

HOUSE OF REPRESENTATIVES STAFF ANALYSIS - Revised

**BILL #:** HB 223  
**SPONSOR(S):** Planas  
**TIED BILLS:**

Encouragement of Nondiscriminatory Practices in Certain Clubs

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>4 Y, 0 N</u>	<u>Kruse</u>	<u>Billmeier</u>
2) <u>Business Regulation Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Local Government Council</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

HB 223 provides that a club which is exempt from certain nondiscrimination practices in membership recruitment established in section 760.60, Florida Statutes, may voluntarily choose to abide by those nondiscrimination practices. In return, a club which chooses to abide by the nondiscrimination practices may operate in any location in a municipality or county, where permitted, regardless of whether the services are provided in a club setting. Further, the bill provides that if a club is already required to abide by the nondiscrimination practices under section 760.60, Florida Statutes, that club may also operate in any location in a municipality or county, where permitted, regardless of whether the services are provided in a club setting.

Additionally, the bill provides that all laws, ordinances, and regulations concerning buildings or zoning must be construed and applied with reference to the underlying nature and use of the property, regardless of whether the location in which the club intends to offer services was operating as a club previously, as long as the club satisfies the nondiscrimination requirement in section 760.60, Florida Statutes.

The fiscal impact on state and local governments is uncertain.

This bill will take effect July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty-This bill may encourage certain clubs to voluntarily abide by nondiscrimination practices established in law, which may, in turn, allow some individuals to join clubs who may not have been able to join previously.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Discriminatory Practices of Certain Clubs Prohibited**

Section 760.60, Florida Statutes, provides 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 in a club” that:

- has more than 400 members;
- 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.

Fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent are exempt from this requirement.<sup>1</sup>

This act also provides a remedy to a person who believes he or she has been discriminated against in violation of this act. A person may either file a written complaint with the Commission on Human Relations or with the Attorney General's Office of Civil Rights. The club must be notified of the complaint. Within 30 days after receiving a complaint, the commission or the Attorney General must investigate the alleged discrimination and notify, in writing, the person who filed the complaint if it intends to pursue the complaint further. If the commission or the Attorney General decides to take further action, it must attempt to resolve the alleged discriminatory practices of a club through informal methods of conference, conciliation, and persuasion.<sup>2</sup>

If within 30 days the commission or the Attorney General fails to notify the complainant of its intention to resolve the complaint, or fails to resolve the complaint within 30 days after giving the required notice, “the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against the club, its officers, or its members... If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.”<sup>3</sup>

##### **Discrimination against Certain Types of Property**

Sections 718.507, 719.507, and 721.25<sup>4</sup>, Florida Statutes, regarding condominiums, cooperatives, and vacation and timeshare plans, respectively, each state with almost identical language that “[a]ll laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership.” This language was interpreted by the courts in 1981. In the late 70’s and early 80’s, many owners of

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<sup>1</sup> Section 760.60(1), F.S.

<sup>2</sup> Section 760.60(2), F.S.

<sup>3</sup> Section 760.60(3), F.S.

<sup>4</sup> Section 721.25, F.S., states that “[a]ll laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of the real estate timeshare plan property, without regard to the form of ownership.

apartment buildings in the City of Miami were converting apartment buildings into condominiums. Out of concern for the diminishing supply of apartments, the City passed several emergency ordinances that placed restrictions on the conversion of apartment buildings into condominiums. A lower court enjoined the City from enforcing those emergency ordinances and the City appealed. The two issues were whether section 718.507, Florida Statutes, which prohibits laws concerning use, location, placement and construction of buildings, subject to the condominium form of ownership, preempted city ordinances, and, if not, whether the city ordinances conflicted with this statute. The court of appeals found that this statute did not preempt city ordinances, but did find that the city ordinances conflicted with the statute. The court indicated that the plain meaning of section 718.507, Florida Statutes, was to prohibit discrimination against condominiums.<sup>5</sup> Thus, the court upheld the lower court's decision to enjoin the City from enforcing the emergency ordinances.

