

STORAGE NAME: h1141.ca

DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1141 (PCB LECP 99-05a)

RELATING TO: Certification of Law Enforcement Officers

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and Representative Futch

COMPANION BILL(S): None

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION (CRC) 9 YEAS 0 NAYS
 - (2) GOVERNMENTAL OPERATIONS (PRC) YEAS 6 NAYS 0
 - (3) COMMUNITY AFFAIRS (PRC)
 - (4)
 - (5)
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I. SUMMARY:

The bill streamlines the process of revocation of law enforcement officer certifications for any officer convicted of a felony or misdemeanor involving perjury or a false statement. The bill revises provisions relating to revocation of certification of any officer convicted of a felony or specified misdemeanor. Moreover, the bill significantly reduces the time in most decertification proceedings involving conviction for serious crimes. The bill also provides for speedy reinstatement in the event the conviction is ever overturned. It requires the Criminal Justice Standards and Training Commission to rescind its final order revoking an officer's certification upon a finding that the judgment has been vacated or a pardon granted.

The bill lists specific statutory sections for misdemeanors involving perjury or false statements that disqualify a person for certification as a law enforcement officer. Finally, the bill provides that applicants for auxiliary employment are exempt from the officer certification examination requirement.

Reducing the time for decertification proceedings in certain felony or misdemeanor cases might substantially reduce the costs for these proceedings. However, the total reduction in cost is indeterminate.

(See Section VI. Amendments or Committee Substitute Changes).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Regulation of Criminal Justice Professions

The Florida Department of Law Enforcement (FDLE) regulates criminal justice professionals to ensure that citizens are served by qualified, well-trained, competent, and ethical officers. The primary purpose of the Professional Program, one of three programs through which FDLE services are provided, is to regulate law enforcement officers, correctional officers, and correctional probation officers to ensure minimum levels of professional knowledge and skills and compliance with standards of conduct. The personnel assigned to the FDLE's Professional Program serve as staff for the Florida Criminal Justice Standards and Training Commission (Commission).

In accordance with s. 943.12, F.S., the Commission is responsible for certifying and disciplining criminal justice officers. The Commission has the authority to suspend or revoke an officer's certificate, which might prohibit that officer from being employed as a criminal justice officer in Florida.

Unreasonable Revocation Delays

Although s. 943.13(4), F.S., stipulates that individuals convicted of any felony or of a misdemeanor involving perjury or a false statement are prohibited from being certified as criminal justice officers, **already-certified officers** convicted of these crimes must still go through the administrative hearing process **before** the Commission can revoke their certification. Process from conviction until final Commission action takes an additional six months because FDLE staff must prepare additional written documentation and then schedule and hold preliminary and final hearings.

This situation has led to lengthy delays in the revocation of the certification of officers who have committed serious offenses. In addition, officers who are convicted of felonies sometimes remain employed in the field until their certifications are revoked. For cases closed in Fiscal Year 1996-1997, the Commission took an average of 1.9 years to revoke certifications for 220 officers who committed serious offenses, such as driving while intoxicated and smuggling contraband into inmates (OPPAGA, Report No. 97-76).

The OPPAGA Report and Recommendations

In June 1998, the Office of Program Policy Analysis and Government Accountability (OPPAGA) completed its Program Evaluation and Justification Review of the Florida Department of Law Enforcement (OPPAGA, Report No. 97-76). This review was made as part of a series of justification reviews to be conducted by OPPAGA under the Government Performance and Accountability Act of 1994.

OPPAGA concluded that while the Commission has become more timely in taking disciplinary actions against officers who violate less serious standards of conduct, it is taking too long to revoke the certifications of officers who commit the most serious offenses.

According to the OPPAGA document, the Commission needs to act in a more timely manner to revoke certifications because the public interest is served when these officers are disqualified from employment as quickly as possible. However, the goal of quickly removing "bad" officers may be impeded by the officers' right to administrative due process.

OPPAGA recommended that the Legislature amend s. 943.13(4), F.S., to expedite the revocation process by requiring officers who are convicted of felonies or misdemeanors involving perjury to **automatically** relinquish their certifications at the time of conviction rather than go through additional administrative due process.

According to OPPAGA, having officers convicted of felonies automatically relinquish their certifications might result in a more efficient revocation process because it would reduce the case time by the six months required for the hearing, and it eliminate the work associated with preparing hearing documents, thereby freeing staff time for other cases. In addition, automatic

relinquishments would eliminate the situation where officers who are convicted of felonies sometimes remain employed in the field until their certifications are revoked.

B. EFFECT OF PROPOSED CHANGES:

The Decertification Process

The bill revises provisions relating to revocation of certification of any officer convicted of a felony or specified misdemeanor. It provides that, upon receipt of documentation of a disqualifying conviction, and after notice and the opportunity for an informal hearing, (pursuant to s. 120.57(2), F.S.), the Commission is required to enter an order revoking the officer's certification.

