States Department of Housing and Urban Development (HUD) and, through annual work share agreements, receives and investigates housing discrimination complaints referred by HUD. HUD provides funding to the Commission through the Fair Housing Assistance Program (FHAP) for processing complaints, training, technical assistance, and the creation and maintenance of data information systems.

Recent state court judicial decisions interpreting the FFHA have held that a person must first exhaust his or her administrative remedies before pursuing a civil action under the FFHA. However, a person aggrieved by housing discrimination may commence a civil action at any time under the federal Fair Housing Act, without regard to whether a complaint was filed with HUD or the status of any complaint. Due to this disparity, HUD maintains that the FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act.

CS/HB 853 amends the FFHA to provide that a person aggrieved by a discriminatory housing practice is not required to exhaust his or her administrative remedies prior to bringing a civil action under the FFHA. This change will make the FFHA substantially equivalent to the federal Fair Housing Act.

The bill does not appear to have a fiscal impact on state government. However, the state may lose federal funding of approximately \$850,000 annually should the bill fail to pass. This bill does not appear to have a fiscal impact on local governments.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Commission on Human Relations (Commission) was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws. The Commission investigates complaints of discrimination under the Florida Fair Housing Act of 1983, the Florida Civil Rights Act of 1992, and the Whistle-Blower's Act of 1999.

Florida Fair Housing Act

The Florida Fair Housing Act (FFHA) is modeled on the federal Fair Housing Act.¹ The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.² In addition, protection is afforded to persons who are pregnant or in the process of becoming legal custodians of children 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.³

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.⁴ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁵ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.⁶ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may initiate civil action or petition for an administrative determination.⁷ If the Commission finds reasonable cause, the claimant may request that the Attorney General bring the civil action against the respondent.⁸ A civil action must be commenced within two years after the alleged discriminatory act occurred.⁹ The court may continue a civil case if conciliation efforts by the Commission or by a local housing agency are likely to result in a satisfactory settlement.¹⁰ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.¹¹

Remedies available under the FFHA include fines and actual and punitive damages.¹² The court may also award reasonable attorney's fees and costs to the Commission.¹³

¹ Part II of Chapter 760, F.S., is the Florida Fair Housing Act. Florida Fair Housing Commission, *Housing Act*, <https://fchr.myflorida.com/housing-act/> (last accessed February 15, 2018).

² S. 760.23(1), F.S.

³ SS. 760.23(6)-(9), F.S.

⁴ S. 760.34(1) and (2), F.S.

⁵ S. 760.34(1), F.S.

⁶ Id.

⁷ S. 760.34(4), F.S.

⁸ Id.

⁹ S. 760.35(1), F.S.

¹⁰ Id.

¹¹ S. 760.35(2), F.S.

¹² Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. S. 760.34(7)(b), F.S.

¹³ S. 760.34(7)(c), F.S.

Federal Fair Housing Act

Substantially Equivalent Agencies

The United States Department of Housing and Urban Development (HUD) administers and enforces the federal Fair Housing Act.¹⁴ The federal Fair Housing Act recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful housing discrimination.¹⁵ HUD may certify a state or local government agency as “substantially equivalent” if HUD determines that the state or local law and the federal Fair Housing Act are substantially equivalent with respect to:¹⁶

- The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;
- The procedures followed by such agency;
- The remedies available to such agency; and
- The availability of judicial review of such agency’s action.

HUD has developed a two-step process of substantial equivalency certification. The first step considers the *adequacy of the law*, meaning that the law which the agency administers facially provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act.¹⁷ A determination of the adequacy of a state or local fair housing law “on its face” is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the law by competent authorities will be considered in making the determination.¹⁸ The second step considers the *adequacy of performance* of the law, meaning that in operation the fair housing law provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act.¹⁹

If a housing discrimination complaint is filed with HUD under the federal Fair Housing Act and the complaint falls within the jurisdiction of a substantially equivalent agency, HUD must refer the complaint to the local or state agency and may take no further action, except under limited circumstances.²⁰

The Commission serves as the certified substantially equivalent HUD agency in Florida.²¹ Through annual work-share agreements with HUD, the Commission accepts and investigates housing discrimination cases from HUD. According to the Commission’s Fiscal Year 2010-11 through Fiscal Year 2016-17 Annual Reports, housing complaints were, on average, 15% of all complaints received by the Commission.²²

¹⁴ 42 U.S.C. § 3601, et seq.

