

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 246

SPONSOR: Senators Hargrett, Dawson, and Holzendorf

SUBJECT: Felons; right to vote

DATE: March 13, 2000 REVISED: 03/16/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 246 maintains portions of the current law disqualifying convicted felons from being eligible to register or vote while incarcerated or otherwise under supervision. However, the bill modifies the process by which a convicted felon’s right to vote is restored, providing that the right to vote is automatically restored one year after the date of completion and satisfaction of all non-monetary components of a convicted felon’s sentence, unless a majority of the members of the Board of Executive Clemency object. If there is an objection, the right to register or vote may only be restored by petitioning the Board.

Senate Bill 246 is an implementing bill and will not take effect until the adoption of a constitutional amendment modifying Art. VI, s. 4, of the State Constitution (proposed in Senate Joint Resolution 244).

This bill substantially amends s. 97.041, Florida Statutes, and amends ss. 97.052, 97.053, and 98.0975, Florida Statutes, to conform.

II. Present Situation:

The restoration of the civil rights of a convicted felon is a form of executive clemency, a power granted by the Florida Constitution to the Governor with the consent of at least three members of the Cabinet. Art. IV, s. 8(a), Fla. Const. The Florida Constitution also specifically bars any person convicted of a felony from being qualified to vote until that person’s *civil rights* have been restored. Art. VI, s. 4(a), Fla. Const. (There are two Senate joint resolutions filed, SJR 244 and SJR 256, which seek to modify this provision of the Florida Constitution.) Florida Statutes implement the constitutional bar against felons voting by providing that any person convicted of a felony who has not had his or her right to vote restored pursuant to law may not register or vote. s. 97.041(2)(b), F.S. (1999).

In contrast, the majority of states automatically restore a convicted felon's right to vote upon release from imprisonment or completion of the sentence --- including such major states as California, New York, Texas, Ohio, Pennsylvania, and Georgia.

The Process for Restoring Civil Rights

The review process for restoring the civil rights of the majority of felons convicted in a Florida state court is designed to be automatic, and should take place without the need for the individual to file any application or request. Upon final release of a felon from prison or supervision (i.e., probation), the Department of Corrections is required to submit each individual's name to the Florida Parole Commission. The Parole Commission then reviews specified criteria to determine whether the individual is eligible to have his or her civil rights restored. Florida Rules of Executive Clemency, Rule 9. The specific criteria for eligibility for restoration of civil rights are:

- Completion and satisfaction of all sentences and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release, and conditional release;
- No outstanding detainers or pending criminal charges;
- No outstanding pecuniary penalties resulting from a criminal conviction or traffic infraction, including, but not limited to, fines, court costs, restitution, or unpaid costs of supervision;
- No conviction of a capital or life felony;
- Civil rights have not previously been restored in the State of Florida;
- No more than two felony convictions of record;
- The applicant must be a citizen of the United States;
- If convicted in a court other than a Florida state court, the applicant must be a legal resident of Florida;
- The applicant was not a public official who, during his or her term of office, committed a criminal offense for which he or she was subsequently convicted.

Florida Administrative Code, Title 27, Appendix (Florida Rules of Executive Clemency, Rule 9.A). If determined eligible and if no member of the Board of Executive Clemency objects to the restoration of civil rights, the Clemency Coordinator, pursuant to an executive order signed by the Board, is supposed to issue a certificate restoring the individual's civil rights (without the specific authority to own, possess or use firearms) without a hearing.

The review process typically takes anywhere from 8-12 months to complete, but can be accelerated by the individual if he or she contacts the Board directly and files an application for clemency.

An individual's civil rights are often not automatically restored because he or she fails to meet the requirements under Rule 9A. Such an individual must either petition the Board for restoration or may be precluded altogether from having the rights restored (i.e., those convicted of capital offenses, persons with more than 2 felony convictions, etc.)

Persons convicted of felonies in courts located outside Florida or in federal courts are required to submit an application to the Board in order to have their civil rights restored, and must meet the same criteria for eligibility described above. There is no automatic process for review.

A felon who has lost his or her civil rights is required to re-register to have his or her name restored to the voter registration books. s. 98.093(4), F.S. (1999). At that time, the convicted felon must sign an oath essentially swearing to the fact that his right to vote has been restored.

According to a 1998 joint report by Human Rights Watch & The Sentencing Project, over 647,000 convicted felons in Florida have lost the right to register or vote (including 436,900 ex-felons no longer incarcerated or subject to supervision). Frank Davies, "Florida No. 1 in Stripping the Vote", *Miami Herald* (10/23/98); Human Rights Watch & The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, at Part III (www.hrw.org/reports98/vote/). This figure places Florida first among the states in denying the right to vote because of a criminal record. According to these figures, the disenfranchisement hits black males particularly hard, with an estimated one-in-three voting-age, black men being denied the right to vote because of a felony conviction.

The Florida Department of Law Enforcement ("FDLE"), however, places the number of disenfranchised felons and ex-felons in Florida at 343,675, not 647,000. FDLE, "Counting Florida's Felons & Ex-Felons (Assessment of Florida Statistics cited in 'Losing the Vote' by Human Rights Watch and the Sentencing Project 1998)" (March, 1999) (Office of Research & Planning). Also, FDLE estimates that 17% of voting-age, black males in Florida were disenfranchised in 1996, not one-in-three as reported.

FDLE's review of the Human Rights Watch & Sentencing Project's joint report identified several problems with the Florida data. One problem is that the report's estimate of 647,000 disenfranchised felons and ex-felons includes almost 55,000 individuals on probation with a sentence of "adjudication withheld." Such persons do not lose their right to vote under Florida law. Also, the 647,000 figure fails to account for the fact that over 150,000 ex-felons have had their civil rights *restored*. These two discrepancies alone serve to reduce the number of disenfranchised felons and ex-felons in Florida by over 200,000 persons.

III. Effect of Proposed Changes:

Senate Bill 246 maintains portions of the current law disqualifying convicted felons from being eligible to register or vote while incarcerated or under supervision (i.e. parole, probation, community control). However, Senate Bill 246 provides that the right to vote is automatically restored one year after the date of completion and satisfaction of all non-monetary components of the sentences imposed, unless a majority of the members of the Board of Executive Clemency object. If a majority of the Board does object, the convicted felon must petition the Board for restoration of the right to register or vote.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Senate Bill 246 will not take effect until the adoption of a constitutional amendment modifying Art. VI, s. 4, of the State Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The cross-reference to Senate Joint Resolution 244 should be added on page 5, line 8.

VII. Related Issues:

None.

VIII. Amendments:

1 by Ethics and Elections:

Technical. Inserts a missing joint resolution number.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
