HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 175 Housing Discrimination
SPONSOR(S): Davis, Smith, D. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 374

FINAL HOUSE FLOOR ACTION: 117 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 175 passed the House on March 11, 2020, as SB 374.

The Florida Commission on Human Relations (Commission) 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 after the federal Fair Housing Act, the FFHA prohibits a person from refusing to sell or rent, or otherwise make available, 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 as such, through annual work share agreements, receives and investigates housing discrimination complaints referred by HUD. HUD provides funding to the Commission through the Fair Housing Assistance Program (FHAP) for processing complaints, training, technical assistance, and creating and maintaining data information systems.

Recent state court decisions interpreting the FFHA held that a person must first exhaust his or her administrative remedies by filing a complaint with the Commission before pursuing a civil action under the FFHA. However, 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 maintains that the FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act. HUD has not yet decertified the Commission.

Restrictive covenants govern the use of real property. Some restrictive covenants restrict a person's ownership, occupancy, or use of real property based on such person's membership in a class protected under the United States Constitution and Florida Constitution, including race, religion, color, national origin, familial status, and physical disability (discriminatory restriction). Such discriminatory restrictions violate the federal and state Fair Housing Acts and are thus unenforceable.

The bill amends the FFHA to clarify 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. This change will make the FFHA "substantially equivalent" to the federal Fair Housing Act. The bill also provides that a discriminatory restriction in a title transaction is unenforceable and extinguished under the Marketable Record Title Act (MRTA).

The bill does not appear to have a fiscal impact on state government. However, based on a six year average of HUD revenues received by the Commission, a potential loss in federal funding of approximately $542,749 could occur should HUD discontinue referring cases to the Commission through the annual work share agreement. This bill does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on September 4, 2020, ch. 2020-164 L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The Florida Commission on Human Relations (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 after 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 fees and costs to the Commission.[13]

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[1] Chapter 760, part II, F.S., is the Florida Fair Housing Act. Florida Fair Housing Commission, *Housing Act,* https://fchr.myflorida.com/history-of-the-florida-commission-on-human-relations (last visited Mar. 18, 2020).
[2] S. 760.23(1), F.S.
[3] S. 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.

Federal Fair Housing Act

Substantially Equivalent Agencies

The United States Department of Housing and Urban Development (HUD) administers and enforces the federal Fair Housing Act (FHA).[14] The FHA 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 FHA 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 FHA.[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 FHA.[19]

If a housing discrimination complaint is filed with HUD under the FHA and the complaint falls within 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 serves as the certified substantially equivalent HUD agency in Florida.[21] Through annual work-share agreements with HUD, the Commission accepts and investigates housing discrimination cases from HUD. According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2017-18 Annual Reports, housing complaints were, on average, 15 percent of all complaints received by the Commission.[22]

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[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 Mar. 18, 2020).
[22] Florida Commission on Human Relations, *Annual Reports*, available at https://fchr.myflorida.com/annual-reports/ (last visited Mar. 18, 2020).

Florida Commission on Human Relations Resolved Housing Discrimination Cases

Closure Type	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
No Cause	92 (50%)	138 (73%)	123 (67%)	106 (58%)	74 (42%)	62 (22%)
Administrative	50 (27%)	29 (15%)	52 (28%)	66 (36%)	80 (45%)	203 (73%)
Cause	4 (2%)	11 (6%)	0 (0%)	1 (0.5%)	18 (10%)	13 (5%)
Settlement	18 (10%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Withdrawal with Benefits	19 (11%)	12 (6%)	10 (5%)	9 (5%)	5 (3%)	0 (0%)
TOTAL CLOSURES	**183**	**190**	**185**	**182**	**177**	**278**

Fair Housing Assistance Program

A substantially equivalent agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).[23] FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the FHA. Financial assistance provides support for:

- The processing of dual-filed complaints;
- Training under the FHA 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. [24]

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. A six year average of trust fund revenue received from HUD is $542,749.

