

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 339 Housing Discrimination
SPONSOR(S): Civil Justice Subcommittee; Rouson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Robinson	Bond
2) Government Operations Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Commission on Human Relations was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws, including the Florida Fair Housing Act (FFHA). Modeled upon the federal Fair Housing Act, the FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. A person aggrieved by a discriminatory housing practice may file a complaint with the commission, and later pursue administrative or civil action if the Commission is unable to obtain the respondent's compliance with the FFHA.

The Commission is certified as a "substantially equivalent" agency by the United States Department of Housing and Urban Development (HUD) and, through annual work share agreements, receives and investigates housing discrimination complaints referred by HUD which may have been filed under the federal Fair Housing Act. HUD provides funding to the Commission through the Fair Housing Assistance Program (FHAP) for processing complaints, training, technical assistance, and the creation and maintenance of data information systems.

Recent judicial decisions interpreting the FFHA have held that a person must first exhaust his or her administrative remedies before pursuing a civil action under the FFHA. A person aggrieved by housing discrimination may commence a civil action at any time under the federal Fair Housing Act, without regard to whether a complaint was filed with HUD or the status of any complaint. Due to this disparity, HUD currently maintains that FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act. As a result, HUD has notified the Commission that its participation in FHAP will be terminated if the FFHA is not amended to eliminate this requirement by March 12, 2016.

This bill amends the FFHA to provide that a person aggrieved by a discriminatory housing practice is not required to exhaust his or her administrative remedies prior to bringing a civil action under the FFHA.

While the bill if passed does not appear to have a fiscal impact on state government, the state may lose federal grants of approximately \$600,000 annually should the bill fail to pass. This bill does not appear to have a fiscal impact on local governments.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

The Florida Commission on Human Relations (the Commission) was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws. The Commission investigates complaints of discrimination under the Florida Fair Housing Act of 1983, the Florida Civil Rights Act of 1992, and the Whistle-Blower's Act of 1999.

Florida Fair Housing Act

The Florida Fair Housing Act (FFHA) is modeled upon the federal Fair Housing Act.¹ The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.² In addition, protection is afforded to persons who are pregnant or in the process of becoming legal custodians of children 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.³

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.⁴ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁵ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.⁶ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may initiate civil action or petition for an administrative determination.⁷ If the Commission finds reasonable cause, the claimant may request that the Attorney General bring the civil action against the respondent.⁸ A civil action must be commenced within two years after the alleged discriminatory act occurred.⁹ The court may continue a civil case if conciliation efforts by the Commission or by a local housing agency are likely to result in a satisfactory settlement.¹⁰ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.¹¹

Remedies available under the FFHA include fines and actual and punitive damages.¹² The court may also award reasonable attorney's fees and costs to the Commission.¹³

Federal Fair Housing Act

Substantially Equivalent Agencies

¹ Part II of Chapter 760, F.S., is the Florida Fair Housing Act. See Florida Fair Housing Commission, *Fair Housing Laws* http://fchr.state.fl.us/resources/the_laws/florida_fair_housing_laws (last visited Jan. 24, 2016).

² s. 760.23(1), F.S.

³ ss. 760.23(6)-(9), F.S.

⁴ s. 760.34(1) and (2), F.S.

⁵ s. 760.34(1), F.S.

⁶ *Id.*

⁷ s. 760.34(4), F.S.

⁸ *Id.*

⁹ s. 760.35(1), F.S.

¹⁰ *Id.*

¹¹ s. 760.35(2), F.S.

¹² Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. s. 760.34(7)(b), F.S.

¹³ s. 760.34(7)(c), F.S.

The United States Department of Housing and Urban Development (HUD) administers and enforces the federal Fair Housing Act.¹⁴ The federal Fair Housing Act recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful housing discrimination.¹⁵ HUD may certify a state or local government agency as “substantially equivalent” if HUD determines that the state or local law and the federal Fair Housing Act are substantially equivalent with respect to:¹⁶

- The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;
- The procedures followed by such agency;
- The remedies available to such agency; and
- The availability of judicial review of such agency’s action.

