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: SB 410

SPONSOR: Senator Wasserman Schultz

SUBJECT: Employment Practices; Discrimination

DATE: February 15, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

It is the employment policy of Florida that appointments, terminations, assignments and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government are to be made without regard to sex. This policy is patterned after the federal Civil Rights Act of 1964, as amended in1978. That act includes pregnancy, childbirth, or related medical conditions within discrimination on the basis of sex. The state act, which is interpreted based upon the federal act, has not been amended to specifically include pregnancy, childbirth, or related medical conditions within discrimination on the basis of sex. Nevertheless, because the state act is interpreted like the federal act, state courts have included pregnancy, childbirth, or related medical conditions within sex discrimination.

The bill amends Florida law to specifically include pregnancy, childbirth, or related medical conditions within discrimination on the basis of sex, including discrimination with respect to fringe benefit plans. Additionally, it exempts employers from paying for health insurance benefits for abortions, except where the life of the mother would be endangered if the fetus were carried to term, or where medical complications have arisen from an abortion.

This bill amends the following sections of the Florida Statutes: 110.105; 110.233; 112.042; and 760.10, F.S.

II. Present Situation:

Chapter 760, F.S., contains the Florida Civil Rights Act of 1992. The act is patterned after Title VII of the Civil Rights Act of 1964.[1] The general purposes of the Florida Civil Rights Act of 1992 are

[1] 42 U.S.C. s. 2000e-2.

> . . . to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

In Florida, there is a long-standing rule of statutory construction which recognizes that if a state law is patterned after a federal law on the same subject, the Florida law will be accorded the same construction as in the federal courts to the extent the construction is harmonious with the spirit of the Florida legislation.[2] In *General Electric Company v. Gilbert*[3] the United States Supreme Court held that discrimination on the basis on pregnancy was not sex discrimination under Title VII. In response to the *Gilbert* decision, the Congress amended Title VII by enacting the Pregnancy Discrimination Act of 1978. That act specifies that discrimination on the basis of pregnancy is sex discrimination and therefore violative of Title VII.

The Florida Legislature has not similarly amended the Florida Human Rights Act to include a prohibition against pregnancy-based discrimination. Section 760.02, F.S., contains definitions that are applicable to the chapter, including "discriminatory practice,"[4] "national origin,"[5] and "employer."[6] The section does not contain definitions for the phrases "because of sex" or "on the basis of sex." Nevertheless, the First District Court of Appeal held in *O'Loughlin v. Pinchback*[7] that the s. 760.10, F.S., of the Florida Human Rights Act is pre-empted by Title VII of the Civil Rights Act of 1984 to the extent that Florida's law offers less protection to its citizens than does corresponding federal law.

The Florida Commission on Human Relations (the "commission") is created in s. 760.03, F.S. The commission, which is assigned to the Department of Management Services but is not subject to its control, is comprised of 12 members appointed by the Governor, subject to Senate confirmation. Commissioners are appointed for 4-year terms. Members may be suspended only for cause, subject to removal or reinstatement by the Senate. The commission is authorized to appoint and executive director.

Section 760.07, F.S., provides remedies for unlawful discrimination. That section provides:

> Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are

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[2] *Kidd v. City of Jacksonville*, 97 Fla. 297, 120 So. 556 (1929); *Massie v. University of Florida*, 570 So. 2d 963 (Fla. 1st DCA 1990); *Holland v. Courtesy Corporation*, 563 So. 2d 787 (Fla. 1st DCA 1990).
[3] 429 U.S. 124.
[4] Section 760.02(4), F.S., defines "discriminatory practice" to mean any violation of the Florida Civil Rights Act of 1992.
[5] Section 760.02(5), F.S., defines "national origin" to include ancestry.
[6] Section 760.02(7), F.S., defines "employer" to mean any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person.
[7] 579 So. 2d 788 (Fla. 1st DCA 1991).

> expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 760.10, F.S., designates unlawful employment practices.

Chapter 110, F.S., regulates state employment. Subsection (5) of s. 110.105, F.S., qualifies the application of the chapter to state employees by noting that ". . . nothing in this chapter shall be construed either to infringe upon or to supersede the rights guaranteed public employees under chapter 447." Chapter 447, F.S., relates to labor organizations.