¹⁵ 42 U.S.C. § 3610

¹⁶ Id.

¹⁷ 24 C.F.R. § 115.201

¹⁸ 24 C.F.R. § 115.204

¹⁹ 24 C.F.R. § 115.201

²⁰ 42 U.S.C. 3610

²¹ HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last accessed February 15, 2018).

²² Florida Commission on Human Relations, *Annual Reports*, available at <https://fchr.myflorida.com/annual-reports/> (last accessed February 15, 2018).

Florida Commission on Human Relations Resolved Housing Discrimination Cases

Closure Type	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17
No Cause	126(69%)	92(50%)	138(73%)	123(67%)	106 (58%)	74 (42%)
Administrative	15(8%)	50(27%)	29(15%)	52(28%)	75 (41%)	80 (45%)
Cause	14(8%)	4(2%)	11(6%)	0(0%)	1 (0.5%)	18 (10%)
Settlement	16(9%)	18(10%)	0(0%)	0(0%)	0 (0%)	0 (0%)
Withdrawal with Benefits	11(6%)	19(11%)	12(6%)	10(5%)	9 (5%)	5 (3%)
TOTAL CLOSURES	182	183	190	185	182	177

Fair Housing Assistance Program

A substantially equivalent agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).²³ FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. Financial assistance provides support for:

- The processing of dual-filed complaints;
- Training under the Fair Housing Act and the agencies' fair housing law;
- The provision of technical assistance;
- The creation and maintenance of data and information systems;
- The development and enhancement of education and outreach projects, special enforcement efforts, partnership initiatives, and other fair housing projects.²⁴

The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission. Trust fund monies received from HUD in Fiscal Year 2016-17 totaled \$847,255, an increase from the Fiscal Year 2015-16 total of \$490,900.

Florida Commission on Human Relations Operating Trust Fund

All Revenues	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17
EEOC Federal Contract	\$817,100	\$259,850	\$540,950	\$335,841	\$410,714	\$597,021
HUD Contract/Grant	\$940,219	\$677,998	\$485,462	\$559,469	\$490,900	\$847,255
HUD Registration	\$33,415	\$32,149	\$23,680	\$35,720	\$6,100	\$0
Interest Earnings	\$28,565	\$26,665	\$15,250	\$15,313	\$10,576	\$7,292
Refunds	\$9,117	\$57,777	\$43,361	\$7,848	\$583	\$0
TOTAL	\$1,828,416	\$1,054,439	\$1,065,342	\$954,191	\$918,873	\$1,451,568
HUD Percentage of Revenues	54.37%	73.21%	48.49%	63.93%	54.09%	58.37%

Exhaustion of Administrative Remedies

A series of recent judicial decisions regarding the applicability of administrative remedies under the FFHA have threatened the Commission's status as a substantially equivalent HUD agency.

In 2004, the Fourth District Court of Appeal held in *Bellellete v. Halford* that an aggrieved person must first exhaust administrative remedies under the FFHA before commencing a civil action in state court, citing the doctrine of exhaustion of administrative remedies.²⁵ The Court's holding was not based upon

²³ United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP)*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last accessed February 15, 2018).

²⁴ 24 C.F.R. § 115.300.

²⁵ *Bellellete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); See also *Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. Black's Law Dictionary (10th ed. 2014), exhaustion of remedies.

an analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act. The *Bellellete* holding has been criticized by the Florida Attorney General, and has been rejected by the U.S. District Court for the Southern District of Florida.²⁶ Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal, have adopted the *Bellellete* holding, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.²⁷

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of the FFHA in *Bellellete* requiring the exhaustion of administrative remedies renders the Florida law fundamentally inconsistent with federal law. The federal Fair Housing Act explicitly allows an aggrieved person to commence a civil action whether or not a complaint has been filed with HUD and without regard to the status of any such complaint.²⁸ Efforts to amend the FFHA during the 2012,²⁹ 2013,³⁰ 2014,³¹ and 2016³² legislative sessions were unsuccessful and courts continue to apply the *Bellellete* rule in FFHA civil actions.

