

STORAGE NAME: h1377.jo.doc
DATE: April 10, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1377
RELATING TO: Civil Rights/Complaints
SPONSOR(S): Representative Benson and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 1377 allows aggrieved persons to file complaints brought under the Florida Civil Rights Act of 1992 with the United States Equal Employment Opportunity Commission (EEOC) or with a local government fair-employment-practice (FEP) agency instead of being required to file duplicate complaints with the Florida Commission on Human Relations (commission). The bill requires the EEOC or the FEP agency to clearly stamp the date that the complaint was filed on the complaint. The bill also applies the 365-day filing deadline for filing an employment discrimination complaint from the earliest date a complaint is filed with the EEOC, the local FEP agency, or the commission.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Employment Discrimination Complaints

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 (commission) is the agency created by the Legislature to hear state complaints under the Florida Civil Rights Act of 1992.¹ The act prohibits employment discrimination based on an individual's race, color, religion, sex, national origin, age, handicap, or marital status.² Under the act, the commission investigates complaints of employment discrimination.³ 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.⁴ The act authorizes various forms of relief from the effects of a discriminatory employment practice including back pay, compensatory damages, and punitive damages.⁵

The United States Equal Employment Opportunity Commission (EEOC) is the federal agency created by the United States Congress to hear employment discrimination complaints. The EEOC hears complaints alleging violations of several federal acts that prohibit employment discrimination:

- Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin.
- Equal Pay Act of 1963, which prohibits discrimination based on gender in compensation for substantially similar work under similar conditions.
- Age Discrimination in Employment Act of 1967, which prohibits employment discrimination against individuals 40 years of age or older.

¹ The Florida Civil Rights Act of 1992 is ss. 760.01-760.11, F.S., and s. 509.092, F.S.

² Section 760.10, F.S.

³ Section 760.06(5), F.S.

⁴ Section 760.11, F.S.

⁵ Section 760.11, F.S.

- Title I of the Americans with Disabilities Act of 1990, which prohibits employment discrimination against qualified individuals with disabilities who are employed by the private sector, and in state and local governments.
- Section 501 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified individuals with disabilities who are employed by the federal government.
- Civil Rights Act of 1991, which provides monetary damages in cases of intentional employment discrimination.

Fair Employment Practice Agencies

Title VII of the Civil Rights Act of 1964 (Title VII) recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful employment discrimination.⁶ When a state or local government hears an employment discrimination complaint, Title VII delays EEOC's consideration of the complaint to allow the state or local government an opportunity to remedy the complaint.⁷ To implement Title VII, the EEOC adopted regulations to evaluate and qualify the employment discrimination laws and ordinances enacted by state and local governments.⁸ A state or local government that is qualified to hear these federal complaints is known as a "fair-employment-practice-agency" or "FEP agency."⁹ The Florida Commission on Human Relations is qualified as the FEP agency in 42 Florida counties, covering counties that are not served by one of the 11 local FEP agencies. The commission's status as an FEP agency is recognized in Florida law.¹⁰

Overlapping Jurisdictions

In addition to federal laws and regulations, the relationship between the EEOC and the Florida Commission on Human Relations is governed by a Worksharing Agreement. Because the jurisdictions of the EEOC and the commission are very similar, the Worksharing Agreement allows the EEOC and the commission to interchangeably transfer complaints between each other for investigation and resolution in those cases where the agencies have common jurisdiction. Similarly, local FEP agencies are deferral agencies. The EEOC defers to local FEP agencies to hear federal complaints, and complaints may interchangeably be transferred between these agencies and the EEOC.

Florida law currently allows the commission to refer state complaints under the Florida Civil Rights Act of 1992 to a local FEP agency for investigation. After the investigation, the commission is required to accord "substantial weight" to the investigative findings and conclusions of the local FEP agency, but the commission retains its ultimate jurisdiction over the state complaint.¹¹

Filing Deadlines

Florida law currently requires a state complaint to be filed with the Florida Commission on Human Relations within 365 days after an alleged violation.¹² Federal complaints may be filed with the EEOC within 180 days after an alleged violation; however, federal complaints may also be filed with a local FEP agency within 300 days after an alleged violation.¹³

⁶ 42 U.S.C. § 2000e-5(c), (d).

⁷ 42 U.S.C. § 2000e-5(c), (d).