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The bill provides that a club may voluntarily elect to abide by the nondiscrimination requirements in section 760.60, Florida Statutes, even though the club may not meet the criteria that would otherwise require it to satisfy the nondiscrimination requirements. It appears that if a club voluntarily elects to abide by the nondiscrimination requirements, that the club also subjects itself to the jurisdiction of the Attorney General's Office of Civil Rights or the Commission on Human Relations and the corresponding enforcement actions that could be taken against it for a violation of the nondiscrimination requirements. In return, a club that voluntarily abides by the nondiscrimination requirements may operate in any location in a municipality or county in which the services that the club provides are permitted, regardless of whether the services are provided in a club setting. Also, the bill provides that a club which *is* required to abide by the nondiscrimination requirements may also operate in any location in a municipality or county in which the services that the club provides are permitted, regardless of whether the services are provided in a club setting.

Additionally, the bill provides that all laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the underlying nature and use of the property, regardless of whether the location in which the club intends to provide services operated previously as a club, provided that the club satisfies the nondiscrimination requirements. Based on the court interpretation described above, this language may be designed to allow the establishment of clubs in an environment with fewer regulatory hurdles than may have previously applied to the establishment of clubs in certain locations. According to a proponent of the bill, this language is designed to allow the conversion of a building or a location to a club without having to go through additional regulatory hurdles that can sometimes apply to a club wishing to offer services. Further, according to a proponent of the bill, the bill is not intended to override existing zoning laws or ordinances. Also, according to the bill sponsor's office, this may allow a person or business who desires to convert a piece of property into a club or purchase a piece of property to turn into a club to have a better chance of success when dealing with any local zoning ordinances or regulations that may in some way require additional regulatory hurdles for clubs to begin operation.

### C. SECTION DIRECTORY:

**Section 1.** Amends section 760.60, Florida Statutes, to provide that a club may voluntarily elect to satisfy the nondiscrimination requirements for choosing members of a club regardless of whether the club meets the criteria that would otherwise require a club to satisfy the nondiscrimination requirements. If a club elects to satisfy such requirements, or is required to satisfy such requirements, then the club is permitted to operate in any location in a municipality or county in which the club's services are permitted, regardless of whether the services are provided in a club setting. Further, the bill states that all laws, ordinances, and regulations concerning building or zoning shall be construed and applied with reference to the underlying nature and use of the property, regardless of whether the

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<sup>5</sup> See *City of Miami Beach v. Rocio Corp*, 404 So. 2d 1066, 1069 (Fla. 3<sup>rd</sup> DCA 1981). (Cited with approval in *Orange West, LTD. v. City of Winter Garden*, 528 So. 2d 84, 86 (Fla. 5<sup>th</sup> DCA 1988).

property is used in a club form, provided that the club satisfies the nondiscrimination requirements as stated in subsection (1) of section 760.60, Florida Statutes.

**Section 2.** Establishes an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The revenue impact on state government is uncertain because it is unknown how many clubs may utilize the provisions of this bill and any corresponding tax revenue that might result from the establishment of new clubs.

#### **2. Expenditures:**

It is unknown how many cases may be brought by the Commission on Human Relations or the Attorney General's Office of Civil Rights against clubs that voluntarily elect to abide by the nondiscrimination requirements in section 760.60, Florida Statutes, but then fails to follow through with the nondiscrimination requirements; therefore the impact on state expenditures is uncertain.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The revenue impact on local government is uncertain because it is unknown how many clubs may utilize the provisions of this bill and any corresponding tax revenue that might result from the establishment of new clubs.

#### **2. Expenditures:**

From the provisions of the bill, it is unknown how many instances of zoning disputes may result from clubs challenging local zoning rules or regulations, and, therefore, it is uncertain how much local governments would have to expend defending any zoning disputes.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Due to the limited amount of information available about the implications of a club which decides to avail itself of the incentive provided in the bill for abiding by the nondiscrimination requirements, the direct economic impact on the private sector is uncertain.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.