

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1007 Florida Commission on Human Relations
 SPONSOR(S): Thompson
 TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee	9 Y, 1 N, As CS	DeZego	De La Paz
2) Criminal & Civil Justice Policy Council			
3) Criminal & Civil Justice Appropriations Committee			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

The Florida Commission on Human Relations (Commission) can receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice under the Florida Civil Rights Act of 1992, the Florida Fair Housing Act of 1983, and the Whistle-Blower's Act of 1999. In part, this bill does the following:

- Replaces the term "handicap" with "disabilities" and expands the definition of "disability" to be consistent with the Americans with Disabilities Act;
- Expands the Commission's power of discovery under the Florida Fair Housing Act from the ability to issue subpoenas to any method of discovery authorized by the Florida Rules of Civil Procedure;
- Clarifies that women affected by pregnancy, childbirth, or any medical condition related to either of these must be treated the same for all employment-related purposes as other persons similar in their ability or inability to work;
- Removes the requirement for notice of a complaint or notice of reasonable cause to be sent by registered mail to a petitioner or the person who allegedly committed a violation under the Florida Fair Housing Act and provides for it to be sent by any means;
- Extends the time for an aggrieved person to respond to a complaint;
- Increases the registration fee to the Commission for a facility or community for older persons claiming an exemption from portions of the Florida Fair Housing Act from \$20 to \$75;
- Provides for a fine of \$500 when a facility or community fails to register or renew its registration with the Commission;
- Provides that the Commission is not liable for any costs, fees or expenses, including court reporting or recordation fees, associated with administrative hearings through the Division of Administrative Hearings under the Florida Civil Rights Act;
- Provides that if the final order issued by the Commission determines that a discriminatory housing practice has occurred, the complainant may request the Attorney General to bring an action in the name of the state on behalf of the person or the person may proceed with the case as if there was a reasonable cause determination.
- Creates a direct-support organization for the Commission; and
- Provides the Commission with rule-making authority to implement the direct-support organization.

This bill appears to have an indeterminate minimal positive fiscal impact on state revenues. This bill appears to have a negative fiscal impact of \$704,084 on the Division of Administrative Hearings and a corresponding positive fiscal impact on the Commission of \$704,084 for FY 2008-2009. This bill appears to have a negative fiscal impact of \$55 on facilities and communities for older persons, which are claiming an exemption, and a negative fiscal impact of \$500 if they fail to register with the Commission.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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 DATE: 3/20/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Commission on Human Relations

The Florida Commission on Human Relations (the Commission) was established as a community relations-based agency in 1969.¹ With the passage of the Florida Human Rights Act of 1977, the Commission became an enforcement agency.² This act permitted the Commission to investigate and resolve employment discrimination complaints through administrative and legal means. Over time, the purview of the Commission expanded with the passage of the Florida Fair Housing Act in 1983,³ the Florida Civil Rights Act in 1992,⁴ and the Whistle-Blower's Act in 1999.⁵

Part I of ch. 760, F.S., is the Florida Civil Rights Act, the purpose of which is to protect individuals against discrimination in areas of employment, housing, and other opportunities based on race, color, religion, sex, national origin, age, handicap, or marital or familial status.

Section 760.03, F.S., creates the Commission to carry out the purposes of this part. Section 760.04, F.S., assigns the Commission to the Department of Management Services; however, the Commission is not subject to any control of, supervision by, or direction from the department.

Pursuant to s. 760.06, F.S., the Commission can receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice.

In addition, the Commission is a Fair Employment Practice Agency (FEPA) under the U.S. Equal Employment Opportunity Commission (EEOC).⁶ As a FEPA, the Commission is provided funds to investigate and resolve employment civil rights cases.

¹ Section 1, ch. 69-287, L.O.F.

² Section 1, ch. 77-341, L.O.F.

³ Sections 1-19, ch. 83-221, L.O.F. (currently ss. 760.20-760.37, F.S.)

