

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 354

SPONSOR: Commerce and Economic Opportunities Committee and Senator Miller

SUBJECT: Civil Rights

DATE: March 15, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gillespie	Maclure	CM	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 354 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 committee substitute also applies the 365-day filing deadline from the earliest date a complaint is filed with the EEOC, the local FEP agency, or the commission.

This committee substitute substantially amends section 760.11, Florida Statutes.

**II. 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.<sup>1</sup> The act

<sup>1</sup> Sections 760.01-760.11 & s. 509.092, F.S. (The 1992 amendments to ch. 760, F.S., are cited as the “Florida Civil Rights Act of 1992,” but the Florida Commission on Human Relations was created by the Legislature in 1969. In addition to employment discrimination complaints, the commission also has jurisdiction over complaints alleging discrimination in

prohibits employment discrimination based on an individual's race, color, religion, sex, national origin, age, handicap, or marital status.<sup>2</sup> Under the act, the commission investigates complaints of employment discrimination.<sup>3</sup> 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.<sup>4</sup> The act authorizes various forms of relief from the effects of a discriminatory employment practice including back pay, compensatory damages, and punitive damages.<sup>5</sup>

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.
- 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)<sup>6</sup> recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful employment discrimination.<sup>7</sup> 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

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public lodging and public food service establishments under s. 509.092, F.S., and the Whistle-blower's Act under ss. 112.3187-112.31895, F.S.).

<sup>2</sup> Sections 760.01(2), 760.05, 760.07 & 760.10, F.S.

<sup>3</sup> Section 760.06(5), (6) & s. 760.11(3), F.S.

<sup>4</sup> Section 760.11(4)-(6), F.S.

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

<sup>6</sup> Pub. L. No. 88-352, as amended (codified at 42 U.S.C. ss. 2000e-2000e-17).

<sup>7</sup> 42 U.S.C. s. 2000e-5(c) & (d).

remedy the complaint.<sup>8</sup> To implement Title VII, the EEOC adopted regulations to evaluate and qualify the employment discrimination laws and ordinances enacted by state and local governments.<sup>9</sup> A state or local government that is qualified to hear these federal complaints is known as a “fair-employment-practice-agency” or “FEP agency.”<sup>10</sup> In Florida, 11 local governments have been qualified by the EEOC as FEP agencies:<sup>11</sup>

- Broward County Human Relations Commission,
- Clearwater Office of Community Relations,
- Hillsborough County Equal Opportunity and Human Relations Department,
- Jacksonville Equal Employment Opportunity Commission,
- Lee County Department of Equal Opportunity,
- Miami-Dade County Fair Housing and Employment Commission,
- Orlando Human Relations Department,
- Palm Beach County Office of Equal Opportunity,
- Pinellas County Affirmative Action Office,
- St. Petersburg Human Relations Department, and
- Tampa Office of Community Relations.

The Florida Commission on Human Relations is also qualified as the FEP agency in 42 Florida counties, covering counties that are not served by one of the 11 local FEP agencies.<sup>12</sup> The commission’s status as an FEP agency is recognized in Florida law.<sup>13</sup>

### **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.

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<sup>8</sup> *Id.*

<sup>9</sup> 29 C.F.R. ss. 1601.70-1601.80.

<sup>10</sup> 29 C.F.R. ss. 1601.3(a) & 1601.70(a).

<sup>11</sup> 29 C.F.R. ss. 1601.74 & 1601.80.

<sup>12</sup> *Id.*; Worksharing Agreement between Florida Comm’n on Human Relations and the Equal Employment Opportunity Comm’n for Fiscal Year 1999, v (1999) (notwithstanding the date of the agreement, the agreement remains in effect).

<sup>13</sup> *See* s. 760.06(10), F.S. (Florida Commission on Human Relations has the power to “become a deferral agency for the Federal Government and to comply with the necessary federal regulations to effect the Florida Civil Rights Act of 1992.”).

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.<sup>14</sup> 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.<sup>15</sup>

To explain how these overlapping jurisdictions affect a complaint, an aggrieved person in a Florida county served by a local FEP agency may file his or her employment discrimination complaint with any one of three separate agencies or with all three: 1) the local FEP agency, 2) the EEOC, and 3) the commission.<sup>16</sup> In this example, both the EEOC and the local FEP agency would have jurisdiction over the federal complaint. Under the Florida Civil Rights Act of 1992, the commission would have jurisdiction over the state complaint. Under s. 760.11(2), F.S., the commission would likely transfer the state complaint to the local FEP agency for investigation. Further, the EEOC would likely defer to the local FEP agency for investigation and resolution of the federal complaint. Accordingly, the local FEP agency would likely conduct the investigation and resolve both the federal and state complaints. After the federal complaint is resolved, the commission would retain jurisdiction over the state complaint, but must give substantial weight to the local FEP agency’s findings and conclusions. In practice, the commission explains, the findings and conclusions of a local FEP agency are not subjected to a case-by-case substantial weight review unless requested by the aggrieved person.

