

STORAGE NAME: h4499a.leps

DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4499

RELATING TO: Candidates for Public Office

SPONSOR(S): Representatives Alexander, Fasano & Thrasher

COMPANION BILL(S): SB 362(c)

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

- (1) ELECTION REFORM (W/D)
 - (2) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 4499 requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the person is qualifying for a public office which is currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This bill requires a subordinate officer, deputy sheriff, or police officer to take a leave of absence without pay when he or she is a candidate for public office that is not currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This bill does not appear to have a fiscal impact on state or local governments.

HB 4499 has an effective date of July 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 99.012, Florida Statutes, is commonly referred to as the resign-to-run law. This law prohibits any individual from qualifying as a candidate for more than one office if the terms of the offices, or any part thereof, run concurrently. In addition, this section requires an elective or appointive officer to irrevocably resign when seeking an elective office which runs concurrently with the term of office which he or she currently holds.

An exemption is provided in subsection (5) of section 99.012, F.S., for a deputy sheriff, police officer, or subordinate officer. These officers need not resign unless they are seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise that person and such individual has qualified for reelection to that office. Nonetheless, such an officer is required to take a leave of absence without pay during the period in which he or she is seeking election. Florida's First District Court of Appeal has held that the leave of absence provision is triggered when a person is "seeking election", which is evidenced by such activities as hiring a campaign manager and preparing and distributing leaflets, cards and other election paraphernalia. Humphries v. Department of Highway Safety and Motor Vehicles, 400 So. 2d 1311 (Fla. 1st DCA 1981).

However, the Division of Elections has interpreted this provision to provide that an a subordinate officer, deputy sheriff, or police officer may choose to either take a leave of absence or resign under the provisions of this section. Division of Elections Opinion, 90-12. Therefore, a subordinate officer, deputy sheriff, or police officer who is running against an individual who has the authority to appoint, employ, promote, or otherwise supervise that person and such individual has qualified for reelection to that office, may file a letter of resignation that is effective on the day that the person would take office if elected and continue to work in that department. Under this ruling such an officer is not required to take a leave of absence. This opinion of the Division of Elections has been followed by at least one District Court of Appeals in Florida. Gonzalez v. Vogel, 616 So. 2d 473 (Fla. 2d DCA 1993).

B. EFFECT OF PROPOSED CHANGES:

This bill requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the person is qualifying for a public office which is currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This bill requires a subordinate officer, deputy sheriff, or police officer to take a leave of absence without pay when he or she is a candidate for public office that is not currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

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, this bill requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the person is qualifying for a public office which is currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This bill requires a subordinate officer, deputy sheriff, or police officer to take a leave of absence without pay when he or she is a candidate for public office that is not currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

(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.

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. HB 4499 requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the person is qualifying for a public office which is currently held by an officer who has the authority to

appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This bill requires a subordinate officer, deputy sheriff, or police officer to take a leave of absence without pay when he or she is a candidate for public office that is not currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

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:

Amends subsection (5) of section 99.012, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends subsection (5) of section 99.012, Florida Statutes, to require a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the person is qualifying for a public office which is currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This section also requires a subordinate officer, deputy sheriff, or police officer to take a leave of absence without pay when he or she is a candidate for public office that is not currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

Section 2: Provides that this act shall take effect on July 1 of the year in which enacted.

III. FISCAL RESEARCH & 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

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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:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 14, 1998, the Committee on Law Enforcement and Public Safety adopted two amendments which clarified that the word "qualifying" meant pursuant to Chapter 99, Florida Statutes.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Legislative Research Director:

Clay Roberts

Clay Roberts

AS REVISED BY THE COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

Kurt E. Ahrendt

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