

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 442

INTRODUCER: Senator Braynon

SUBJECT: Fair Housing

DATE: January 30, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Irwin</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill allows a person who alleges housing discrimination to file a civil action in a Florida court of law whether or not a complaint has been filed with the Florida Commission on Human Relations or a local housing discrimination agency and regardless of a conciliation agreement.

This bill substantially amends section 760.35, Florida Statutes.

II. Present Situation:

Florida Commission on Human Relations

Chapter 760, F.S., ensures that all individuals in Florida are protected 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 Florida Commission on Human Relations (Commission) and authorizes the Commission to carry out the purposes of ch. 760, F.S. Section 760.04, F.S., assigns the Commission to the Department of Management Services; however, the Commission is not subject to any control, or supervision by, or direction from the department.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.¹ The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.²

¹ Section 760.03(1), F.S.

² Section 760.03(2), F.S.

At least one member of the Commission, as required by law, must be 60 years of age or older.³ The Commission is empowered, pursuant to s. 760.06(5), F.S., to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging any discriminatory practice.

Florida Fair Housing Act

Part II of Chapter 760, F.S., constitutes the Florida Fair Housing Act. It is the state's policy, as provided in s. 760.21, F.S., to provide for fair housing throughout the state. Part II defines what constitutes unlawful housing discrimination. For example, it is unlawful to refuse or 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.⁴ In addition, protection is afforded an individual who is pregnant or in the process of securing legal custody of a child 18 years of age or younger, or an individual who is handicapped or is associated with a handicapped person.⁵

Enforcement of the Florida Fair Housing Act

Section 760.34(1), F.S., provides that any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with the Commission. The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.⁶ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁷ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.⁸ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may commence a civil action or petition for an administrative determination.⁹

Section 760.34(8), F.S., provides that any local agency certified as substantially equivalent¹⁰ may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with the local fair housing law. The local agency need not petition for an administrative hearing or exhaust its administrative remedies prior to bringing a civil action.¹¹

³ *Id.*

⁴ Section 760.23(1), F.S.

⁵ Sections 760.23(6)-(9), F.S.

⁶ Section 760.34(2), F.S.

⁷ Section 760.34(1), F.S.

⁸ *Id.*

⁹ Section 760.34(4), F.S.

¹⁰ *See* Section 760.22(9), F.S. (Substantial equivalence certification takes place when a state or local agency applies for certification and the U.S. Department of Housing and Urban Development (HUD) determines that the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act).

¹¹ Section 760.34(8), F.S.

Civil Actions and Relief

Section 760.35, F.S., provides for civil actions and administrative relief. A civil action must be commenced no later than two years after the alleged discriminatory act occurred.¹² The court can continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.¹³ If the court finds that a discriminatory housing practice has occurred, it is to issue an order prohibiting the practice and providing affirmative relief.¹⁴ If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding or the aggrieved person may request administrative relief within 30 days after receiving notice that the Commission has concluded its investigation.¹⁵

Federal Discrimination Housing Law

In addition to adhering to the state discrimination laws, the Commission abides by federal discrimination laws. Through annual work-share agreements with the U.S. Department of Housing and Urban Development (HUD), the Commission, certified as a substantially equivalent agency,¹⁶ accepts and investigates housing discrimination cases from HUD. Federal housing discrimination laws are contained in Title VIII (Fair Housing Act) of the federal Civil Rights Act of 1968.¹⁷ The Commission is reimbursed by HUD for closing housing cases; such funds are deposited into the Commission's trust fund. Trust fund monies received from HUD in FY 2010-11 totaled \$926,679 or 79 percent.¹⁸

2010-2011 Housing Related Complaints

According to the Commissions' 2010-2011 Annual Report, housing complaints represented 22 percent of all complaints received by the Commission in 2011.¹⁹ The 269 housing cases closed in FY 2010-11 were distributed as follows:²⁰

¹² Section 760.35(1), F.S.

¹³ *Id.*

¹⁴ Section 760.35(2), F.S.

¹⁵ Section 760.35(3), F.S.

¹⁶ See U.S. Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_op/partners/FHAP/agencies (last visited January 26, 2012) (Providing a listing of agencies certified as a "fair housing assistance program" (FHAP) with HUD. A variety of FHAP funds are available to agencies with substantial equivalence interim certification and certification).

¹⁷ 42 U.S.C. ch. 45.

¹⁸ E-mail from Hunter Barnett, Policy Analyst, Florida Commission on Human Relations (January 19, 2012) (on file with the Senate Committee on Judiciary). Total FY 2010-11 trust fund dollars were \$1,168,651 and represented 27 percent of the Commission's budget. The Commission's trust fund dollars are composed of federal fund receipts (from HUD and Equal Employment Opportunity Commission for closed cases), payment received for public records copy requests and 55+ housing registrations and renewals (biennial fee of \$20 per facility/community).

¹⁹ Florida Commission on Human Relations, *Annual Report 2010-2011*, 5 (2011) (indicating employment complaints represented 73 percent, housing complaints 22 percent, whistle blower complaints 3 percent and public accommodations 2 percent).

²⁰ E-mail from Hunter Barnett, Policy Analyst, Florida Commission on Human Relations (January 19, 2012) (on file with the Senate Committee on Judiciary).

No Cause	171 (64%)
Administrative Closure	46 (17%)
Cause	20 (7%)
Settlement	16 (6%)
Withdrawal with Benefits	16 (6%)

State Law Regarding Avenues of Relief for Complaints Under the Florida Fair Housing Act

Florida's 4th District Court of Appeal held in the 2004 case, *Belletete v. Halford*, that individuals claiming discrimination under the Florida Fair Housing Act must exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative remedies.^{21, 22} The Florida Supreme Court has not addressed this issue yet, leaving the 4th DCA decision the only one on point in the state court system. However, in a case brought before the U.S. District Court for the Southern District of Florida and decided in 2010, the Florida Attorney General, in a motion to intervene, stated that "as co-enforcer with the Florida Commission on Human Relations of the FFHA [Florida Fair Housing Act], it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy."²³ The court agreed that the 4th DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before petitioning the courts for relief in a cause of action grounded in the Florida Fair Housing Act.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 760.35, F.S., to add a subsection (4) providing that an aggrieved person may commence a civil action whether or not a complaint has been filed under s. 760.34, F.S., and without regard to the status of that complaint. However, if the Florida Commission on Human Relations or a local housing discrimination agency has obtained a conciliation agreement with the consent of an aggrieved person, an action may not be filed except for the purpose of enforcing the terms of that agreement.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004).

²² See also *Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973) (the Doctrine of Exhaustion of Administrative Remedies stands generally for the proposition that judicial intervention in executive branch decision making is precluded where administrative procedures can afford the relief a litigant seeks).

²³ *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436, at *1 (S.D. Fla. 2010).

²⁴ *Id.* at *2 (holding that the Florida Fair Housing Act should be interpreted similarly to the Federal Fair Housing Act, which has been interpreted by federal courts as allowing for actions in court whether or not all administrative remedies have been exhausted).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Entities engaged in the housing industry may experience indeterminate effects as a result of the bill.

C. Government Sector Impact:

According to the Commission, they would incur no fiscal or workload impact related to the bill.²⁵ However, the Commission cautioned that the bill may create additional workload on Florida's court system if persons bypass the investigation and conciliation process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ Florida Commission on Human Relations, *SB 442 Analysis* (on file with the Senate Committee on Community Affairs)