

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 255 Florida Commission on Human Relations

**SPONSOR(S):** Civil Justice Subcommittee, Antone

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 726

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**FINAL HOUSE FLOOR ACTION:** 116 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 255 passed the House on March 11, 2020, and subsequently passed the Senate on March 12, 2020.

The Florida Commission on Human Relations (Commission) administers the state's civil rights laws and serves as a resource for businesses, individuals, and groups to prevent discriminatory activities. The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate. The membership of the Commission is representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida. The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination related to employment, housing, certain public accommodations, and state employee whistle-blower retaliation.

The bill amends several statutes pertaining to the Commission. Specifically, the bill:

- Provides that six Commission members constitute a quorum for conducting business;
- Authorizes the Commission to recommend up to 10 nominees for the Florida Civil Rights Hall of Fame;
- Specifies the applicable statute of limitations for bringing a cause of action pursuant to the Florida Civil Rights Act;
- Deletes the registration requirements for facilities and communities claiming the housing for older persons exemption and eliminates related forms, fees, and fines;
- Deletes an investigation requirement for certain public accommodation discrimination cases, allowing the Commission to immediately use methods of conference, conciliation, and persuasion; and
- Aligns time periods in state employee whistle-blower cases with time periods in other cases investigated by the Commission.

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

The bill was approved by the Governor on June 30, 2020, ch. 2020-154 L.O.F., and will become effective on July 1, 2020.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### **Florida Commission on Human Relations**

#### Background

Chapter 760, F.S., protects individuals in Florida against discrimination in areas of employment, housing, certain public accommodations and other opportunities based on race, color, religion, sex, national origin, age, handicap, marital, or familial status. Part I of Chapter 760, F.S., is known as the Florida Civil Rights Act of 1992; Part II is known as the Florida Fair Housing Act.

The Florida Commission on Human Relations (Commission) is authorized to carry out the purposes of chapter 760, F.S.<sup>1</sup> The Commission is housed in the Department of Management Services (DMS).<sup>2</sup> DMS does not exercise any control or supervision over the Commission.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.<sup>3</sup> The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.<sup>4</sup> At least one member of the Commission must be 60 years of age or older.<sup>5</sup> The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination and act upon complaints alleging a discriminatory practice.<sup>6</sup>

### **Quorum for Commission Meeting**

#### Background

While the Commission is comprised of 12 commissioners, only six commissioners are currently serving on its board.<sup>7</sup> Of these six commissioners, three are in terms that have not yet expired; the other three commissioners are continuing to serve until they are either reappointed or until their seats are filled by another appointment.<sup>8</sup> Current law provides that seven members constitute a quorum for the Commission to conduct business.<sup>9</sup> Due to the low number of commissioners currently serving, the Commission is unable to conduct official business. Since the Commission has final order authority over administrative hearings involving discriminatory practice, a lack of quorum prevents the Commission from resolving discrimination cases in a timely manner. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.<sup>10</sup>

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<sup>1</sup> S. 760.03, F.S.

<sup>2</sup> S. 760.04, F.S.

<sup>3</sup> S. 760.03(1), F.S.

<sup>4</sup> S. 760.03(2), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> S. 760.06, F.S.

<sup>7</sup> Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations, RE: Number of Commissioners (Jan. 31, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Among others, Ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within the Department of Business and Professional Regulation), 456.011(3) (Boards and Commissions within the Department of Health), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

## Effect of the Bill

The bill amends s. 760.03, F.S., to allow a quorum for a Commission meeting to consist of six members. The bill also clarifies that panels created by the Commission establish a quorum to conduct business with three members.

## **Florida Civil Rights Hall of Fame**

### Background

The Florida Civil Rights Hall of Fame was created in 2010.<sup>11</sup> The Hall of Fame's purpose is to recognize persons, living or deceased, who have made significant contributions to the state as leaders in seeking equality and justice for all persons.<sup>12</sup> The Commission oversees and administers the Hall of Fame, excluding the normal costs of operations, repairs, and maintenance, which is the responsibility of DMS.<sup>13</sup> The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.<sup>14</sup> 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 a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.<sup>15</sup>

### Effect of the Bill

The bill amends s. 760.065(3)(a), F.S., permitting the Commission to recommend up to 10 nominees each year for the Governor's consideration. This change prevents the Commission from violating the law if it submits less than 10 recommendations due to a lack of nominees.