Florida Commission on Human Relations Operating Trust Fund

Revenues	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19
EEOC Federal Contract	$540,950	$335,841	$410,714	$597,021	$614,500	$2,000
HUD Contract/Grant	$485,462	$559,469	$490,900	$847,255	$424,400	$383,509
HUD Registration	$23,680	$35,720	$6,100	$0	$0	$0
Interest Earnings	$15,250	$15,954	$10,475	$7,292	$14,564	$24,270
Refunds	$43,361	$1,174	$583	$0	$20,816	$3
TOTAL	**$1,108,703**	**$948,158**	**$918,772**	**$1,451,568**	**$1,074,280**	**$409,782**

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 state court, citing the doctrine of exhaustion of administrative remedies.[25] The Court's holding was not based upon an analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a brief 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

[23] 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 Mar. 18, 2020).
[24] 24 C.F.R. § 115.300.
[25] *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); S*ee 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 (10th ed. 2014), exhaustion of remedies.

has been rejected by the U.S. District Court for the Southern District of Florida.[26] Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal, have adopted the *Belletete* holding, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.[27]

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of the FFHA in *Belletete* requiring the exhaustion of administrative remedies renders the Florida law fundamentally inconsistent with federal law. The FHA 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.[28] Efforts to amend the FFHA during the 2014,[29] 2016,[30] 2018,[31] and 2019[32] 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 it 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.[33] In light of the legislative calendar, HUD agreed to extend the deadline to amend the FFHA until March 12, 2016.[34]

On March 16, 2016, HUD recognized pending litigation in the Third District Court of Appeal[35] and vowed to refrain from making any decision regarding suspension of the Commission's participation in FHAP during the pendency of the judicial proceedings.[36] In December 2016, the Third District Court of Appeal applied the *Belletete* rule and held that a plaintiff must exhaust all administrative remedies before commencing an action in civil court, determining that "[w]hether the [Florida Fair Housing Act] should be amended to conform precisely to the federal [Fair Housing Act] is a matter for the Legislature."[37]

On August 8, 2019, HUD notified the Commission that the FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act.[38] The Commission continues to risk suspension in FHAP if the Legislature does not amend the FFHA.

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[26] In *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).

[27] *Sun Harbor Homeowners Ass'n 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 (Fla. 11th Cir. Ct. April 30, 2015).

[28] 42 U.S.C. § 3613.

[29] SB 410 (Senator Braynon) and HB 453 (Representative Watson).

[30] SB 7008 (Senate Governmental Oversight and Accountability) and HB 339 (Representative Rouson).

[31] SB 306 (Senator Rouson) and HB 853 (Representative Davis).

[32] SB 958 (Senator Rouson) and HB 565 (Representatives Williams and Davis).

[33] Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to Michelle Wilson, Executive Director, Florida Commission on Human Relations, (July 2, 2015).

[34] Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to Michelle Wilson, Executive Director, Florida Commission on Human Relations, *Subject: Florida Fair Housing Act - Exhaustion of Administrative Remedies*, (Mar. 16, 2016).

[35] *Housing Opportunities Project v. SPV*, 212 So. 3d 419 (Fla. 3rd DCA 2016).

[36] Letter from Sara K. Pratt, *supra*, note 33.

[37] *Housing Opportunities Project v. SPV*, 212 So. 3d 419 at 424.

[38] Letter from Carlos Osegueda, Office of Fair Housing and Equal Opportunity Region IV Director, *Subject: Post-Suspension Performance Assessment Report,* (Aug. 8, 2019).

Marketable Record Title Act

Prior to passage of the Marketable Record Title Act (MRTA) in 1963, a title examination involved reviewing all documents relating to the real property recorded in the public records of the county in which the property lies from the oldest public records[39] to the most recent.[40] This usually required the purchase of a title abstract and a review and analysis of every document and title transaction[41] listed in the abstract.[42] However, MRTA created a new title concept, i.e., the marketable record title, by eliminating ancient defects or stale claims to real property.[43] In other words, MRTA simplifies the title examination process by confirming a piece of real property's marketability based on a 30-year marketable record period and a consideration of certain statutory exceptions rather than on a perfect record from the oldest public records to the most recent. Specifically, MRTA provides that any person with the legal capacity to own land who, alone or with a predecessor in title, has been vested with any estate in land of record for 30 years or more, has marketable record title to such land free and clear of all claims other than those excepted in statute.[44]

Discriminatory Restrictive Covenants

Taken together, the Fourteenth Amendment of the United States Constitution and section 2, article I of the Florida Constitution protect persons from discrimination on the basis of certain characteristics, including race, color, national origin, religion, gender, pregnancy, familial status, and physical disability (protected class). However, some title transactions recorded in the state restrict a person's ownership, occupancy, or use of real property based on such person's membership in a protected class (discriminatory restriction), vestiges of a time when property value was determined in part by the people living in the neighborhood.[45]