HUD has developed a two-step process of substantial equivalency certification. The first step considers the *adequacy of the law*, meaning that the law which the agency administers facially provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act.¹⁷ A determination of the adequacy of a state or local fair housing law “on its face” is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the law by competent authorities will be considered in making the determination.¹⁸ The second step considers the *adequacy of performance* of the law, meaning that in operation the fair housing law provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act.¹⁹

If a housing discrimination complaint is filed with HUD under the Federal Fair Housing Act and the complaint falls with the jurisdiction of a “substantially equivalent” agency, HUD must refer the complaint to the local or state agency and may take no further action except under limited circumstances.²⁰

The Commission, charged with enforcement of the FFHA which is modeled upon the federal Fair Housing Act, serves as the main, certified “substantially equivalent” HUD agency in Florida.²¹ Through annual work-share agreements with HUD, the Commission, in its capacity as a substantially equivalent agency, accepts and investigates housing discrimination cases from HUD. **Figure 1** illustrates the number of housing complaints investigated and closed by the Commission from 2010-2015. According to the Commission’s Fiscal Year 2010-11 through Fiscal Year 2014-15 Annual Reports, housing complaints represented on average 15% of all complaints received by the Commission.

¹⁴ 42 U.S.C. 3601, *et seq.*

¹⁵ 42 U.S.C. 3610.

¹⁶ *Id.*

¹⁷ 24 C.F.R. § 115.201.

¹⁸ 24 C.F.R. § 115.204

¹⁹ 24 C.F.R. § 115.201

²⁰ 42 U.S.C. 3610

²¹ HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Jan. 22, 2016).

Figure 1: Florida Commission on Human Relations Resolved Housing Discrimination Cases

Closure Type	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
No Cause	171(64%)	126(69%)	92(50%)	138(73%)	123(67%)
Administrative Cause	46(17%)	15(8%)	50(27%)	29(15%)	52(28%)
Settlement	20(7%)	14(8%)	4(2%)	11(6%)	0(0%)
Withdrawal with Benefits	16(6%)	16(9%)	18(10%)	0(0%)	0(0%)
TOTAL CLOSURES	269	182	183	190	185

Fair Housing Assistance Program

A “Substantially equivalent” agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).²² FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. The financial assistance is designed to provide support for:²³

- The processing of dual-filed complaints;
- Training under the Fair Housing Act and the agencies’ fair housing law;
- The provision of technical assistance;
- The creation and maintenance of data and information systems;
- The development and enhancement of education and outreach projects, special enforcement efforts, partnership initiatives, and other fair housing projects.

The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission as illustrated in **Figure 2**. Trust fund monies received from HUD in Fiscal Year 2014-15 totaled \$604,978, an increase from the Fiscal Year 2013-14 total of \$516,536.

Figure 2: Florida Commission on Human Relations Operating Trust Fund

All Revenues	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
EEOC Federal Contract	\$198,750	\$817,100	\$259,850	\$540,950	\$335,841
HUD Contract/Grant	\$926,693	\$940,219	\$677,998	\$485,462	\$559,469
HUD Registration	\$21,170	\$33,415	\$32,149	\$23,680	\$35,720
Interest Earnings	\$5,023	\$28,565	\$26,665	\$15,250	\$15,313
Refunds	\$4,570	\$9,117	\$57,777	\$43,361	\$7,848
TOTAL	\$1,156,206	\$1,828,416	\$1,054,439	\$1,065,342	\$954,191
HUD Percentage of Total Funds	82.67%	54.37%	73.21%	48.49%	63.93%

Exhaustion of Administrative Remedies

A series of recent judicial decisions regarding the applicability of administrative remedies under the FFHA have threatened the Commission’s status as a “substantially equivalent” HUD agency.

In 2004, the Fourth District Court of Appeal held in *Belletete v. Halford*, that an aggrieved person must first exhaust administrative remedies under the FFHA before commencing a civil action in court, citing the doctrine of exhaustion of administrative remedies.²⁴ The Court’s holding was not based upon an analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather,

²² United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP)*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Jan. 22, 2016).

²³ 24 C.F.R. § 115.300.

²⁴ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); 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 the exhaustion of administrative remedies is the principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. BLACK’S LAW DICTIONARY (2014).

the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act. The *Belletete* holding has been criticized by the Florida Attorney General, and has been rejected by the U.S. District Court for the Southern District of Florida.²⁵ Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal have continued to adopt the holding of *Belletete*, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.²⁶

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of FFHA in *Belletete* requiring the exhaustion of administrative remedies, “renders the Florida law fundamentally inconsistent with federal law.” The Federal Fair Housing Act explicitly allows an aggrieved person to commence a civil action whether or not a complaint has been filed with HUD and without regard to the status of any such complaint.²⁷ Efforts to amend the FFHA during the 2012,²⁸ 2013,²⁹ and 2014³⁰ legislative sessions were unsuccessful and courts continue to apply the *Belletete* rule in FFHA civil actions.

