

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 Judiciary

BILL: SB 440

INTRODUCER: Senator Rouson

SUBJECT: Florida Commission on Human Relations

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 440 amends several statutes involving the Florida Commission on Human Relations (Commission). The Commission is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

Specifically, the bill:

- Changes the number of commissioners required for a quorum from seven to a majority of the currently appointed commissioners and establishes a quorum of three for panels.
- Allows the Commission to nominate fewer than 10 people for the Florida Civil Rights Hall of Fame each year.
- Requires the Commission to provide notice to an aggrieved person under specified circumstances and notify the person that he or she must file a civil action within 1 year or the action will be barred.
- Removes the registration requirement for facilities and communities that claim an exemption for housing the elderly and eliminates related fees and fines.
- Deletes a requirement that the Commission or the Attorney General investigate public housing discrimination complaints and increases the time from 30 to 45 days for the Commission or the Attorney General has to resolve the dispute. Revises various deadlines and time constraints regarding the Commission's fact-finding investigation period for a retaliation claim.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2019.

II. Present Situation:

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status. The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services. The Commission possesses the requisite powers to enforce the FCRA.¹ The Governor appoints, and the Senate confirms, the 12 members of the Commission.²

The Florida Commission on Human Relations

The Commission is empowered to receive, initiate, investigate, conciliate, and act upon complaints alleging discriminatory practices.³ Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.⁴

An aggrieved person, the Commission, a commissioner, or the Attorney General has 365 days after the alleged violation to file a complaint with the Commission.⁵ Within 180 days after the filing, the Commission must make a determination of whether reasonable cause exists to believe that discriminatory practice has occurred.⁶

If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring civil action.⁷ A civil action must be brought within a year after the determination of reasonable cause.⁸ The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.⁹ The remedies available through an administrative hearing include back pay and attorney's fees, while remedies available through a civil action include injunctive relief, compensatory damages, punitive damages up to \$100,000, and attorney's fees.¹⁰

Quorum for Commission Meeting

The Commission is comprised of 12 members. Currently, the Commission has just 9 members serving on its board.¹¹

¹ Section 760.06(6), F.S.

² Section 760.03(1), F.S.

³ Section 760.06(5), F.S.

⁴ Section 760.021(1), F.S.

⁵ Section 760.11(1), F.S.

⁶ Section 760.11(3), F.S.

⁷ Section 760.11(4), F.S.

⁸ Section 760.11(5), F.S. If, however, the Commission fails to make a determination of reasonable cause, the four-year statute of limitations for cause of action based on statutory liability applies. *Joshua v. City of Gainesville*, 768 So.2d 432 at 439 (Fla. 2000).

⁹ Section 760.07, F.S.

¹⁰ Section 760.11(5), (6), and (7), F.S.

¹¹ Florida Commission on Human Relations, *Commissioners*, <https://fchr.myflorida.com/fchrcommissioners>.

Current law provides that seven members constitute a quorum for the Commission to conduct business.¹² Due to the low number of commissioners currently appointed, the Commission has difficulty meeting the seven member quorum. If three members were to resign, the Commission could no longer conduct official business at all. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.¹³

The Commission is also permitted to establish panels of not less than three members to exercise its powers under the Florida Civil Rights Act, subject to procedures and limitations the Commission may provide by rule.

Halls of Fame in Florida

It is the intent of the Florida Legislature to recognize and honor those persons, living or dead, who have made significant contributions to this state. The Legislature has established various Halls of Fame including the Florida Women's Hall of fame, Florida Artists Hall of Fame, Florida Educator Hall of Fame, Florida Sports Hall of Fame, and the Florida Civil Rights Hall of Fame.

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.¹⁴ Each year the Commission recommends 10 people for induction into the Florida Civil Rights Hall of Fame, from which list the Governor selects up to 3 new members.¹⁵ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.¹⁶

The Commission has failed to receive the minimum 10 recommendations in some years. In 2014 the Commission received 6 nominations, in 2015, it received 9 nominations, and in 2016, it received 9 nominations, such that the Commission faced violating the statute by submitting fewer than 10 recommendations. In each year the Governor has selected the maximum three inductees.

Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act, which protects citizens against discrimination in housing practices.¹⁷ The Florida Fair housing Act 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 may file a complaint with the Commission.¹⁸ The complainant must file the complaint within one year after the alleged discriminatory practice

¹² Section 760.03(5), F.S.

¹³ See, e.g. ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), and s. 456.011(3) (Boards and Commissions within DOH).

¹⁴ Section 760.065, F.S.; see ch. 3010-53, Laws of Fla.

¹⁵ Section 760.065(3)(a), F.S.

¹⁶ Section 760.065(3)(b), F.S.

¹⁷ Sections 760.20-760.37, F.S.