## **Florida Civil Rights Act**

### Background

A person aggrieved by a violation of the Florida Civil Rights Act,<sup>16</sup> may file a complaint with the Commission.<sup>17</sup> The complaint must be filed within 365 days of the alleged violation, describe the violation, and name the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation.<sup>18</sup> The Commission has 180 days to determine whether reasonable cause exists to believe that a discriminatory practice occurred.<sup>19</sup>

If the Commission makes a reasonable cause determination, the claimant may then file a civil action or request an administrative hearing.<sup>20</sup> A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.<sup>21</sup> If the Commission does not find reasonable cause, the claimant may still request an administrative hearing, but is precluded from filing

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<sup>11</sup> S. 760.065, F.S.; see ch. 2010-53, L.O.F.

<sup>12</sup> S. 760.065(1), F.S.

<sup>13</sup> S. 760.065(5), F.S.

<sup>14</sup> S. 760.065(3)(a), F.S.

<sup>15</sup> S. 760.065(3)(b), F.S.

<sup>16</sup> Ss. 760.01-760.10, F.S.

<sup>17</sup> S. 760.11(1), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> S. 760.11(3), F.S.

<sup>20</sup> S. 760.11(4), F.S.

<sup>21</sup> S. 760.11(5), F.S.

a civil action.<sup>22</sup> If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.<sup>23</sup>

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between the Commission finding reasonable cause and the statute of limitations.<sup>24</sup> The Court stated that the "[a]ct...does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms."<sup>25</sup> The Court held that the one-year statute of limitations for filing civil actions in s. 760.11(5), F.S., does not apply if the Commission fails to make a determination within 180 days. Instead, the Court held that the four-year statute of limitations for a cause of action based on statutory liability<sup>26</sup> applies when the Commission fails to make a determination.<sup>27</sup>

### Effect of the Bill

The bill amends s. 760.11(8), F.S., providing that, if the Commission fails to determine whether there is reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as claims that receive a determination of reasonable cause. Moreover, the Commission is required to promptly notify the individual of the Commission's failure to determine reasonable cause and inform the individual of their options as a result. The one-year period for filing an action begins to run on the date the Commission certifies that the notice was mailed.

## **Florida Fair Housing Act**

### Background

Part II of ch. 760, F.S., is the Florida Fair Housing Act (FHHA).<sup>28</sup> The FHHA allows 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 to file a complaint with the Commission.<sup>29</sup> The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.<sup>30</sup> The Commission has 100 days after receipt of the complaint to complete its investigation and issue a determination.<sup>31</sup> The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.<sup>32</sup>

The FFHA applies to all housing and housing-related entities, including realtors, brokers, mortgage companies, and financial institutions, in the state. In 2001, the Legislature created exemptions for certain housing, to which the FFHA does not apply.<sup>33</sup> For example, a single-family house sold or rented by its owner is exempt, as well as rooms or units in dwellings that provide housing for four or less families.<sup>34</sup>

Certain housing for older persons is also exempt from charges of discrimination based on familial status.<sup>35</sup> 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

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<sup>22</sup> S. 760.11(7), F.S.

<sup>23</sup> S. 760.11(8), F.S.

<sup>24</sup> *Joshua v. City of Gainesville*, 768 So. 2d 432, 434-435 (Fla. 2000).

<sup>25</sup> *Id.*

<sup>26</sup> S. 95.11(3)(f), F.S.

<sup>27</sup> *Joshua*, 768 So. 2d at 439.

<sup>28</sup> Ss. 760.20-760.37, F.S.

<sup>29</sup> S. 760.34(1), F.S.

<sup>30</sup> S. 760.34(2), F.S.

<sup>31</sup> S. 760.34(1), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> S. 760.29, F.S.

<sup>34</sup> S. 760.29(1)(a)1 and 2, F.S.

<sup>35</sup> S. 760.29(4), F.S.

units are occupied by at least one person age 55 years or older.<sup>36</sup> The housing facility or community must also adhere to senior housing policies and procedures and comply with rules developed by the U.S. Department of Housing and Urban Development pursuant to 24 C.F.R. 100.<sup>37</sup>

These facilities and communities must register with the Commission, renew such registration every two years, and pay a \$20 fee for registration and renewal.<sup>38</sup> The Commission may impose an administrative fine of up to \$500 for submission of false information.<sup>39</sup> 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.<sup>40</sup> The registry is not determinative as to whether the community actually qualifies for the housing for older persons exemption.<sup>41</sup> 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.

