

STORAGE NAME: h1109a.go
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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1109
RELATING TO: Public Officers & Employees
SPONSOR(S): Representative Edwards
STATUTE(S) AFFECTED: Amends s. 112.3173
COMPANION BILL(S): SB 1500(i)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (2) CRIME & PUNISHMENT
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1109 expands the retirement forfeiture provisions in s. 112.3173(3), F.S. Pursuant to that section, public officers and employees may forfeit their retirement benefits if they commit certain specified offenses. This bill expands the term "specified offense" to include several sexual offenses. Pursuant to HB 1109, specified offenses include the use by a public officer or employee of his or her official position to commit any felony violation of chs. 794 (sexual battery), 800 (lewdness or indecent exposure), or 827 (child abuse), F.S. Additionally, this bill includes as a specified offense, the committing of a felony by a public officer or employee where such a person uses their official position or any public property or resource within their official trust to secure an illegal privilege, benefit, or exemption for himself, herself, or others.

This bill has some fiscal impact on state and local governments (see Fiscal Analysis & Economic Impact Statement).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article II, Section 8(d), Florida Constitution, provides that “[a]ny public officer or employee who is convicted of a felony involving a breach of the public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.”

Section 112.3173(1), F.S., states that the Legislature intended to implement Art. II, Sec. 8(d), Florida Constitution, by enacting s. 112.3173, F.S.

Section 112.3173(3), F.S., provides that any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of the officer’s admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement systems to which he or she is a member. However, any accumulated contributions by the officer or employee will be returned and will not be forfeited.

Section 112.3173(2)(c), F.S., defines a “public officer or employee” as an officer or employee of any public body, political subdivision, or public instrumentality within the state. Section 112.3173(2)(e), F.S., defines the “specified offenses”, which will trigger forfeiture, to mean:

- Committing, aiding, or abetting of an embezzlement of public funds;
 - Committing, aiding, or abetting of any theft by the public officer or employee from his or her employer;
 - Bribery in connection with the public officer or employee’s employment;
 - Any felony specified in ch. 838, F.S, except for ss. 838.15 and 838.16, F.S.;
- Chapter 838, F.S., includes the following:
- Corruption by threat against a public servant;
 - Bribery in athletic contests;
 - Receiving a Commercial bribe; and
 - Commercial bribing.
- Committing an impeachable offense; or
 - Committing any “felony where the public officer or employee who, willfully and with intent to defraud the public or a public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain a profit, gain, or advantage for himself or herself or for some other person through use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.”

Although the above list may on its face appear to include offenses other than felony offenses, the intent of the current law, as directed by Art. II, Sec. 8(d), Florida Constitution, only includes felony convictions involving a breach of public trust. Section 112.3173(2)(e), F.S., does not specifically list any sexual crimes which, if committed by a public officer or employee, would trigger the forfeiture of retirement or pension rights or benefits.

Section 112.3173(4), F.S., provides for certain notice procedures whereby the Commission on Ethics must be informed of proceedings against a public officer or employer. The Commission on Ethics must then notify the governing body of the retirement system of which the public officer or employer is a member.

Section 112.3173(5)(a), F.S., provides that the official or board responsible for paying public retirement benefits to the officer or employee must give notice and hold a hearing pursuant to ch. 120, F.S., whenever that official or board receives notice that the public officer's or the employee's retirement benefits are required to be forfeited. If the official or board determines that the benefits are required to be forfeited, an order must be issued accordingly. Section 112.3173(5)(b), F.S., further provides that such an order is appealable to the district court of appeal. When such an order is issued, s. 112.3173(5)(c), F.S., provides that the payment of benefits must be automatically stayed pending an appeal of a felony conviction. If the conviction is reversed, the benefits will not be forfeited. Upon affirmation of the conviction, the benefits will remain forfeited. Section 112.3173(5)(d), F.S., provides that a public officer or employee must pay back his or her retirement benefits to the retirement system if the benefits become forfeited, and if he or she has received benefits in excess of his or her contributions to the system.