⁴ Chapter 92-177, L.O.F. (currently ss. 760.01-760.11, F.S.)

⁵ Section 448.102, F.S.

⁶ See <http://www.eeocoffice.com/States/florida/florida.htm>. Last accessed March 20, 2009.

The Florida Civil Rights Act

Part I of ch. 760 (ss. 760.01-760.11, F.S.) and s. 509.092, F.S., constitute the Florida Civil Rights Act of 1992 (FCRA).⁷

Section 760.08, F.S., provides that all persons are entitled to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion.

Section 509.092, F.S., allows operators of public lodging establishments and public food service establishments to refuse accommodations or service to any person who is objectionable or undesirable to the operator. However, consistent with s. 760.08, F.S., such refusal cannot be based upon race, creed, color, sex, physical disability, or national origin. The term “public accommodations” does not include lodge halls or other similar facilities of private organizations that are made for public use either occasionally or periodically.⁸

Section 760.10, F.S., addresses prohibited actions related to various aspects of employment, to include hiring, classification of employees or applicants; employment agencies; labor organizations; training; licensure, certification or credentialing; and advertising. Generally, it is unlawful to discriminate against a person because of his or her race, color, religion, sex, national origin, age, handicap, or marital status.

Florida Fair Housing Act

Part II of ch. 760, F.S., (ss. 760.20-760.37, F.S.) constitutes the Florida Fair Housing Act. It is the state’s policy, as provided in s. 760.21, F.S., to provide, within constitutional limits, fair housing throughout the state.

Section 760.23, F.S., specifies what constitutes unlawful housing discrimination. This act defines unlawful housing discrimination. It is unlawful to refuse to sell or rent or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. Those who are pregnant or in the process of securing legal custody of a child 18 years of age or younger;⁹ and disabled, or associated with a disabled person are all protected.¹⁰

The act also addresses prohibited actions related to various aspects of housing services, to include brokerage services; financing; and land use decisions. Generally, it is unlawful to discriminate against a person because of his or her race, color, national origin, sex, handicap, familial status, or religion.

Miscellaneous Provisions Related to Prohibited Discrimination

Section 760.50, F.S., provides that any person with or perceived as having acquired immune deficiency syndrome (AIDS), acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

Section 760.60, F.S., relates to membership in clubs with over 400 members. This provision states that it is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership, if the club provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It also prohibits notices or advertisements containing statements that deny membership privileges to these classes of individuals. An exception to these restrictions is provided for

⁷ Chapter 92-177, L.O.F.

⁸ Section 760.07, F.S.

⁹ Section 760.23(6), F.S.

¹⁰ Section 760.23(7), F.S.

fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

Effect of Bill

Definition of Disability vs. Handicap

Current Law

Currently, the FCRA does not define “handicap.” However, the Fair Housing Act does define that term to mean:

(a) A person who has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person who has a developmental disability as defined in s. 383.963.¹¹

This definition is substantially similar to the term “disability” used in the Americans with Disabilities Act (ADA). The term “disability” is defined as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.”¹² It further defines what constitutes physical or mental impairment. Under the ADA, a physical impairment is:

“Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.”

The ADA defines a mental or psychological disorder as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.¹³

In addition, paragraph (5) of the federal definition also lists certain conditions that are not included within the definition of disability. Excluded conditions under the term “disability” in federal law include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), was signed into law on September 25, 2008 and became effective January 1, 2009.¹⁴ The Amendments Act retained the ADA's basic definition of “disability” as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changed the way that these statutory terms should be interpreted in several ways.¹⁵ The Amendments Act, in part, did the following:

- Expanded the definition of “major life activities;”
- Provided that mitigating measures, other than ordinary eyeglasses or contact lenses, are not considered in assessing whether an individual has an impairment;
- Clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and

¹¹ Section 760.22(7), F.S.