On July 2, 2015, HUD notified the Commission that it would suspend the Commission's participation in FHAP if the FFHA was not amended by January 25, 2016, to overcome the judicially-created requirement that a plaintiff exhaust their administrative remedies as a condition precedent to filing a housing discrimination claim under the FFHA.³³ In light of the legislative calendar, HUD agreed to extend the deadline to amend the FFHA until March 12, 2016.³⁴

On March 16, 2016, HUD recognized pending litigation in the Third District Court of Appeal³⁵ and vowed to refrain from making any decision regarding suspension of the Commission's participation in FHAP during the pendency of the judicial proceedings.³⁶ In December 2016, the Third District Court of Appeal applied the *Bellellete* rule and held that a plaintiff must exhaust all administrative remedies before commencing an action in civil court, determining that "[w]hether the [Florida Fair Housing Act] should be amended to conform precisely to the federal [Fair Housing Act] is a matter for the Legislature."³⁷

Effect of Proposed Changes

CS/HB 853 amends the FFHA to establish that a person alleging a discriminatory housing practice is not required to petition for an administrative hearing or exhaust his or her administrative remedies prior to bringing a civil action under the FFHA. Therefore, a person who alleges that he or she has been injured by unlawful housing discrimination may file a civil action at any time under the FFHA regardless of whether a complaint has been filed with the Commission or the status of any such complaint.

²⁶In *Milsap v. Cornerstone Residential Management, Inc.*, 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on *Bellellete* as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General intervened and argued that *Bellellete* was wrongly decided, the court reversed itself and reinstated the FFHA claims. See, 2010 WL 427436 (S. D. Fla. 2010).

²⁷*Sun Harbor Homeowners Association v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012); *State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA 2015); *HOPE v. SPV Realty, L.C.*, Case No. 14-32184-CA-01 (Eleventh Judicial Circuit April 30, 2015).

²⁸ 42 U.S.C. § 3613.

²⁹ SB 442 (Senator Braynon) and HB 283(Representative Watson).

³⁰ SB 310 (Senator Braynon) and HB 523 (Representative Watson).

³¹ SB 410 (Senator Braynon) and HB 453 (Representative Watson).

³² SB 7008 (Senate Governmental Oversight and Accountability) and HB 339 (Representative Rouson).

³³ Letter from Sara K. Pratt, Deputy Assistance Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to Michelle Wilson, Executive Director, Florida Commission on Human Relations, (July 2, 2015) (on file with Judiciary Committee).

³⁴ Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to Michelle Wilson, Executive Director, Florida Commission on Human Relations, *Subject: Florida Fair Housing Act - Exhaustion of Administrative Remedies*, (March 16, 2016) (on file with Judiciary Committee).

³⁵ *Housing Opportunities Project v. SPV*, 212 So.3d 419 (Fla. 3rd DCA 2016).

³⁶ Supra, FN 34.

³⁷ Supra, FN 35 at 424.

The bill prohibits the filing of a civil action under the FFHA if the claimant and the respondent have entered into a conciliation agreement which has been approved by the Commission, other than to enforce the terms of the agreement or file a civil action once an administrative hearing has begun. These provisions are consistent with the federal Fair Housing Act.

The bill also makes conforming changes to s. 760.07, F.S.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 760.07, F.S., relating to remedies for unlawful discrimination.

Section 2: Amends s. 760.34, F.S., relating to enforcement.

Section 3: Amends s. 760.35, F.S., relating to civil actions and relief; administrative procedures.

Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Office of the State Courts Administrator indicates an indeterminate fiscal impact due to the unavailability of data to establish additional revenue expected from an increase in civil filings and increased expenditures due to additional workload.³⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Commission does not expect a fiscal or workload impact from the bill. While the Commission maintains that existing law allows a person aggrieved by a discriminatory housing practice to commence a civil action without first filing an administrative complaint, the bill clarifies that individuals can bypass the investigation and conciliation process to access Florida's court system.

The Commission received \$847,280 from HUD in FY 2016-2017.

³⁸ Information from an Agency Analysis of an identical bill: Office of State Courts Administrator, *2016 Judicial Impact Statement SB 7008* (Nov. 2, 2015).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Civil Justice and Claims Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical change to the title of the bill. This analysis is drafted to the committee substitute as passed by the Civil Justice and Claims Subcommittee.