

STORAGE NAME: h4395.go

DATE: April 16, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4395

RELATING TO: Volunteers/Nepotism Law

SPONSOR(S): Representative Boyd and others

COMPANION BILL(S): SB 1898(i)

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

- (1) GOVERNMENTAL OPERATIONS
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends section 112.3135(2)(a), F.S., to provide an unnumbered section which would:

1. Provide an exemption from the other provisions of section 112.3135, F.S., for persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. This will remove from these categories of persons the prohibition against public officials appointing, employing, promoting, advancing, or advocating a relative to a position for which they are exercising jurisdiction or control.
2. Provide that persons described in (1), above, may receive reimbursements for the related and incidental costs related to their services.

HB 4395 provides that persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services may receive reimbursements for the related and incidental costs of their service without loss of their volunteer status. The degree of impact is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

I. Section 112.3135, F.S.

Section 112.3135, F.S., provides, in relevant part, that

a public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.

Further,

An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control¹ over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.

“Public official” is defined² as an officer who has the authority to appoint, employ, promote, or advance individuals; or, to recommend individuals for such, in connection with employment in an “agency.”

“Agency” is defined to include state agencies; “an office, agency, or other establishment” in either the legislative or judicial branches; a county; a city; and “any other political subdivision of the state.” The section excludes from this definition “an institution under the jurisdiction of the Division of Universities of the Department of Education,” district school boards, community college districts, and the legislative pages and messengers. The section provides for emergency appointments which would otherwise be in violation of the section’s other provisions.

“Relative” is defined as “an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.”

II. Parameters of Section 112.3135, F.S.

Under at least two rationales, the plain language of the section 112.3135, F.S., is usually interpreted narrowly.

¹ This section excludes mere approval of budgets from the definition of “jurisdiction or control.”

² for purposes of this section only.

First, the Supreme Court of Florida has asserted that “due to the penal nature, any doubts as to its meaning must be resolved in favor of a narrow construction [of section 112.3135, F.S.]”³ In applying a narrow construction, the Court found that the plain language of the statute prohibits “only overt actions by a public official in the appointment of that official’s relative.”⁴ As such, this section does not prohibit a commission from re-appointing a relative of one of its members if the member in question recuses himself or herself from participation in the decision.⁵

Second, the legal maxim of “expresso unius est exclusio alterius”⁶ has also been applied to the language of section 112.3135, F.S., to produce a narrow construction of its provisions. Its effect has generally been to interpret enumerated exceptions strictly, according to the specific wording of the statute. In 1989, the First District Court of Appeal of Florida held that

although the Legislature has created exceptions [to former section 116.111]⁷ for teachers hired by district school boards or community colleges and for the temporary employment of a relative in the event of an emergency, it has made no exception . . . for the office of sheriff. . . no other exception may be inferred.⁸

Likewise, a 1984 Opinion from the Attorney General of Florida asserted that since “[section 116.111] in defining the term ‘relative’ fails to include the relationship of granddaughter, that relationship would appear to be excluded from the operation of the statute.”

This tendency toward narrow construction has been applied to the issue of whether the presence of compensation is material to the applicability of the language in section 112.3135, F.S. In 1988, an Opinion from the Attorney General of Florida dealt with the issue of the applicability of section 116.111, F.S., to “a county commissioner [who] wishe[d] to appoint her spouse to an advisory board created by the county to assist the county commission in carrying out its governmental functions.” The Opinion asserted that:

³ City of Miami Beach v. Galbut, 626 So.2d 192, 193 (Fla. 1993).

⁴ Id. at 193-194.

⁵ Galbut v. City of Miami Beach, 605 So.2d 466, at 467 (Fla. 3d DCA 1992).

⁶ “Expresso unius est exclusio alterius” is defined as “a maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. . . .Mention of one thing implies exclusion of another. . . .Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.” BLACKS LAW DICTIONARY, Sixth Edition, 1990 West Publishing Company.

⁷ Section 116.111, F.S. was renumbered as section 112.3135, F.S., and amended by Laws 1989, c.89-67 s.1. The provisions of both sections are substantially the same.

⁸ Morris v. Seely, 541 So.2d 659 (Fla. 1st DCA 1989).

While members of the advisory board are not paid, they are reimbursed for their expenses. . . .In AGO 73-347, however, this office concluded that [section] 116.111, F.S., would prohibit the appointment of a sheriff of a relative to the position of deputy sheriff even if the relative served without compensation. . . . Accordingly, [section] 116.111, F.S., would prohibit the appointment by a county commissioner of a relative to an unpaid position on a governmental advisory board.

The narrow construction of section 112.3135, F.S., under both of the above rationales recognizes only specific exclusions from the statute's provisions. This means that if a category of persons is not mentioned within the statute, they are presumed to be covered since they have not been exempted. Further, the provisions of section 112.3135, F.S., appear to apply to both paid and unpaid positions. As such, there presently exists no exclusion for volunteers who provide emergency medical, firefighting, or police services.

B. EFFECT OF PROPOSED CHANGES:

This bill amends section 112.3135(2)(a), F.S., to provide an unnumbered section which would:

1. Provide an exemption from the other provisions of section 112.3135, F.S., for persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. This will remove from these categories of persons the prohibition against public officials appointing, employing, promoting, advancing, or advocating a relative to a position for which they are exercising jurisdiction or control.
2. Provide that persons described in (1), above, may receive reimbursements for the related and incidental costs related to their services.

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?

No

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

No

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

An agency or program is not 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?

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?

No

5. Family Empowerment:

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

The bill does not purport 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

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(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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends section 112.3135, F.S.

E. SECTION-BY-SECTION RESEARCH:

None

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

HB 4395 provides that persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services may receive reimbursements for the related and incidental costs of their service without loss of their volunteer status. The degree of impact is indeterminate.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

See "Recurring Effects."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

HB 4395 provides that persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services may receive reimbursements for the related and incidental costs of their service without loss of their volunteer status. The degree of impact is indeterminate.

3. Long Run Effects Other Than Normal Growth:

None

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

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D. FISCAL COMMENTS:

HB 4395 provides that persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services may receive reimbursements for the related and incidental costs of their service without loss of their volunteer status. The degree of impact is indeterminate.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

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

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

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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