¹² *Id.*

¹³ See <http://www.usdoj.gov/crt/ada/reg3a.html>. Last accessed March 11, 2009.

¹⁴ See <http://www.eeoc.gov/policy/ada.html>. Last accessed March 11, 2009.

¹⁵ http://www.eeoc.gov/ada/amendments_notice.html

- Changed the definition of "regarded as" so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead provides that an applicant or employee is "regarded as" disabled if he or she is subject to an action prohibited by the ADA based on an impairment that is not transitory and minor.

As individuals with disabilities and organizations representing such individuals began to object to the use of such terms as "handicapped person" or "the handicapped," Congress changed the federal law accordingly. As a result, the use of the terms "disability" (instead of "handicap") and "individual with a disability" (instead of an "individual with a handicap") have been phased out of Federal law. Florida law continues to use the term "handicap" and does not provide that certain conditions are excluded from its definition of handicap.

Proposed Changes

This bill amends ch. 760, F.S., to make the FCRA consistent with the terminology used in the Americans with Disabilities Act (ADA). This bill replaces the term "handicap" with "disabilities," and provides that the disability of an individual means:

- A physical or mental impairment that substantially limits one or more of the major life activities;
- A record of such impairment;
- Being regarded as having such an impairment; or
- Having a developmental disability.

This bill defines major life activities as including, but not limited to:

- Caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- Operation of a major bodily function such as the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Whether or not a major life activity is impaired is determined without regard to effects of improvement by use of mitigating measures such as medication, prosthetics, and reasonable accommodations.

This bill provides that "substantially limits" means to materially restrict a person's ability to perform an activity. A transitory or minor impairment is one where the expected duration is six months or less. This bill provides that a person is regarded as having such impairment if he or she has been subjected to an action prohibited in the FCRA.¹⁶

In addition, this bill provides that a "disability" does not include the following:

- Transvestism,
- Transsexualism,
- Pedophilia,
- Exhibitionism,
- Voyeurism,
- Gender identity disorders (not resulting from physical impairments or sexual disorders),
- Compulsive gambling,
- Kleptomania, or
- Psychoactive substance use disorders resulting from current illegal drug use.

¹⁶ Sections 760.01-760.11, F.S. or s. 509.092, F.S.

Powers of the Commission

Current Law

Under the Florida Fair Housing Act, the Commission may currently issue subpoenas to compel the attendance of testimony of witnesses or to compel the production of books, papers, records, documents, and other evidence pertaining to any investigation or hearing convened.¹⁷

Proposed Changes

This bill expands the Commission's power of discovery to provide that the Commission may use any method of discovery authorized by the Florida Rules of Civil Procedure. Therefore, this bill provides that the Commission may engage in all types of discovery including interrogatories, discovery depositions, requests for admission and physical and mental examinations under this bill.

Discrimination Based on Sex

Current Law

Section 760.01, F.S. provides the purpose of the FCRA, which is to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status. In 1976, the U.S. Supreme Court ruled that discrimination based upon pregnancy was not sex discrimination under Title VII of the federal Civil Rights Act of 1964. As a result of that court's decision, Title VII was amended in 1978 to include the Pregnancy Discrimination Act (PDA), thereby providing specific coverage for pregnancy discrimination. The federal law provides that:

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work...

The terms "sex", "because of sex", "without regard to sex", and "on the basis of sex" are not defined in current Florida law. In 1991, a Florida appellate court held that Title VII of the federal law preempted Florida Law.¹⁸ However, when the Legislature amended the FCRA, it did not include the PDA language regarding sex. Since that time, some federal district courts have interpreted that there is no relief under the Florida act based on pregnancy because the Florida act was not amended.¹⁹ However, a Florida appellate court held in December 2008 that a pregnant woman may bring a discrimination claim against her employer in state court under FCRA.²⁰

Proposed Changes

This bill amends ch. 760.10, F.S., regarding unlawful employment practices. This bill clarifies that women affected by pregnancy, childbirth or any medical condition related to either of these must be treated the same for all employment-related purposes as other persons similar in their ability or inability to work.