In the early 20th century, cities used zoning ordinances to segregate people into neighborhoods by race and ethnicity, but in 1917, the U.S. Supreme Court declared the practice unconstitutional.[46] After this ruling, restrictive covenants became the preferred method of segregation based on membership in a protected class. As private contracts, restrictive covenants did not fall under existing laws prohibiting discrimination by the federal government or the state, and in 1926, the U.S. Supreme Court declared discriminatory restrictions enforceable.[47] Discriminatory restrictions were so successful in segregating neighborhoods that in 1934, the Federal Housing Administration (Administration) recommended that all Administration-insured homes include such restrictions in their deeds, finding that, "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."[48]

However, in 1948, the U.S. Supreme Court found racially restrictive covenants unenforceable under the Fourteenth Amendment of the United States Constitution.[49] In 1949, the Administration stopped rejecting new mortgage insurance applications simply because the home's purchase or occupancy

[39] These records could date as far back as a land grant from the King of Spain when Florida was a Spanish colony. *See* The Florida Bar, *Florida Real Property Title Examination and Insurance* chapter 2, (8th ed. 2016).
[40] Gregory M. Cook, *The Marketable Record Title Act Made Easy*, 66 Fl. Bar J. 55 (Oct. 1992), https://www.floridabar.org/the-florida-bar-journal/the-marketable-record-title-act-made-easy/ (last visited Mar. 18, 2020).
[41] "Title transaction" means any recorded instrument or court proceeding affecting title to any estate or interest in land and describing the land sufficiently to identify its location and boundaries. S. 712.01(7), F.S.
[42] *Id.*
[43] *Id.*
[44] S. 712.02(1), F.S.
[45] In 1931, a common appraisal text included the language: "we must recognize the customs, habits, and characteristics of various strata of society and races of people." National Association of Realtors ("NAR"), You Can't Live Here: The Enduring Impacts of Restrictive Covenants (Feb. 2018), https://www.nar.realtor/sites/default/files/documents/2018-February-Fair-Housing-Story.pdf (last visited Mar. 18, 2020).
[46] *Buchanan v. Warley*, 245 U.S. 60 (1917).
[47] *Corrigan v. Buckley*, 271 U.S. 323 (1926).
[48] NAR, *supra* note 32.
[49] *Shelley v. Kraemer*, 334 U.S. 1 (1948).

might violate a discriminatory restrictive covenant,[50] and in 1968, Congress passed the Fair Housing Act, explicitly prohibiting racial discrimination in housing sale, rental, or financing.[51] Florida's Fair Housing Act also generally prohibits discrimination in the sale or rental of real property based on membership in a protected class,[52] and prohibits the making, printing, or publishing of "any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on [such membership]."[53]

Though unenforceable, discriminatory restrictions can be difficult to remove from the public record as they run with the land, passing from owner to owner. Where a restrictive covenant governs the use of property in a homeowners' association[54] (HOA), the Declaration of Covenants may be amended to remove the restriction by an affirmative vote of the HOA's members, which vote must be two-thirds of all voting interests unless the HOA's governing documents[55] specify otherwise.[56] However, voter apathy is a common problem in HOAs, making restrictive covenant amendments challenging,[57] and no similar process exists for homeowners living in a neighborhood with a voluntary neighborhood association.[58]

However, a homeowner with a discriminatory restriction in his or her deed may seek a declaratory judgment[59] from the circuit court for the judicial circuit in which the property is located to determine his or her rights under the deed.[60] This process can be costly and time-consuming, as well as intimidating for homeowners unfamiliar with the court system. Additionally, a declaratory judgment would only state that a discriminatory restriction is void and unenforceable against the homeowner; it would not remove the offending language from the official record.