On July 2, 2015, HUD notified the Commission that HUD would suspend the Commission’s participation in FHAP if the FFHA was not amended by January 25, 2016, to overcome the judicially-created requirement that a plaintiff exhaust their administrative remedies as a condition precedent to filing a housing discrimination claim under the FFHA.³¹ In light of the legislative calendar, HUD has agreed to extend the deadline to amend the FFHA until March 12, 2016.³²

EFFECT OF THE BILL

The bill amends the FFHA to provide that a person aggrieved by a discriminatory housing practice is not required to petition for an administrative hearing or exhaust his or her administrative remedies prior to bringing a civil action under the FFHA. Therefore, a person who alleges that he or she has been injured by unlawful housing discrimination may file a civil action at any time under the FFHA regardless of whether a complaint has been filed with the Commission or the status of any such complaint.

The bill prohibits the filing of a civil action under the FFHA if the claimant and the respondent have entered into a conciliation agreement which has been approved by the Commission other than to enforce the terms of the agreement. Also, an aggrieved person may not file a civil action regarding a discriminatory housing practice once an administrative hearing has begun. These provisions are consistent with similar provisions under the federal Fair Housing Act.

The bill also makes conforming changes to s. 760.07, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 760.07, F.S., regarding remedies for unlawful discrimination.

Section 2 amends s. 760.34, F.S., regarding enforcement.

²⁵In *Milsap v. Cornerstone Residential Management, Inc.*, 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on *Belletete* as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General intervened and argued that *Belletete* was wrongly decided, the court reversed itself and reinstated the FFHA claims. See, 2010 WL 427436 (S. D. Fla. 2010).

²⁶ *Sun Harbor Homeowners Association v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012); *State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA 2015); *HOPE v. SPV Realty, L.C.*, Case No. 14-32184-CA-01 (Eleventh Judicial Circuit April 30, 2015).

²⁷ 42 U.S.C. 3613.

²⁸ SB 442 (Senator Braynon) and HB 283(Representative Watson).

²⁹ SB 310 (Senator Braynon) and HB 523 (Representative Watson).

³⁰ SB 410 (Senator Braynon) and HB 453 (Representative Watson).

³¹ Phone call between Tashiba Robinson and Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Jan. 19, 2016).

³² *Id.*

Section 3 amends s. 760.35, F.S., regarding civil actions, relief and administrative procedures.

Section 4 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Office of the State Courts Administrator indicates that the fiscal impact of the bill is unknown due to the unavailability of data needed to establish both additional revenue expected to be generated from an increase in civil filings and increased expenditures due to additional workload.³³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Commission does not expect a fiscal or workload impact from the bill. While the Commission maintains that existing law allows a person aggrieved by a discriminatory housing practice to commence a civil action without first filing a complaint for an administrative remedy, the bill clarifies that individuals can bypass the investigation and conciliation process in order to better access Florida's court system.

According to the Commission, if the proposed bill does not pass, the Commission will continue to investigate any complaints of housing discrimination directly filed with the Commission under the FFHA, but would no longer receive or investigate cases for HUD. Additionally, federal funding from HUD for investigations, administrative costs, or training would be at risk. HUD has indicated to the Commission that cases previously referred by HUD would have to be investigated by HUD.

The Commission received \$604,978 from HUD in the 2014-2015 fiscal year. The ending fund balance of the Human Relations Commission Operating Trust Fund for Fiscal Year 2015-2016 is estimated to be \$17,360.³⁴ As a result of the potential loss of federal funds, a deficit of (\$1,264,105) is projected to occur in the Human Relations Commission Operating Trust Fund in Fiscal Year 2016-2017. If the bill does pass and federal funds continue to be received from HUD for investigations, the Commission projects an ending fund balance of (\$664,105) in Fiscal Year 2016-2017.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³³ Office of State Courts Administrator, *2016 Judicial Impact Statement SB 7008* (Nov. 2, 2015).

³⁴ Accrual Fund Balance Analysis – Human Relations Commission Operating Trust Fund (Jan 11, 2016).

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changes the effective date of the bill to upon becoming a law. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.