¹⁷ Section 760.32, F.S.

¹⁸ *O'Loughlin v. Pinchback*, 579 So. 2d 788 (Fla. 1st DCA, 1991)

¹⁹ *Boone v. Total Renal Labs., Inc.*, 565 F. Supp.2d 1323 (M.D.Fla.2008)

²⁰ *Carsillo v. City of Lake Worth*, 995 So.2d 1118 (Fla. 4th DCA 2008)

Notification Procedures and Timeframes

Current Law

Florida law provides that a person who has been subject to a violation of the FCRA may file a complaint with the Commission within 365 days. Within five days of receiving a complaint, the Commission must send a copy of the complaint by registered mail to the person who allegedly committed the violation.²¹ That person then has 25 days from the time the complaint was filed to file an answer to the complaint.²² The Commission must determine if there is reasonable cause to believe that a discriminatory practice occurred within 180 days of the filing of a complaint.²³ If reasonable cause is found, then the Commission must notify the aggrieved person and the respondent by registered mail.²⁴

The Florida Auditor General found in 2004 that 60 percent of reviewed case files of the Commission exceeded the five-day period for mailing a copy of the complaint.²⁵ According to the Commission, for FY 2007-2008, 94 percent of cases were docketed within the required five-day period once the Commission adjusted the time period for "perfecting," which includes amending charges, attempting to reach a specific respondent, or correcting inaccurate or missing information.²⁶

Proposed Changes

This bill provides that within five days of receiving a complaint under the FCRA, the Commission must provide a copy of the complaint to the person who allegedly committed the violation. This bill removes the requirement to send the copy as well as a notification of whether or not there is reasonable cause by registered mail. Therefore, this bill allows the Commission to provide a copy of the notice by any means including e-mail, fax, mail, or personal service.

In addition, this bill provides that the respondent must respond in writing to the Commission and must send a copy of the response to the aggrieved person within 21 days after receiving the Notice of Filing Complaint.

Statute of Limitations for Commencement in Civil Suit

Current Law

Florida law provides that once there is a determination of reasonable cause, the aggrieved party may either:²⁷

- Bring a civil action against the person named in the complaint, or
- Request an administrative hearing under s.120.569, F.S., or s.120.57, F.S.

If the party brings a civil suit, the civil action must commence no later than one year after the date of determination of reasonable cause.²⁸ If the Commission fails to conciliate or determine whether there is reasonable cause on any complaint within 180 days of the filing of the complaint, then an aggrieved person may proceed with either a civil action or request an administrative hearing as if a determination of reasonable cause was found.²⁹

The Florida Supreme Court held that the general four-year statute of limitations for statutory violations applies to actions filed under ch. 760, F.S., if the Commission does not make a reasonable cause

²¹ Section 760.11(1), F.S.,

²² *Id.*

²³ Section 760.11(3), F.S.

²⁴ *Id.*

²⁵ Report of the Auditor General, Report No. 2004-034.

²⁶ Staff Analysis, Florida Commission on Human Relations. March 11, 2008.

²⁷ Section 760.11(4), F.S.

²⁸ Section 760.11(4), F.S.

²⁹ Section 760.11(8), F.S.

determination of a complaint within 180 days.³⁰ However, a federal court interpreting Florida law held that when a person “starts his own clock” and initiates a claim under this section, instead of waiting for a determination from the Commission, then he or she is entitled to a one year limitation period under the FCRA.³¹

Proposed Changes

This bill provides that any civil action filed under s. 760.11, F.S., must be commenced no later than four years after the date of the cause of action accrued. Furthermore, this bill clarifies that in ch. 760, F.S., the day of the act, event or default from which a period of time begins to run is not included in the computation of time. This bill provides that the Commission will have five days, excluding Saturdays, Sundays, and legal state holidays, to provide a respondent with a copy of a complaint.