¹⁸ Section 760.34(1), F.S.

has occurred.¹⁹ The Commission has 100 days after receipt of the complaint to complete its investigation and give notice in writing to the person aggrieved whether it intends to resolve it.²⁰ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²¹

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply. Certain housing for older persons is exempt from charges of discrimination based on familial status.²² Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older. These facilities must register with the Commission and renew such registration every two years, and pay a fee that does not exceed \$20 fee for registration and renewal.²³ The Commission may impose an administrative fine of up to \$500 for submission of false information,²⁴ but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption, and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015. The registry is not determinative as to whether the community actually qualifies from the housing for older persons' exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

Whistleblower Investigations

The Commission is authorized to investigate any allegation of an adverse action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.²⁵ When an employer retaliates against an employee who makes such a disclosure (a whistleblower), the whistleblower may make a complaint to either the Inspector General or the Commission within 60 days.²⁶ The office must provide notice of receipt of such a complaint, and the Commission will begin a fact finding investigation into the complaint.²⁷ The Commission must investigate the complaint and, if a violation is found, move to protect the whistleblower by petitioning for relief and recommending disciplinary proceedings as they see fit.²⁸

¹⁹ Section 760.34(2), F.S.

²⁰ Section 760.34(1), F.S.

²¹ *Id.*

²² Section 760.29(4), F.S.

²³ Section 760.29(4)(c), F.S.

²⁴ *Id.*

²⁵ *See s. 112.3187(4), (5), (6), and (7).*

²⁶ Section 112.31895(1), F.S.

²⁷ Section 112.31895(2), F.S.

²⁸ Section 112.31895(3), F.S.

If an agency does not implement the recommended action of the Commission within 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.²⁹ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.³⁰

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and state the reasons for terminating the investigation.³¹

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.³² This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from non-members for business purposes.³³ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status.³⁴ This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.³⁵

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.³⁶ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant in writing if it intends to resolve the complaint.³⁷

If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.³⁸ If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days

²⁹ Section 112.31895 (3)(e), F.S.

³⁰ Section. 112.31895(4)(a), F.S.

³¹ Section 112.31895(3)(d), F.S.

³² Section 760.60(1), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 760.60(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.³⁹ If the court finds a discriminatory practice has occurred 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.⁴⁰

III. Effect of Proposed Changes:

Florida Commission on Human Rights

Section 1 amends s. 760.03, F.S., to change the number of commissioners required for a quorum from seven to a majority of the currently appointed commissioners. This change should avoid a situation where action needs to be taken but, due to unfilled commissioner slots, having seven commissioners is impracticable. For example, the bill would allow the Commission as it sits today to meet and conduct business with five of the nine commissioners. The bill also provides that panels created by the Commission would be able to establish a quorum to conduct business with three commissioners on the panel.

Section 2 amends s. 760.065, F.S., to allow the Commission to recommend fewer than 10 people for the Florida Civil Rights Hall of Fame each year. Currently, the Commission must recommend exactly 10 people each year, while the Governor may accept between zero and three new members. This prevents the Commission from violating the law when they receive fewer than 10 nominations from which to select.

Section 3 amends s. 760.11, F.S., to provide that if the Commission fails to determine whether there is reasonable cause within 180 days, the Commission is required to promptly notify the individual of the Commission's failure to conciliate or to determine reasonable cause, to inform the individual of available options, and to inform the individual that a civil action alleging a violation of the Florida Civil Rights Act is prohibited if not filed within 1 year after the date the Commission certifies that the notice was mailed.

The bill requires that any civil action brought by an individual must be commenced within 1 year after the date the Commission certifies that the notice was mailed.

Fair Housing Act

Section 4 deletes s. 760.29(4)(e), F.S., to remove the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

Section 5 amends s. 760.31, F.S., to remove instructions for fee and forms made obsolete by the changes in s. 760.29 (4)(e), F.S., in section 4.

³⁹ Section 760.60(3), F.S.

⁴⁰ *Id.*

Discriminatory Practices in Certain Clubs

Section 6 amends s. 760.60, F.S., to delete the requirement that the Commission or the Attorney General investigate the public accommodation discrimination complaint. The bill also extends from 30 days to 45 days the time for the Commission or the Attorney General to resolve the dispute.

State Employee Whistle-blower's Act

Section 7 amends s. 112.31895, F.S., to revise various time periods involving the Commission's fact-finding investigation period for a whistleblower retaliation claim. Specifically, this section:

- Increases the time to acknowledge receipt of a complaint from 3 to 5 working days;
- Removes the requirement that the Commission separately acknowledge receipt of a complaint;
- Increases the time for the Commission to complete its fact-finding report from 90 to 180 days;
- Decreases the time for the Commission to terminate its investigation from 60 to 35 days after receipt of the fact-finding report;
- Increases the time for the relevant agency to implement the Commission's recommended action from 20 to 35 days; and
- Decreases the time for a complainant to appeal following a notice of termination of the investigation from 60 to 21 days.

These changes bring most of the timeframes for s. 112.31895, F.S., complaint investigations in line with complaints filed with the Commission under s. 760.11, F.S.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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 state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Elderly housing organizations will no longer have to register every two years.

C. Government Sector Impact:

The Commission will have a longer period of time to investigate whistleblower allegations, which will allow it more flexibility in organizing its efforts. The Commission will also no longer have to register elderly housing organizations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.03, 760.065, 760.11, 760.29, 760.31, 760.60, and 112.31895.

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.