Section 110.105, F.S., states:

> It is the purpose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.

The chapter also contains a policy statement prohibiting discrimination in state employment. Section 110.105(2), F.S., states:

> All appointments, terminations, assignments and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, religion, national origin, political affiliation, marital status, or handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration.

The chapter contains a definitions section, but only defines the terms "Department,"[8] "Secretary,"[9] and "Furlough."[10] The phrase "without regard to sex" is not defined in the chapter.

Section 110.233, F.S., states:

> No person shall be appointed to, demoted, or dismissed from any position in the career service, or in any way favored or discriminated against with respect to employment in the

[8] Section 110.107(1), F.S., defines "Department" to mean the Department of Management Services.
[9] Section 119.107(2), F.S., defines "Secretary" to mean the Secretary of Management Services.
[10] Section 119.107(3), F.S., defines "Furlough" to mean a temporary reduction in the regular hours of employment in a pay period, or temporary leave without pay for one or more pay periods, with a commensurate reduction in pay, necessitated by a projected deficit in any fund that support salary and benefit appropriations. The deficit must be projected by the Revenue Estimating Conference pursuant to s. 216.136(3).

> career service, because of race, color, national origin, sex, handicap, religious creed, or political opinion or affiliation.

Chapter 112, F.S., also regulates public officers and employees and prohibits discrimination in county and municipal employment. Section 112.042, F.S., states:

> It is against the public policy of this state for the governing body of any county or municipal agency, board, commission, department, or office, solely because of the race, color, national origin, sex, handicap, or religious creed of any individual, to refuse to hire or employ, to bar, or to discharge from employment such individuals or to otherwise discriminate against such individuals with respect to compensation, hire, tenure, terms, conditions, or privileges of employment, if the individual is the most competent and able to perform the services required.

III. Effect of Proposed Changes:

The bill defines the phrase "without regard to sex" for state employment policy purposes. "Without regard to sex" would also mean without regard to pregnancy, childbirth, or related medical conditions. As a result, women affected by pregnancy, childbirth, or related medical conditions would be required to be treated the same as all other persons not so affected but similar in their ability or inability to work for all employment-related purposes. This requirement would extend to receipt of benefits under fringe benefits programs. Nothing in the employment policy of the state could be interpreted to permit otherwise.

The definition of "without regard to sex" explicitly prohibits an interpretation of the phrase that would require a state employer to pay for health insurance benefits for abortion except under two conditions:

- Where the life of the mother would be endangered if the fetus were carried to term or
- Except where medical complications have arisen from an abortion.

The bill does not preclude an employer from providing abortion benefits nor does it affect bargaining agreements in regard to abortion.

The bill also amends s. 110.233, F.S., which prohibits certain employment acts, including favoritism toward or discrimination against a person in the career service because of their race, color, national origin, sex, handicap, religious creed, or political opinion or affiliation. The phrase "because of sex" is defined to include, but not be limited to, pregnancy, childbirth, or related medical conditions.

The bill also amends s. 112. 042, F.S., which prohibits discrimination in county and municipal employment. The phrase "because of sex" is defined to include, but not be limited to, pregnancy, childbirth, or related medical conditions.

The bill also amends s. 760.10, F.S., to define the phrases "because of sex" and "on the basis of sex." These phrases are defined to include, but not be limited to, pregnancy, childbirth, or related medical conditions.

The act takes effect July 1, 2002.

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:

None.

C. Government Sector Impact:

According to the Florida Commission on Human Relations, no increase in cases would be expected if this bill were enacted into law because the term "sex" is construed by the courts to include pregnancy, childbirth, and related medical conditions.

The definition of "without regard to sex" explicitly prohibits an interpretation of the phrase that would require a state employer to pay for health insurance benefits for abortion except under two conditions:

- Where the life of the mother would be endangered if the fetus were carried to term or
- Except where medical complications have arisen from an abortion.

It appears that these two requirements are already provided under applicable state insurance benefits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.