### **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.<sup>17</sup> Federal complaints may be filed with the EEOC within 180 days after an alleged violation;<sup>18</sup> however, federal complaints may also be filed with a local FEP agency within 300 days after an alleged violation.<sup>19</sup>

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.<sup>20</sup> Further, the EEOC’s receipt of a complaint on behalf of the

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<sup>14</sup> Section 760.11(2), F.S.

<sup>15</sup> *Id.*; rule 60Y-5.002(4) & (5), F.A.C.

<sup>16</sup> State complaints under the Florida Civil Rights Act of 1992 are filed with Florida Commission on Human Relations at the commission’s office. Rule 60Y-5.001(3), F.A.C.

<sup>17</sup> Section 760.11(1), F.S. The date of filing is the “date of actual receipt of the complaint by the Clerk or other agent of the [Florida] Commission [on Human Relations].” Rule 60Y-5.001(3), F.A.C.

<sup>18</sup> 42 U.S.C. s. 2000e-5(e)(1).

<sup>19</sup> *Id.*

<sup>20</sup> Worksharing Agreement between Florida Comm’n on Human Relations and the Equal Employment Opportunity Comm’n for Fiscal Year 1999, ii (1999).

commission is also considered filed and automatically initiates proceedings under federal law.<sup>21</sup> 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.<sup>22</sup> The Florida Commission on Human Relations reports that, in practice, both the EEOC and the local FEP agencies routinely stamp the date on all complaints when they are filed.

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 a substantial number of aggrieved persons are confused by the complex combination of state and federal complaint filing deadlines and procedures. 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.<sup>23</sup> Because of administrative delays in the transfer of complaints to the commission from the EEOC and local FEP agencies, the commission also reports, a substantial number of complaints that would otherwise have been timely filed must be dismissed as untimely when they are received by the commission more than 365 days after the alleged violation.

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.

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<sup>21</sup> *Id.*

<sup>22</sup> Section 760.11(1), F.S.; rule 60Y-5.001(3), F.A.C.

<sup>23</sup> *E.g., Armstrong v. Lockheed Martin Beryllium Corp.*, 990 F. Supp. 1395 (M.D. Fla. 1997); *Thompson v. Nassau County Dep't of Transp.*, 12 Fla. L. Weekly Fed. D 429 (M.D. Fla. 1999).

### **III. Effect of Proposed Changes:**

#### **State Complaints May Be Filed With Federal Agencies**

The committee substitute 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 which 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.<sup>24</sup>

The committee substitute provides that the date clearly stamped on the face of a complaint, if a stamp is present, is the date of filing. The committee substitute 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 committee substitute 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.

#### **Effective Date**

The committee substitute takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

Employers, employment agencies, labor organizations, and joint labor-management committees named in complaints that currently are dismissed as untimely under the Florida

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<sup>24</sup> 29 C.F.R. ss. 1601.70-1601.80.

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 be subject to potentially increased civil liability. The Florida Civil Rights Act of 1992 authorizes various forms of relief from the effects of a discriminatory employment practice including back pay, compensatory damages, and punitive damages, but punitive damages are limited to \$100,000.<sup>25</sup>

### C. Government Sector Impact:

The Florida Commission on Human Relations (commission) reports the committee substitute 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 committee substitute will reduce unnecessary paperwork resulting from processing these duplicative complaints and reduce delays in processing other complaints.

In its Long-Range Program Plan,<sup>26</sup> the commission reported that it had a backlog of about 2,700 complaints and that the EEOC had a backlog of about 40,000 cases.<sup>27</sup> The plan listed the commission's outcome measure as the percentage of complaints resolved within 180 days of filing.<sup>28</sup> The baseline year for this outcome measure was FY 1989-1990 when the commission resolved 30 percent of complaints within the 180-day period. During FY 1990-2000, the commission resolved 39 percent of complaints in 180 days of filing. For FY 2000-2001, the commission estimates it will have completed 50 percent of complaints in that time. For FY 2001-2002, the commission has requested the standard be set at 60 percent. According to the plan, the commission anticipates it will increase the percentage of complaints resolved in 180 days of filing to 90 percent by FY 2005-2006.<sup>29</sup>

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

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<sup>25</sup> Section 760.11(5) & (6), F.S.

<sup>26</sup> Florida Dep't of Management Services, *Long-Range Program Plan: Fiscal Years 2001-2002 Through 2005-2006* (Jan. 2001).

<sup>27</sup> *Id.* at 155.

<sup>28</sup> *Id.* at 5, 155, 158-63 & 349-50.

<sup>29</sup> *Id.*

**VIII. Amendments:**

None.

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

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