

**Joint Oversight Hearing of the
Senate and Assembly Judiciary Committees**

February 23, 2010
1:00 pm – 3:00 pm
State Capitol, Room 4203

*“Fair Employment and Housing 50 years after the FEHA: Where
do we go from here?”*

*Statement of DFEH Associate Chief Deputy Director / Special Projects
Counsel, Annmarie Billotti:*

Going forward, the DFEH can use your help with legislation of which the Department and your constituents are in need.

What problems require legislative fixes?

First, the FEHA must remain substantially equivalent to the federal Fair Housing Amendments Act for the DFEH to continue to receive complaint referrals, and funding, from HUD. For the current contract period, the DFEH anticipates receiving over three million dollars from HUD. This extremely important funding source could be jeopardized if the cap on civil penalties the Commission is authorized to impose on housing providers who violate the FEHA with fraud, oppression or malice – sometimes repeatedly - is not raised to conform to the maximum amount federal Administrative Law Judges are authorized to impose on violators.

Second, because state law prohibits housing discrimination on the basis of age, but federal law does not, those who provide affordable housing to at-need populations, such as low-income seniors, violate state law when they impose admission preferences based on age in compliance with federally-approved housing programs. How does this conflict arise? In some federal housing programs, renter eligibility criteria include the requirement that at least one member of a household be age 62 or older. Other members of the household can be of any age, and the provider cannot refuse to rent to a family with minor children, so long as at least one household member is age 62 or older. Such a requirement violates California law which exempts as senior housing, for example, only those properties where all residents are at

least age 62. Failure to comply with federal regulations results in loss of funding for these housing providers, while compliance results in violation of state law and a potential DFEH complaint

What legislative fixes are required? First, amending the FEHA to raise current civil penalty caps of \$10,000, \$25,000, and \$50,000 for first, second, and third violations, respectively, to those stated in federal law (currently \$16,000, \$37,500, and \$65,000).

Second? Simply amending the Civil Code and FEHA to expressly state that admission preferences based on age, imposed in connection with a federally-approved housing program, do not constitute age discrimination in housing.

While these fixes may be simple, they cannot be achieved without an act of the Legislature.

Looking to the very immediate future, the DFEH embarks upon its first-ever rulemaking action, endeavoring to replace procedures currently utilized by the department (and commonly known as DFEH Directives) with duly noticed and vetted procedural regulations. The department's rulemaking action will streamline and make transparent its practice and procedure for receiving, investigating and conciliating complaints of employment, housing and public accommodation discrimination and hate violence.

The full text of the proposed regulations is available on the department's Web site. Interested persons are invited to present statements or arguments regarding alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

On behalf of the department's Director, its Chief Counsel, and every staff member who enjoys the privilege of serving your constituents while enforcing California's civil rights law, I thank you for the opportunity to seek your legislative support while reporting on the department's achievements.