

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 Committee on Governmental Oversight and Accountability

BILL: SPB 7008

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Fair Housing Act

DATE: October 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		Pre-meeting
2.				
3.				

I. Summary:

SPB 7008 allows a person who alleges housing discrimination to file a civil action in a Florida court of law regardless of whether a complaint has been filed with the Florida Commission on Human Relations or a local housing discrimination agency, unless a conciliation agreement has been obtained.

The purpose of the legislation is to ensure that the Florida Commission on Human Relations continues to be eligible to contract with the U.S. Department of Housing and Urban Development (HUD) regarding housing discrimination cases. HUD has informed the Florida Commission on Human Relations that the Commission will no longer receive federal monies for investigations, administrative costs and training unless the Florida Fair Housing Act is not amended to overcome the judicially-created requirement that a state court plaintiff exhaust his or her administrative remedies as a precondition to filing a housing discrimination claim in state court. The federal funds at risk are approximately \$600,000 annually (roughly 15.5 percent of the commissions total budget).

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, pregnancy,¹ 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

¹ Chapter 2015-68, Laws of Florida; *see also* Senate Bill 982 (Reg. Session 2015).

Commission to the Department of Management Services (DMS); however, the Commission is not subject to any control, or supervision by, or direction from DMS.

The Commission is comprised of 12 individuals appointed by the Governor and confirmed by the Senate.² The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.³ At least one member of the Commission must be 60 years of age or older.⁴ The Commission is empowered to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging any discriminatory practice.⁵

Florida Fair Housing Act

Part II of Chapter 760, F.S., constitutes the Florida Fair Housing Act (FFHA). 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 to sell or rent, or otherwise make unavailable, or deny, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.⁶ In addition, protection is afforded to 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.⁷

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.⁸ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁹ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.¹⁰ 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.¹¹

² Section 760.03(1), F.S.

³ Section 760.03(2), F.S.

⁴ *Id.*

⁵ Section 760.06(5), F.S.

⁶ Section 760.23(1), F.S.

⁷ Sections 760.23(6)-(9), F.S.

⁸ Section 760.34(2), F.S.

⁹ Section 760.34(1), F.S.

¹⁰ *Id.*

¹¹ Section 760.34(4), F.S.

Section 760.34(8), F.S., provides that any local agency certified as substantially equivalent¹² 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.¹³

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.¹⁴ 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.¹⁵ If the court finds that a discriminatory housing practice has occurred, it is to issue an order prohibiting the practice and providing affirmative relief.¹⁶ 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 under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.¹⁷

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 HUD, the Commission, certified as a substantially equivalent agency,¹⁸ 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 1968.¹⁹ 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 2014-15 totaled \$604,978 which is up from the FY 2013-14 total of \$516,536.²⁰

¹² See Section 760.22(9), F.S. (For substantial equivalence certification, a state or local agency applies for certification and the U.S. Dep't of Housing and Urban Development determines if the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions substantially equivalent to the federal Fair Housing Act. See U.S. Department of Housing and Urban Development, Substantial Equivalence Certification, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/equivalency (last visited Aug. 3, 2015)).

¹³ Section 760.34(8), F.S.

¹⁴ Section 760.35(1), F.S.

¹⁵ *Id.*

¹⁶ Section 760.35(2), F.S.

¹⁷ Section 760.35(3), F.S.

¹⁸ 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_opp/partners/FHAP/agencies (last visited Aug. 3, 2015). Providing a list of agencies participating in the FHAP with HUD.

¹⁹ 42 U.S.C. ch. 45. 3601-3619; See 42 U.S.C. 3631 for penalties for violations.

²⁰ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (on file with the Governmental Oversight and Accountability Committee).