Although the bill would allow the officer to challenge the decertification at the informal hearing, it significantly reduces the time frame in most of these decertification cases involving conviction for serious crimes. On the other hand, the bill also provides for speedy reinstatement in the event the conviction is ever overturned. Upon a finding that the judgment has been vacated or a pardon is granted, the Commission is required to rescind its final order revoking the officer's certification.

Specific Grounds for Decertification

The bill amends s. 943.13, F.S., to identify specific misdemeanors involving perjury or false statements which disqualifies a person for certification as a law enforcement officer. These include:

- s. 817.49, F.S., (False reports of commission of crimes),
- s. 837.012, F.S., (Perjury when not in an official proceeding),
- s. 837.05, F.S., (False reports to law enforcement authorities),
- s. 837.06, F.S., (False official statements), and
- s. 944.35, F.S., (Malicious battery, sexual misconduct, and failure to prevent or report the same).

Likewise, it establishes the specific statutory sections for which intentionally executing a false affidavit will subject the person to the certification revocation process. These sections each relate to compliance with employment qualification and separation requirements.

Change Regarding Auxiliary Employment Applicants

Finally, the bill provides that applicants for auxiliary employment are not required to take the officer certification examination.

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. According to OPPAGA, having officers convicted of felonies automatically relinquish their certifications would eliminate the work associated with preparing hearing documents, thereby freeing staff time for other cases.

(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?

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?

No.

5. Family Empowerment:

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

This 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

- (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:

This 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:

ss. 943.13, 943.1395, and 943.22, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amending s. 943.13, F.S., substituting **specific** references to statutory misdemeanor violations that disqualify a person from serving as an officer for a **general** reference to perjury or a false statement related misdemeanors; and exempting applicants for auxiliary employment the officer certification examination requirement.

Section 2. Amending s. 943.1395, F.S., moving a provision requiring the Commission to revoke certification under certain circumstances to a new subsection and adding other requirements; requiring the Commission to revoke the certification of any officer who is not in compliance with certain provisions upon receiving documents proving noncompliance of the officer, notice and the opportunity for a chapter 120, F.S., hearing; requiring the Commission to rescind its final order revoking an officer's certification if there is a finding that the judgment was vacated, or the officer was granted a full or conditional pardon; and changing certain cross references effectuated by the provisions of this bill.

Section 3. Amending 943.22, F.S., changing a cross reference effectuated by the provisions of this bill.

Section 4. Providing that this bill takes effect October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, FISCAL COMMENTS.

2. Recurring Effects:

See, FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

See, FISCAL COMMENTS.

4. Total Revenues and Expenditures:

See, FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, FISCAL COMMENTS.

2. Recurring Effects:

See, FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

See, FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, FISCAL COMMENTS.

2. Direct Private Sector Benefits:

See, FISCAL COMMENTS.

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

See, FISCAL COMMENTS.

D. FISCAL COMMENTS:

Reducing the length of time spent on decertification proceedings in certain felony or misdemeanor cases might substantially reduce the costs for these proceedings. However, the total reduction in cost 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 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:

The Florida Police Benevolent Association (PBA) has two concerns about the bill. First, it questions the wisdom behind exempting auxiliary officers from the officer certification examination requirement. The PBA believes that because these employees often work alongside certified officers and are sometimes involved in high-risk situations, they need to meet the same standards as certified officers. Second, the PBA disagrees with the inclusion of s. 944.35, F.S., in the list of specific disqualifying misdemeanors, because including this statutory section encompasses offenses that **do not presently** require decertification of officers (e.g., misdemeanor battery by an officer).

Especially with regard to the latter of the PBA's concerns, it seems that the PBA has a valid concern. It is clear that the intent of the bill is to require automatic decertification of officers who have been convicted of either: (1) any felony or, (2) a misdemeanor **involving perjury or false statements**. But the bill, as written, includes the misdemeanors of s. 944.35, F.S., (i.e., malicious battery and sexual misconduct) in the list of offenses warranting automatic decertification, offenses which do not currently require decertification of an officer. If the intent of the bill's sponsors really is to limit the list of eligible

misdemeanors to those involving perjury or false statements, this goal can be easily achieved by amending the bill to specifically include only the misdemeanors in s. 944.35(4), F.S., which has to do with failure to report, as well as false statements.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1999, the Committee on Law Enforcement and Crime Prevention approved two amendments which were incorporated into the proposed committee bill. The first amendment clarifies that an officer convicted of a felony or disqualifying misdemeanor would be afforded an opportunity for an informal hearing, prior to revocation of the officer's certification. The second amendment provides that applicants for auxiliary employment are not required to take the officer certification examination.

On March 17, 1999, the Committee on Governmental Operations adopted two amendments to HB 1141 and they are traveling with the bill. The first amendment remedies the second of the Florida PBA's concerns about the bill, noted above. It makes clear that the list of disqualifying misdemeanors would not include every offense listed in s. 944.35, F.S., but rather, would include only those named in s. 944.35(4)(b), F.S.. The second amendment addresses the first of the PBA's concerns. It deletes the provision which exempts auxiliary officers from the officer certification examination requirement.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jen Girgen

Jimmy O. Helms

AS FURTHER REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Nayola R. Frazier

Joan Highsmith-Smith