Housing for Older Persons

Current Law

Section 760.29(4)(a), F.S., provides that the familial status provision of the Florida Fair Housing Act does not apply to housing for older persons. Housing for older persons is defined to mean “any state or federal program that the Commission determines is specifically designed and operated to assist elderly persons; is intended for, and solely occupied by, persons 62 years of age or older; or intended and operated for occupancy by persons 55 years of age or older.”³²

A facility claiming an exemption from ss. 760.23³³ and 760.25³⁴, F.S., of the Fair Housing Act must register with the Commission, which registration must be renewed every two years from the date of original filing. The Commission may establish a reasonable registration fee not to exceed \$20.³⁵ In addition to the fee, the facility or community must submit a letter stating that it complies with federal senior housing laws. The Commission may impose an administrative fine, not to exceed \$500, on a facility or community which knowingly submits false information. No fine is required for failure to register with the Commission.³⁶

Proposed Changes

This bill provides that to register with the Commission, a facility or community must submit a copy of its recorded documents establishing the community or facility for housing older persons in addition to the letter currently required. This bill increases the registration fee from \$20 to \$75 and provides that in addition to a \$500 fine for knowingly submitting false information to the Commission, the Commission may impose an administrative fine of \$500 on a facility or community which fails to register or renew its registration with the Commission, which registration must be renewed every two years.

³⁰ *Joshua v. City of Gainesville*, 768 So.2d 432, 433 (Fla.,2000)

³¹ *Freeman v. Walgreen Co.*, 407 F.Supp 2d 1317 (S.D. Fla. 2005)

³² Section 760.29(4)(a), F.S.

³³ Section 760.23, F.S., provides that it is unlawful to discriminate on the sale or rental of housing.

³⁴ Section 760.25, F.S., provides that it is unlawful to discriminate in the financing of housing or residential real estate transactions.

³⁵ Section 760.29(4)(e), F.S.

³⁶ *Id.*

Department of Administrative Hearings

Current Law

Florida Civil Rights Act:

Florida law provides that the Commission has 180 days from the filing of a complaint regarding a violation of the FCRA to determine if there is reasonable cause to believe that a discriminatory practice occurred.³⁷ Once there is a determination of reasonable cause, the aggrieved party may either:³⁸

- Bring a civil action against the person named in the complaint, or
- Request an administrative hearing under s.120.569, F.S., or s.120.57, F.S.

If a person elects to pursue an administrative hearing, the Commission may hear the case³⁹ or may request for it to be heard by an administrative law judge with the Division of Administrative Hearings.⁴⁰ The Commission currently does not hear any cases.⁴¹ An administrative hearing must be requested no later than 35 days after the date of determination of reasonable cause.⁴²

If an administrative law judge finds a violation of the FCRA has occurred, then the administrative law judge must issue a recommended order.⁴³ The Commission has 90 days from the date the recommended or proposed order is rendered to issue a final order adopting, rejecting, or modifying the recommended order.

If the Commission determines that there is no reasonable cause, it must dismiss the complaint. If a complaint is dismissed, a person may still request an administrative hearing within 35 days of the determination of no reasonable cause to be heard by the Division and not the Commission.⁴⁴

Final orders of the Commission are subject to judicial review.⁴⁵ Judicial review of any agency action is confined to the record transmitted or the court may remand a case to the agency for further proceedings consistent with the court's decision or set agency action when it finds that there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends on disputed facts.⁴⁶

The Commission currently transfers funds to the Division to conduct hearings.

Florida Fair Housing Act:

If the Commission has not been able to obtain voluntary compliance under the Fair Housing Act within 180 days of a complaint being filed, then the aggrieved person may commence a civil action in any appropriate court against the respondent or petition for an administrative hearing.⁴⁷ If the Commission finds reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved the Attorney General must bring an action in the name of the state on behalf of the aggrieved person.⁴⁸

³⁷ Section 760.11(3), F.S.

