

STORAGE NAME: h0545p1.leps

DATE: March 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: PCS/HB 545

RELATING TO: Dual Officeholding/Law Officers

SPONSOR(S): Representative Sindler

STATUTE(S) AFFECTED: s. 943.1398, F.S.

COMPANION BILL(S): SB 996 (s)

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

(1) LAW ENFORCEMENT AND PUBLIC SAFETY

(2)

(3)

(4)

(5)

I. SUMMARY:

This bill creates s. 943.1398, F.S., to allow actively certified law enforcement officers, correctional officers, and correctional probation officers who are employed or appointed by an employing agency, to work on a part-time basis for a different employing agency without being considered as holding an "office" for purposes of the dual officeholding prohibition of Article II, Section 5, of the Florida Constitution.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Dual Officeholding Prohibited

Article II, Section 5(a), of the Florida Constitution provides in pertinent part:

. . . No person may hold at the same time more than one "office" under the governments of the state, counties, and municipalities, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, constitutional convention, or statutory body having only advisory powers.

This constitutional provision prohibits a person from simultaneously holding more than one "office" under the government of the state, counties, and municipalities. The prohibition applies to both elected and appointed officials.

Attorney General's Opinion 89-10, February 20, 1989, holds that a certified law enforcement officer is an "officer" within the scope of the constitutional prohibition against dual officeholding. While the term "public officer" is not defined in the Florida Statutes (see West's F.S.A. ss. 110-112, s. 943.10, 1994), the opinion that a law enforcement officer is a "public officer" is well supported in numerous Florida Supreme Court cases. In general, the Florida Supreme Court has held that the duties performed by a law enforcement officer, particularly the exercise of the state's sovereign power (e.g., power to arrest, and the power to administer and enforce state law), is the determining factor in characterizing law enforcement officers as "public officers."

The following cases are illustrative on this issue: Blackburn v. Brorein, 70 So. 2d 293 (Fla. 1954), holding that a deputy sheriff is a public officer; State ex rel. Watson v. Hurlbert, 20 So. 2d 693 (Fla. 1945), holding that a county detective is a public officer; Curry v. Hammond, 16 So. 2d 523 (Fla. 1944), holding that a city patrolman is a public officer; and State ex rel. Clarkson v. Philips, 70 So. 367 (Fla. 1915), holding that a county game warden is a public officer.

One of the earliest, and most cited cases, to distinguish between "public officer" and "public employee" is State ex rel. Clyatt v. Hocker, 22 So. 721 (Fla. 1897), in which the court held that members of the Board of Legal Examiners were public officers. The Clyatt court provided the following description:

The term "office" implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office, a public office being an agency for the State, and the person whose duty it is to perform the agency being a public officer . . . A person in the service of the government . . . whose duties are continuous in their nature and defined by rules prescribed by government . . . consisting of the exercise of important public powers, trusts, or duties . . . implying an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws. *Id.* at 723.

Under this construction, Article II, Section 5, precludes law enforcement officers not only from serving in elected positions at the state, county, and municipal levels, but also from holding part-time employment with other law enforcement agencies.

2. Certification of Law Enforcement and Other Officers

Law enforcement officers, correctional officers, and correctional probation officers are certified by the Criminal Justice Standards and Training Commission pursuant to ss. 943.085- 943.255, F.S. In order to be certified, applicants must meet minimum qualifications for certification that are set forth in s. 943.13, F.S. Section 943.10, F.S., sets forth definitions of the various officers that are eligible to be certified by the Criminal Justice Standards and Training Commission.

“Employing agency” is defined by s. 943.10, F.S., as “any agency or unit of government . . . which has constitutional or statutory authority to employ or appoint persons as officers.”

Chapter 30, F.S., sets forth the law pertaining to sheriffs. Sheriffs are constitutional officers who are required by Article VIII Section 1(d) to be elected for terms of four years. Because they are elected constitutional officials, they are not “employed or appointed” by an employing agency. Sheriffs may appoint deputy sheriffs, who are considered appointees of an employing agency and are required under s. 30.072, F.S., to be certified pursuant to chapter 943, F.S. By law, deputy sheriffs are vested with the same sovereign power as the sheriffs. See section 30.07, F.S. See also Murphy v. Mack, 358 So.2d 822 (1978)(describing the position of deputy sheriff as an appointed public officer of an employing agency).

B. EFFECT OF PROPOSED CHANGES:

This bill creates s. 943.1398, F.S., to allow all law enforcement officers, correctional officers, and correctional probation officers who (1) hold active certification from the Criminal Justice Standards and Training Commission, and (2) are employed or appointed by an employing agency, to work on a part-time basis for a different employing agency without being considered as holding an “office” for purposes of the dual-officeholding prohibition of Article II, Section 5 of the Florida Constitution. These officers, who may include deputy sheriffs, will be able to hold paid part-time positions in other employing agencies without resigning from their current positions or taking a leave of absence. However, the bill does not permit these officers to run for elected office or work full-time for another agency without resigning from their present position, as currently required by law. In addition, sheriffs will not qualify for the exemption due to their status as elected constitutional officers.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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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:

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.

4. Individual Freedom:

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

Yes, to the extent this bill allows certified law enforcement officers to hold additional part-time employment with other agencies.

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?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates section 943.1398, F.S., for purposes of allowing law enforcement and other officers to work part-time for other agencies without violating the dual officeholding prohibition, as described above.

Section 2. Provides that the bill is effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

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.

D. FISCAL COMMENTS:

Not applicable.

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 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:

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

V. COMMENTS:

In Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981), the Florida Supreme Court discussed the purpose of the dual officeholding prohibition of Article II, Section 5, of the Florida Constitution. The Court explained that the purpose is "to ensure that multiple state, county, and municipal offices will not be held by the same person. Underlying this objective is the concern that a conflict of interest will arise by dual officeholding whenever the respective duties of office are inconsistent." Id. at 112. The Florida Supreme Court has also held that where a constitutional provision may have either of several meanings, the meaning adopted by the Legislature through statute is controlling, unless it manifestly infringes some provision of the Constitution. See Greater Loretta Imp. Ass'n v. State ex. rel. Boone, 234 So.2d 665, 669 (Fla. 1970). "There is a strong presumption that such contemporaneous construction rightly interprets the meaning and intention of a constitutional provision." Id. at 670. See also Vinales v. State, 394 So.2d 993 (Fla. 1981)(holding that statute allowing the temporary appointment of municipal police officers as state attorney investigators for no additional remuneration did not violate dual officeholding prohibition of Florida Constitution because the Legislature's adoption of the constitutional provision's meaning is controlling).

Allowing law enforcement officers to work part-time with other agencies, would not circumvent the purpose of the dual officeholding prohibition as articulated by the Court,

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unless there were some inherent conflict or inconsistency in an officer's respective duties between the two employing agencies that rises to the level of a conflict of interest.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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