FY 2010-2011 through FY 2014-2015 Housing Related Complaints

According to the Commission’s FY 2010-11 through FY 2014-15 Annual Reports, housing complaints represented on average 15 percent of all complaints received by the Commission. From FY 2010-11 through FY 2014-15, 1009 cases were closed, distributed as follows:

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 Closure	46 (17%)	15 (8%)	50 (27%)	29 (15%)	52 (28%)
Cause	20 (7%)	14 (8%)	4 (2%)	11 (6%)	0 (0%)
Settlement	16 (6%)	16 (9%)	18 (10%)	0 (0%)	0 (0%)
Withdrawal with Benefits	16 (6%)	11 (6%)	19 (11%)	12 (6%)	10 (5%)
Total Closures	269	182	183	190	185

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

Florida’s Fourth District Court of Appeal held in the 2004 case, *Belletete v. Halford*, that individuals claiming discrimination under the FFHA must exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative remedies.²¹ In 2012, the Fourth DCA reiterated that the Florida Fair Housing Act, as interpreted by that court, requires exhaustion of administrative remedies as a condition precedent to a civil suit.²² The court did not rule on that particular issue because it was moot.²³ 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, it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy.”²⁴ The U.S. District court agreed that the Fourth DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before filing a civil lawsuit in a cause of action grounded in the FFHA.²⁵

²¹ *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 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.

²² *Sun Harbor Homeowners’ Ass’n, Inc. v. Bonura*, 95 So. 3d 262 (Fla. 4th DCA 2012).

²³ *Id.*

²⁴ *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436, at 1 (S.D. Fla. 2010).

²⁵ *Id.* at 2. The court held that the FFHA 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.

U.S. Housing and Urban Development Response

Based upon the Fourth DCA holdings in *Belletete v. Halford*, HUD notified the Commission that the agency will no longer receive federal monies for investigations, administrative costs and training if the FFHA is not amended to overcome the judicially-created requirement that a state court plaintiff must exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.²⁶ HUD has agreed to extend the deadline for the Commission to have the FFHA amended until March 12, 2016.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 760.07, F.S., by deleting the term “housing.” A plaintiff will no longer be required to exhaust his or her administrative remedies in an unlawful housing discrimination case. Such plaintiff will now be permitted to file a civil case in a Florida court of law without filing a complaint with the Commission or a local housing discrimination agency and waiting for final resolution.

Section 2 amends s. 760.34, F.S., to remove the requirement that a person must wait until the expiration of the 180 day time period after filing a complaint with the Commission or expiration of the 180 day time period after referral of the complaint to local fair housing agency before a person may commence a civil action.

This section is also amended to allow a person who was injured by a discriminatory housing practice to commence a civil action at any time and is not required to have petitioned for an administrative hearing or exhausted administrative remedies before initiating the civil action.

Section 3 amends s. 760.35, F.S., to provide that an aggrieved person may commence a civil action whether a complaint has been filed with the Commission pursuant to s. 760.34(1), F.S., and without regard to the status of such complaint.

If the Commission has obtained a conciliation agreement with consent of the aggrieved person, no civil action may be filed by the aggrieved person except to enforce the terms of such agreement. Also, an aggrieved person may not bring a civil action regarding a discriminatory housing practice if an administrative law judge has commenced a hearing on the record for such charge.

Section 4 provides an effective date of July 1, 2016.

²⁶ Letter from HUD to Michelle Wilson, Executive Director, Florida Commission on Human Relations, dated July 8, 2015 (copy on file with the Senate Governmental Oversight and Accountability Committee).

²⁷ *Id.*

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

The Commission will incur no fiscal or workload impact related to the enactment of this bill.²⁸ While the Commission maintains that a Floridian aggrieved by a discriminatory housing practice already may commence a civil action without first filing a complaint for an administrative remedy, this bill confirms for individuals in the jurisdiction of the Fourth DCA that they 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, this agency would continue to investigate any complaints of housing discrimination directly filed with the Commission; however, they would no longer receive or investigate cases for HUD.²⁹ Potentially, the Commission will no longer receive funding from HUD for investigations, administrative costs, or training.³⁰ The Commission received \$604,978 from HUD in FY

²⁸ E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 20, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

²⁹ E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 19, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

³⁰ See *supra* note 26.

2014-15.³¹ HUD has indicated to the Commission that cases previously referred to the Commission by HUD would have to be investigated by HUD.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 760.07, 760.34, and 760.35 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

³¹ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

³² *Id.*