³⁸ Section 760.11(4), F.S.

³⁹ If the commission hears the case, then the final order must be issued by members of the commission who did not conduct the hearing.

⁴⁰ Section 120.569(2)(a), F.S.

⁴¹ Staff Analysis, Florida Commission on Human Relations. March 11, 2008.

⁴² Section 760.11(6), F.S.

⁴³ *Id.*

⁴⁴ Section 760.11(7), F.S.

⁴⁵ Section 760.11(13), F.S.

⁴⁶ Section 120.68(4), F.S.; Section 120.68(7)(a), F.S.

⁴⁷ Section 760.34(4), F.S.

⁴⁸ *Id.*

Proposed Changes

Florida Civil Rights Act:

This bill provides that if a party to a filed complaint elects to file for an administrative hearing, then the sending of the election may not be construed as making the Commission a party, a transmitting agency, an initiation agency, or a referral agency under s. 120.569, F.S. Therefore, this bill provides that the Commission is not liable for any costs, fees, or expenses, including court reporting or recordation fees, associated with an administrative law hearing under the FCRA. This bill provides an exception when the Commission initiates or is a party to an administrative hearing.

Florida Fair Housing Act:

This bill provides that if the Commission determines that there is no reasonable cause to believe that a discriminatory housing practice has occurred, then the Commission must dismiss the complaint. The aggrieved person may request an administrative hearing,⁴⁹ but such request must be made within 30 days after the service of the notice of the determination of no reasonable cause. This bill provides that any such hearing will be made by an administrative law judge and not by the Commission or a Commissioner. If the aggrieved person does not request a hearing within 30 days, then the claim is barred.

If the administrative law judge finds that a discriminatory housing practice occurred, then he or she must issue an appropriate recommended order to the Commission. Within 90 days from the date the recommended order is made, the Commission must issue a final order by adopting, rejecting or modifying the recommended order. The 90-day period may be extended by the consent of all parties. In addition, this bill provides that the Commission may allow the prevailing party reasonable attorney's fees as part of the costs. This bill provides Legislative intent that this provision regarding attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

This bill provides that if the Commission issues a final order determining a discriminatory housing practice has occurred, the aggrieved person may:

- Request the Attorney General to bring an action in the name of the state on behalf of the person to enforce the FCRA, or
- Proceed with the case as if there was a reasonable cause determination.

Direct-Support Organization

Current Law

A direct-support organization is typically created to give a governmental entity the flexibility to seek an additional funding source. Numerous direct-support organizations are provided for in statute including ones for the Guardian Ad Litem Program,⁵⁰ the Statewide Public Guardianship Office,⁵¹ and the Office of Tourism, Trade and Economic Development.⁵²

Proposed Changes

This bill creates a direct-support organization for the Commission. A direct-support organization (DSO) is defined as a not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State. The DSO is exempt from filing fees under s. 617.0122, F.S.

⁴⁹ Sections 120.569 and 120.57, F.S.

⁵⁰ Section 39.8298, F.S.

⁵¹ Section 744.7082, F.S.

⁵² Section 288.1229, F.S.

This bill provides that the DSO:

- Must be organized and operated exclusively to obtain funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer in its own name, securities, funds, or property; and make expenditures to or for the direct or indirect benefit of the Commission;
- Must be authorized to receive federal subsidies, endowments, grants and aid, but not donations from any public or private entity or individuals connected with entities for which the Commission has regulatory authority; and
- Must be operated in a manner consistent with the goals and purposes of the Commission and in the best interest of the state as determined by the Commission.

The bill provides for the appointment of a Board of Directors by the Executive Director of the Commission for three-year terms. However, the initial appointees will serve for one year, two years, or three years in the order to achieve staggered terms. A member may be reappointed when his term expires. In addition, the executive director or his or her designee, serves as an ex officio member of the board.