Many who encounter a discriminatory restriction suffer pain, reminded of segregation and other forms of discrimination from the not-so-distant past. Additionally, a prospective homebuyer may be discouraged from buying a home with a discriminatory restriction in the deed, believing that he or she may not be welcome in the neighborhood.[61] Understanding this, California and Washington State have in recent years created a simplified process for HOAs to remove discriminatory restrictive covenants from their respective Declarations of Covenant.[62] California also allows a homeowner with a discriminatory restriction in his or her deed to file in the official records of the county in which his or her property lies a modification document along with a copy of the deed with the offending restriction

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[50] NAR, *supra* note 32.
[51] Title VIII of the Civil Rights Act of 1968.
[52] The prohibition does not apply to the sale or rental of a single-family home by a private individual owner, housing for older persons if the discrimination is against familial status, or to a religious organization giving preference to members of such religion for any dwelling operated or owned for something other than a commercial purpose under specified circumstances. S. 760.29(1), (2), and (4), F.S.
[53] S. 760.23(1)-(3), F.S.
[54] HOA means a Florida corporation responsible for a community's operation in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. S. 720.301(9), F.S.
[55] An HOA's governing documents include the Declaration of Covenants, Articles of Incorporation, Bylaws, and Rules and Regulations.
[56] S. 720.306(1)(b), F.S.
[57] *See* Joseph Adams, *Voter Apathy Plagues Florida Community Associations*, Florida Condo & HOA Law Blog (Feb. 16, 2017), https://www.floridacondohoalawblog.com/2017/02/16/voter-apathy-plagues-florida-community-associations/ (last visited Mar. 18, 2020).
[58] A voluntary association is, as the name suggests, voluntary. Members must pay dues and follow the association's rules, but the association has no lien rights or other authority over the homeowner except to exclude the homeowner from membership.
[59] An interested person in doubt about his or her rights under a deed, will, contract, or other article or instrument may have determined by a court any question of construction or validity arising under such article or instrument. When such relief if sought, all interested persons whose interest may be affected by the declaration may be made parties. The court's declaration may be either affirmative or negative in form and has the force and effect of a final judgment. Ss. 86.011, 86.021, and 86.091, F.S.
[60] S. 86.021, F.S.
[61] For example, in 2019, an attorney buying a home in the Betton Hills neighborhood of Tallahassee, Florida discovered a racially discriminative restrictive covenant in the home's deed prohibiting a person "of other than the Caucasian race" to own, use, or occupy property in the neighborhood except as "domestic servants." The attorney, upset by language that would have excluded her minor son if enforceable, decided not to buy the home. *See* TaMaryn Waters, *Attorney Wants Outdated, Racist Covenant Language in Betton Hills Stripped*, Tallahassee Democrat, Oct. 13, 2019, https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/ (last visited Mar. 18, 2020).
[62] *See* Wash. Rev. Code § 49.60.227; *see also* Cal. Civ. Code § 6606.

stricken through.[63] If the county attorney agrees that the stricken restriction is illegal and unenforceable, the modification document is recorded in the county's official records.[64]

Effect of the Bill

The bill amends the FFHA to establish that a person alleging 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 or file a civil action once an administrative hearing has begun. These provisions are consistent with the federal Fair Housing Act.

Additionally, the bill defines "discriminatory restriction," providing that such a restriction is unlawful and unenforceable. Under the bill, a discriminatory restriction is extinguished from any recorded title transaction under MRTA, and filing a notice to preserve such a restriction has no effect. The bill also simplifies the process to remove a discriminatory restriction in a covenant affecting parcels in a property owners' association (POA)[65] or a voluntary neighborhood association by allowing such removal through a majority vote of the association's board of directors, instead of a vote by two-thirds of the association's members or some other number of members specified in the association's governing documents.

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

The bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

[63] See Cal. Gov't Code § 12956.1.
[64] See Cal. Gov't Code § 12956.2.
[65] A POA is a homeowners' association, corporation, or other entity responsible for the operation of property in which voting membership is made up of the property owners and their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners authorized to enforce a community covenant or restriction imposed on the parcels. S. 712.01(5), F.S.

2. Expenditures:

   The Office of the State Courts Administrator indicates an indeterminate fiscal impact due to the unavailability of data to establish additional revenue expected from an increase in civil filings and increased expenditures due to additional workload.[66]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There is no workload or fiscal impact to the Commission as a result of provisions in the bill. However, based on a six year average of HUD revenues received by the Commission, a potential loss in federal funding of approximately $542,749 could occur should HUD discontinue referring cases to the Commission through the annual work share agreement.

[66] Information from an Agency Analysis of an identical bill: Office of State Courts Administrator, *2016 Judicial Impact Statement SB 7008* (Nov. 2, 2015).