⁸ 29 C.F.R. § 1601.70.

⁹ 29 C.F.R. § 1601.70.

¹⁰ Section 760.06(10), F.S.

¹¹ Section 760.11(2), F.S.

¹² Section 760.11(1), F.S.

¹³ 42 U.S.C. § 2000e-5(e).

Under the Worksharing Agreement between the EEOC and the commission, the commission's receipt of a complaint on the EEOC's behalf is considered filed and automatically initiates proceedings under federal law. Further, the EEOC's receipt of a complaint on behalf of the commission is also considered filed and automatically initiates proceedings under federal law. However, receipt by the EEOC or a local FEP agency of a complaint on the commission's behalf is not considered filed under the Florida Civil Rights Act of 1992.

Under these filing deadlines, if an aggrieved person files an employment discrimination complaint under federal law with a local FEP agency on the 300th day after the alleged violation, 65 days remain for the aggrieved person to file a timely state complaint under the Florida Civil Rights Act of 1992. Because investigations of federal complaints often extend beyond 65 days, if an aggrieved person is unaware that a state complaint must be filed with the Florida Commission on Human Relations to preserve his or her rights, a state complaint will often be untimely if filed after the local FEP agency completes its investigation.

Preservation of State Complaints and Duplicative Filing

The Florida Commission on Human Relations (commission) reports that there is a great deal of confusion dealing with claims filed in Florida. Many aggrieved persons residing in counties served by a local FEP agency, the commission reports, file their complaints with the local FEP agency unaware they have not preserved their rights to a state complaint under the Florida Civil Rights Act of 1992. Further, in cases where an aggrieved person has only filed a complaint with the EEOC or the local FEP agency, some courts have ruled the complaint was invalid because it was not filed with the commission.

Conversely, the commission reports that a substantial number of complaints are filed with the EEOC, the local FEP agency, and the commission, causing a duplication of effort and imposing unnecessary costs on each agency. Because Florida law currently requires a state complaint to be filed with the commission, as discussed above, aggrieved persons in a county served by a local FEP agency currently must file their complaints with the Florida Commission on Human Relations in addition to the local FEP agency to preserve their state complaint under the Florida Civil Rights Act of 1992.

C. EFFECT OF PROPOSED CHANGES:

State Complaints May Be Filed With Federal Agencies

The bill allows complaints brought under the Florida Civil Rights Act of 1992 to be filed with the United States Equal Employment Opportunity Commission (EEOC) or with any unit of government of the state that is a fair-employment-practice agency (FEP agency). As discussed above, FEP agencies must be qualified by the EEOC to hear complaints under federal regulations.

The bill requires the EEOC or local FEP agency to clearly stamp the date of filing on the face of the complaint. The bill also provides that, for purposes of the Florida Civil Rights Act of 1992, the date of filing with the Florida Commission on Human Relations (commission) is the earliest date the complaint was filed with the EEOC, the FEP agency, or the commission. Thus, the bill allows complaints filed with the EEOC or the local FEP agency within 365 days after an alleged violation to be considered timely filed under the Florida Civil Rights Act of 1992, regardless of when the complaint is actually received by the commission.

The bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Employers, employment agencies, labor organizations, and joint labor-management committees named in complaints that currently are dismissed as untimely under the Florida Civil Rights Act of 1992, but which would be timely under the committee substitute because the complaint was filed with the Equal Employment Opportunity Commission or the local fair-employment-practice agency within 365 days after the alleged violation, will potentially be subject to increased civil liability.

D. FISCAL COMMENTS:

The Florida Commission on Human Relations (commission) reports the bill will allow an aggrieved person to file a single employment discrimination complaint with the United States Equal Employment Opportunity Commission (EEOC) or the local fair-employment-practice (FEP) agency, preserving the aggrieved person's rights to both a federal and state complaint without needing to file a duplicate complaint with the commission. The commission estimates the bill will reduce unnecessary paperwork resulting from processing these duplicative complaints and reduce delays in processing other complaints.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill requires the EEOC to “clearly stamp on the face of the complaint the date the complaint was filed with the commission.” While it is likely that complaints are already date-stamped by the EEOC, since the EEOC is a federal entity, the state could likely not enforce such a requirement.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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L. Michael Billmeier

Lynne Overton