Members of the board must be Florida residents and knowledgeable about human and civil rights. A member may be removed by the Executive Director of the Commission for good cause with the approval of a majority of the board. The executive director must appoint a replacement for any vacancy which occurs.

The bill provides that the DSO must operate under a written contract with the Commission. The contract must provide for:

- Submission of an annual budget for approval by the executive director;
- Certification by the Commission that the DSO is complying with the terms of the contract and is doing so consistent with the goals and purposes of the Commission. (This certification must be made annually and reported in the official minutes of a meeting of the DSO.);
- The disclosure of the material provisions of the contracts; and
- The reversion of monies and property held by the DSO to:
 - The Commission if the DSO is no longer approved to operate for the Commission;
 - The Commission if the DSO ceases to exist; or
 - The state if the Commission ceases to exist.

The DSO must submit its federal application for recognition of tax exemption and its federal income tax return to the Commission. The DSO's fiscal year begins July 1st of one year and ends June 30th of the next year. In addition, the DSO must provide for a financial audit according to s. 215.981, F.S.⁵³

This bill provides that the Commission may permit the use of property, facilities, and personal services of the Commission by the DSO. In addition the Commission may prescribe, by contract, any condition that the DSO must comply with in order to use property, facilities, or personal services of the Commission. The Commission may not permit the use of its property facilities, or personal services by a DSO who does not provide equal employment opportunities regarding race, color, religion, sex, age, or national origin.

This bill provides that any transaction or agreement between the DSO and another DSO or entity must be approved by the executive director of the Commission. This bill also defines the term "personal services" as including full-time and part-time personnel.

The bill limits the DSO from exercising certain corporate powers.⁵⁴ The bill also prohibits state employees from receiving compensation for the DSO for service on the board of directors or for services rendered to the DSO.

⁵³ Section 215.981, F.S., provides requirements for audits of state agency DSOs.

In addition, this bill provides that the Commission may adopt rules to implement the DSO.⁵⁵

Miscellaneous

This bill amends s. 419.001(d), F.S. to replace the cross-reference to s. 760.22(7)(a), F.S., with ss. 760.02(4)(a)1- 760.02(4)(a)3 F.S., to reflect the reordering of the definitions in the Fair Housing Act.

B. SECTION DIRECTORY:

Section 1 amends s. 760.01, F.S., relating to the purpose of the Florida Civil Rights Act of 1992.

Section 2 amends s. 760.02, F.S., relating to definitions.

Section 3 amends s. 760.05, F.S., relating to functions of the commission.

Section 4 amends s. 760.06, F.S., relating to powers of the commission.

Section 5 amends s. 760.07, F.S., relating to remedies for unlawful discrimination.

Section 6 amends s. 760.08, F.S., relating to discrimination in places of public accommodation.

Section 7 amends s. 760.10, F.S., relating to unlawful employment practices.

Section 8 amends s. 760.11, F.S., relating to administrative and civil remedies.

Section 9 creates s. 760.12, F.S., relating to computation of time.

Section 10 amends s. 760.22, F.S., relating to definitions.

Section 11 amends s. 760.23, F.S., relating to discrimination in the sale or rental of housing.

Section 12 amends s. 760.24, F.S., relating to discrimination in the provision of brokerage services.

Section 13 amends s. 760.25, F.S., relating to discrimination in the financing of housing or in residential rental transactions.

Section 14 amends s. 760.29, F.S., relating to exemptions.

Section 15 amends s. 760.31, F.S., relating to powers and duties of the commission.

Section 16 amends s. 760.32, F.S., relating to investigations, subpoenas, and oaths.

Section 17 amends s. 760.34, F.S., relating to enforcement.

Section 18 amends s. 760.50, F.S., relating to discrimination on the basis of AIDS.

