

STORAGE NAME: h0265.cp

DATE: January 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 265

RELATING TO: Elections

SPONSOR(S): Representative Logan

COMPANION BILL(S): SB 210

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed." "Completion and satisfaction of all sentences " occurs when:

1. A person is released from incarceration upon expiration of sentence and has achieved or completed all other nonmonetary terms and conditions of the sentence or subsequent supervision; or
2. A person who has not been incarcerated has achieved or completed all nonmonetary terms and conditions of community supervision imposed by the court.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Convicted Felons Prohibited from Voting.

Article VI, Section 4 of the Florida Constitution limits the ability of convicted felons to vote as follows:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

Section 97.041(2), F.S., provides that the following persons are not entitled to register or vote:

(a) A person who has been adjudicated mentally incapacitated with respect to voting in this or any other state and who has not had his or her right to vote restored pursuant to law.

(b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.

Section 104.15, F.S., makes it a third degree felony for a convicted felon to vote if the person is aware that he or she is not qualified to vote.

The prohibition against voting by convicted felons is further expressed in section 944.292(1), FS:

(1) Upon conviction of a felony as defined in section 10, Article X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to section 8, Article IV of the State Constitution.

First time felony offenders who do not commit violent crimes typically receive a withhold of adjudication instead an adjudication of guilt. A withhold of adjudication is not considered a conviction and does not prohibit a person from voting or possessing a firearm.

Clemency

Article IV, Section 8(a) establishes the authority for clemency as follows:

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, ...

with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Clemency Hearings

The Florida Administrative Code (27 FAR. T. 27, A.P.) sets forth the procedure and requirements for clemency that includes the following:

1. All applications for clemency must be filed with the Coordinator for the Office of Executive Clemency on standard forms provided by that office.
2. The Florida Parole Commission investigates the applicants and issues a report and recommendation.
3. All criminal sentences imposed must be completed unless a waiver of the rules is granted by the Governor and two members of the Cabinet.
4. The Parole Commission shall inform the victim of the application if possible.
5. The Governor and two members of the Cabinet may require the coordinator for the office of Executive Clemency to place a case on the agenda to be heard by the Clemency Board. The Clemency Board is the Cabinet and the Governor.

Restoration of Civil Rights without a Hearing

Relatively few people have a clemency hearing before the Governor and Cabinet, however, the Rules of Executive Clemency establish an expedited procedure for a convicted felon to have his or her civil rights restored without a hearing if the person meets a number of requirements including:

1. The entire sentence imposed including all supervision has been completed.
2. There are no pending criminal charges.
3. No money is owed for fines, cost of supervision or restitution resulting from a criminal charge.
4. The person has not been convicted of a capital or life felony.
5. The person has not had his or her civil rights restored in Florida.
6. The person does not have more than two felony conviction if the convictions were separate transactions.

This review occurs automatically and no application or other action is required by the convicted felon. The Department of Corrections automatically notifies the Florida Parole Commission of all persons who complete a criminal sentence. If the Florida Parole Commission determines that the above criteria have been met, then the Coordinator shall issue a certificate that would grant restoration of civil rights or residence rights in the State of Florida without the specific authority to possess a firearm. If any member of

the Cabinet objects to the restoration of civil rights without a hearing then the applicant must have a clemency hearing before the Cabinet and Governor. In 1998, The Parole Commission reviewed 9,989 inmates released from prison and 7,676 persons whose community supervision including probation had terminated. A total of 1,254 persons received the restoration of their civil rights without a hearing.

Florida is one of 12 states that permanently disenfranchise felony offenders who have completed their criminal sentences. (In two of the 12 states, the offenders are disenfranchised after a second felony) *The Sentencing Project*, Internet address: www.hrw.org/reports98/vote or *Criminal Justice Newsletter*, vol. 29, number 16. However, a person may have the right to vote automatically restored in Florida, subject to a veto by any member of the Cabinet, if the person has two or fewer felony convictions and all terms of the sentence are completed including monetary conditions.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed." "Completion and satisfaction of all sentences " occurs when:

1. A person is released from incarceration upon expiration of sentence and has achieved or completed all other nonmonetary terms and conditions of the sentence or subsequent supervision; or
2. A person who has not been incarcerated has achieved or completed all nonmonetary terms and conditions of community supervision imposed by the court.

Monetary conditions of a sentences such as restitution to a victim and costs of supervision would not have to be paid in order for a convicted felon to have his or her right to vote automatically restored.

The bill provides that a majority of the Board of Executive Clemency may prevent the automatic restoration of the right to vote unless a majority of the Board agree to restore the right to vote. The Board of Executive Clemency consists of the Cabinet and the Governor.

The bill takes effect upon the effective date of any amendment to the State Constitution which authorizes or removes impediment to the enactment of the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill gives more responsibilities to convicted felons in that far more felons will be able to vote if the constitutional amendment is passed.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No. The persons whose voting rights will be restored do not pay any costs or fees.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, more people will have the right to vote.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 97.041, FS

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed."

Section 2: Provides that the bill takes effect upon the effective date of any amendment to the State Constitution which authorizes or removes impediment to the enactment of the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Department of Correction currently notifies the Office of Executive Clemency of all felons whose sentence has been completed. The Office of Executive Clemency already reviews these cases to see if the felons qualify to have their voting rights restored. Since it is largely just the criteria for having the right to vote restored, then any additional administrative expenses should be slight. The position of the Office of Executive Clemency is that the bill will not have a fiscal impact to that agency.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not impose mandates upon the counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The house resolution does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The house resolution does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Page 2, line 5 should be amended remove the blank and insert HJR 263.

Section 944.292(1), FS should be amended so that it does not conflict with the bill. Of course, the language in the bill would be controlling since it is more recent.

In 1974 the legislature passed Section 28, Chapter 74--112 providing that the civil right of a person convicted for a felony shall be suspended until the person is discharged from parole at which time civil rights are automatically reinstated. In re Advisory Opinion of the Governor Civil Rights, 306 So.2d 520 (Fla. 1975), the Florida Supreme Court held the law to be an unconstitutional invasion of the authority given exclusively to the Executive Branch. Thus HB 265 would require a constitutional amendment before it could take effect.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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