### Effect of the Bill

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

The bill also amends s. 760.31(5), F.S., relating to the powers and duties of the Commission. The bill deletes language requiring the Commission to create forms and procedures and set the fee for the registration of facilities and communities claiming the exemption. The language is no longer needed as the registration requirement is being deleted.

### **Discriminatory Practices in Certain Clubs**

#### Background

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, or marital status in evaluating an application for membership.<sup>42</sup> 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 from non-members for business purposes.<sup>43</sup> The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement denying use and access to the club for a discriminatory purpose.<sup>44</sup>

Any person who has been discriminated against by a club may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.<sup>45</sup> 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

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<sup>36</sup> S. 760.29(4)(b), F.S.

<sup>37</sup> S. 760.29(4)

<sup>38</sup> S. 760.29(4)(e), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> Florida Commission on Human Relations, *Housing for Older Person Requirements* (2017), [http://eastpascoroc.com/images/pdf/2017\\_hopa.pdf](http://eastpascoroc.com/images/pdf/2017_hopa.pdf) (last visited Mar. 13, 2020).

<sup>41</sup> *Id.*

<sup>42</sup> S. 760.60(1), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> S. 760.60(2), F.S.

discrimination and inform the complainant of its intention to resolve the complaint.<sup>46</sup> 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 informal methods.<sup>47</sup>

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 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.<sup>48</sup> If the court finds a discriminatory practice 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.<sup>49</sup>

### Effect of the Bill

The bill amends s. 760.60, F.S., deleting the requirement that the Commission or Attorney General investigate the public accommodation discrimination complaint. This allows the Commission or Attorney General to immediately enter into informal methods after giving notice to the club of the discrimination complaint. The bill also extends the time for the Commission or Attorney General to resolve the dispute by informal methods to 45 days, bringing the time period in line with the time allowed for other mediation activities of the Commission.

## **State Employee Whistle-Blower Retaliation**

### Background

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.<sup>50</sup> If a person is retaliated against, he or she can file a written complaint with either the Commission or the Office of the Chief Inspector General (CIG) in the Executive Office of the Governor within 60 days after the adverse action.<sup>51</sup>

Within three days, the Commission or the CIG must acknowledge receiving the complaint and provide copies of the complaint and other preliminary information to each of the other parties named in the complaint.<sup>52</sup> The Commission must further notify, within 15 days, the complainant that their complaint has been received.<sup>53</sup> The Commission must then complete the fact-finding process within 90 days after receiving the complaint and provide the agency head and the complainant a report that may include recommendations or a proposed resolution.<sup>54</sup> 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.<sup>55</sup> The Commission is then required to 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.<sup>56</sup>

If an agency does not implement the recommended action of the Commission in 20 days, the investigation terminates and the Commission must notify the complainant of the right to appeal to the

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<sup>46</sup> *Id.*

<sup>47</sup> These informal methods are conference, conciliation, and persuasion. *Green v. Burger King Corp.*, 728 So. 2d 369, 371 (Fla. 3d DCA 1999).

<sup>48</sup> S. 760.60(3), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> S. 112.31895, F.S.

<sup>51</sup> S. 112.31895(1)(a), F.S.

<sup>52</sup> S. 112.31895(1)(b), F.S.

<sup>53</sup> S. 112.31895(2)(b), F.S.

<sup>54</sup> S. 112.31895(2), F.S.

<sup>55</sup> S. 112.31895(3)(d), F.S.

<sup>56</sup> *Id.*

Public Employees Relations Commission or petition the agency for corrective action.<sup>57</sup> 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.<sup>58</sup> This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.<sup>59</sup>

### Effect of the Bill

The bill amends a number of the time periods related to investigations by the Commission under s. 112.31895, F.S. The bill requires the Commission or CIG to respond within five working days after receiving a complaint, instead of three working days. The bill deletes language requiring the Commission to further notify the complainant that their complaint has been received within 15 days of receiving the complaint. The bill also amends the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint.

The bill standardizes the times before the Commission must terminate an investigation pursuant to s. 112.31895(3)(d) and (e), F.S., to 35 days. The bill also shortens the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission to 21 days.

The effective date of the bill is July 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

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<sup>57</sup> S. 112.31895(3)(e)3., F.S.

<sup>58</sup> S. 112.31895(4)(a), F.S.

<sup>59</sup> *Id.*