Section 19 amends s. 760.60, F.S., relating to prohibition of discriminatory practices of certain clubs.

Section 20 creates s. 760.13, F.S., relating to a direct-support organization for the Florida Commission on Human Relations.

⁵⁴ See s. 617.0302 (12), (16) F.S.

⁵⁵ This rule is adopted according to s. 120.5365, F.S., which provides in part that statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute. Section 120.54, F.S., provides requirements for agency rulemaking.

Section 21 amends s. 419.0001, F.S., relating to site selection of community residential homes.

Section 22 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have an indeterminate minimal positive fiscal impact on state revenues. See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill increases the fee for facilities and communities to register as exempted from housing finance criteria from \$20 to \$75. In addition, failure to register every two years for the exemption will result in a fine of \$500 for those facilities and communities.

D. FISCAL COMMENTS:

This bill appears to have a positive fiscal impact on the Commission of \$165,000 from the \$55 increase in fees for facilities and communities for older persons claiming an exemption from ss. 760.23 and 760.25, F.S. According to the Commission, they receive 3,000 registrations each year for approximate revenue of \$60,000. The approximate cost of the program is \$143,000. In addition, this bill has an indeterminate minimal positive impact on Commission revenues resulting from the \$500 fine for failure to register.

The Commission transfers funds to the Division for conducting hearings under FCRA. During FY 2007-2008, the Commission transferred \$1,323,356⁵⁶ to the Division for 660 hours of hearings.⁵⁷ The Division anticipates the Commission will transfer \$704,084 during FY 2008-2009. Therefore, the Division anticipates a negative fiscal impact of \$704,084. The Commission anticipates a corresponding positive fiscal impact of \$704,084 for FY 2008-2009.

This bill may increase the judicial workload by an indeterminate minimal amount due to the enforcement of compliance with discovery methods under this bill and actions that may be brought by the Attorney General under this bill.

⁵⁶ The Commission transferred \$1,041,030 from General Revenue and \$282,326 from trust funds.

⁵⁷ Staff Analysis, Florida Commission on Human Relations. March 11, 2008.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Florida's Due Process Clause⁵⁸ mirrors the due process clause of the Fourteenth Amendment of the federal constitution and provides that "no person shall be deprived of life, liberty, or property without due process of law..." Due process rests on the idea of fundamental fairness and requires at a minimum:⁵⁹

- The right to adequate advance notice, and
- A meaningful right to be heard.

Currently, a person who is alleged to have committed a violation of the FCRA is provided notice by registered mail.⁶⁰ However, this bill provides that notice may be sent by any means, which includes e-mail, fax, regular mail, or personal service. It is possible that a court may find that the notice under this bill constitutes a lack of procedural due process.

B. RULE-MAKING AUTHORITY:

This bill grants rule-making authority to the Commission in order to implement the direct-support organization.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill provides a reference to s. 393.063, F.S., at lines 83-86. However, courts generally interpret ch. 760, F.S., as being consistent with federal law. If the statute references something outside of federal law and the federal definition changes in the future, this could provide confusion over the proper interpretation of the statute.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Civil Justice & Courts Policy Committee adopted four amendments to this bill. The amendments made the following changes to the bill:

- Removed the definitions of "because of sex" and "on the basis of sex";
- Clarified that women affected by pregnancy or childbirth are covered under the Florida Civil Rights Act;
- Removed the authorization for the direct-support organization to receive donations or funds from private or public entities; and
- Clarified that a person has 21 days after receiving the Notice of Filing Complaint to file a response

The bill was then reported favorably. This analysis is drafted to the bill as amended.

⁵⁸ Article I, Section 9, Florida Constitution

⁵⁹ *State v. Smith*, 547 So.2d 131 (Fla. 1989).

⁶⁰ The Commission currently provides notice by certified mail. Section 1.01(11), F.S., provides that "the words 'registered mail' include certified mail with return receipt requested."