In 1996, the Gulf County sheriff was convicted in Federal district court of seven misdemeanor civil rights violations because he had forced inmates to perform sex acts (see memorandum "Forfeiture of Pension Benefits by Public Officers and Employees who Commit Rape, Aggravated Child Abuse, and Other Felonies Involving a Breach of the Public Trust," Florida Office of the Attorney General, Department of Legal Affairs, March 21, 1997). The former sheriff is now serving a 51 month sentence in federal prison (*Id.*). In the near future, the former sheriff will begin to draw retirement benefits because his offenses did not fall within the categories of "specified offenses" which would trigger a forfeiture of his benefits pursuant to s. 112.3173, F.S. (*Id.*).

B. EFFECT OF PROPOSED CHANGES:

HB 1109 expands the term "specified offense" to include several sexual offenses. Pursuant to HB 1109, specified offenses would include the use by a public officer or employee of his or her official position to commit any felony violation of chs. 794 (sexual battery), 800 (lewdness or indecent exposure), or 827 (child abuse), F.S. Additionally, this bill includes as a specified offense the committing of a felony by a public officer or employee where such a person uses his or her official position or any public property or resource within his or her official trust to secure an illegal privilege, benefit, or exemption for himself, herself, or others.

Certain proponents of this bill urge that its provisions will require forfeiture of retirement benefits of errant public officers, such as the former Gulf County sheriff, who utilize their positions to commit certain sexual offenses (*Id.*). It must be noted, however, that even if the provisions in HB 1109 were current law, the former Gulf County sheriff's retirement benefits would still not have been forfeited because he had not committed one of the specified felonies. He was convicted under federal law of a misdemeanor violation of another person's civil rights, for which there is no felony counterpart under Florida law.

Opponents of this bill criticize it because it expands a law which may negatively affect spouses and dependents of offending public officers and employees by taking away retirement money upon which they may have relied.

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?

Yes. By expanding the category of "specified offenses," this bill appears to increase the possibility that more forfeitures will occur. This increase will in turn increase the workload of the Commission on Ethics, which receives notice of forfeitures, and any public retirement or pension boards or officials who are required to hold administrative hearings pursuant to s. 112.3173(5), F.S.

(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?

N/A

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

N/A

4. Individual Freedom:

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

No.

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

Yes. Currently, a public officer or employee may continue to draw certain retirement benefits if the officer or employee is convicted of a certain non-

specified offense (like a sexual felony). This bill expands the categories of offenses which would trigger this forfeiture.

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?

No.

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. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 112.3173, F.S.; expands the definition of "specified offense" to include certain sexual offenses and certain other felonies committed by public officers and employees using their official positions or property or resources in their possession. Section 2 -- Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

By expanding the categories of specified offenses, this bill would probably increase the forfeiture of certain retirement benefits, although the number of increased forfeitures is not determinable. Florida Retirement System benefits not disbursed pursuant to such increased forfeitures would remain in the Florida Retirement System Trust Fund. Trust Fund monies can only be spent as appropriated by the Legislature.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate (see Recurring Effects above).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. This bill would increase the forfeiture of certain retirement benefits, which benefits would revert back to certain retirement systems or pension plans. Some funds would revert to local pension plans or retirement systems, such as municipal police officers' retirement trust fund boards established pursuant to ch. 185, F.S. Also, the amount of local funds expended in notice and forfeiture

procedures, such as holding additional administrative hearings, would increase. Because the exact number of public officers and employees who will commit specified offenses in the future is unascertainable, the recurring fiscal effect of this bill is indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not directly require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill 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:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

The committee adopted one "strike everything" amendment. The amendment removed several provisions contained in the original bill including the following:

- ⊗ legislative intent statement that retirement benefits should be forfeited by public officers or employees who are found to have committed a specified felony **whether criminally convicted or not;**
- ⊗ expansion of s. 112.3173(3), F.S., forfeiture provision to forfeit the retirement benefits of public officers or employees who are found **in ch. 120 administrative hearings** to have committed a specified offense;
- ⊗ expansion of the definition of "specified offense" to include the committing of **any felony involving breach of the public trust.**

HB 1109 as amended simply expands the definition of "specified offense" for purposes of retirement forfeiture to the use (removing attempted use) by a public officer or employee of his or her official position to commit certain sexual felonies. Additionally, the amendment restricts the scope of the original provision that included "the committing of any felony involving breach of the public trust" as triggering forfeiture. Instead, the amendment provides that forfeiture will be triggered by a commission of a felony by a public officer or employee that involves the use of his or her official position or any public property or resource that he or she holds in official trust to secure an illegal privilege, benefit, or exemption for himself, herself, or others.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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