

STORAGE NAME: h1817a.ca
DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1817
RELATING TO: Declared States of Emergency/Schools
SPONSOR(S): Representative Garcia
COMPANION BILL(S): SB 1850 (i)

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 1
 - (2) CRIME & PUNISHMENT (CRC)
 - (3) EDUCATION/K-12 (AEC)
 - (4) GENERAL APPROPRIATIONS (FRC)
 - (5)
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I. SUMMARY:

This bill relates to the aftermath of state emergencies, requiring that:

- Certain offenses be reclassified to the next higher degree if the offense is committed during a state of emergency or a mandatory evacuation order;
- A school district's state funding be recalculated if the district's enrollment falls following a disaster; and
- Preference be given to local organizations, firms, and individuals with respect to awarding contracts for clean-up and reconstruction activities following a major disaster or emergency.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Misdemeanors and Felonies

The "degree of crime" denotes a particular grade of crime more or less culpable than another grade of the same offense. The maximum punishment to which the accused is liable to be subjected is the test by which the degree of the crime must be determined, without regard to whether less serious punishments are also authorized.

The statute classifying felonies and misdemeanors is supplemental to, and is not to be construed to alter, the law of Florida establishing and governing criminal offenses that are divided into degrees by virtue of distinctive elements comprising such offenses, regardless of whether such law is established by constitutional provision, statute, court rule, or court decision, s. 775.081(3), F.S.

Section 775.08, F.S., states that a misdemeanor is any criminal offense that is punishable by a term of imprisonment in a county correctional facility, except an extended term, not in excess of one year; a misdemeanor does not include conviction for any noncriminal traffic violation or any municipal or county ordinance.

Misdemeanors are classified in s. 775.081, F.S., for the purpose of sentence and for any other purpose specifically provided by statute, into the following categories: (1) misdemeanor of the first degree, and (2) misdemeanor of the second degree. A misdemeanor is of the particular degree designated by statute. Any crime declared by statute to be a misdemeanor without specification of degree is of the second degree.

A felony is any criminal offense punishable by death or imprisonment in a state penitentiary or a state correctional facility. Any crime for which a convicted person may be imprisoned in the state prison is a crime "punishable" by imprisonment in the state prison and is therefore a felony, even though another place of imprisonment might also be authorized as an alternative. Likewise, if the statute defining a crime prescribes imprisonment in the state penitentiary or a fine for its violation, the offense is a felony.

Section 775.081, F.S., classifies felonies for the purpose of sentencing and for any other purpose specifically provided by statute, into the following categories: (1) capital felony; (2) life felony; (3) felony of the first degree; (4) felony of the second degree; and (5) felony of the third degree. A capital felony and a life felony must be so designated by statute. Other felonies are of the particular degree designated by statute.

Any crime declared by statute to be a felony without specification of degree is of the third degree, except that this provision does not affect felonies punishable by life imprisonment for the first offense.

Sentencing Guidelines and Gain-time

Sentencing guidelines for criminal offenses are codified in chapter 921, F.S. Section 921.0022, F.S., contains the offense severity ranking chart, which must be used with the sentencing guidelines worksheet to compute a sentence score for each felony offender. The chart has 10 offense levels, ranked from least severe to most severe, and each felony offense is assigned to a level according to the severity of the offense.

Pursuant to s. 944.275, F.S., the Department of Corrections is authorized to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentives for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services. For offenses imposed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time. However, gain-time may only be granted for a maximum of 15 percent of the sentence imposed.

Florida Education Finance Program (FEFP)

Section 236.081, F.S., establishes the funding formula for public schools. The formula is referred to as the Florida Education Finance Program. A key factor in the FEFP formula is the full-time equivalent membership, which is the number of students enrolled in each school district.

In 1998, state funding for the Monroe County School District for FY 1998/99 was based on the enrollment of 9,510 Full Time Equivalent students. However, district officials report school enrollment dropped to 9,175 by December 1 of that year, due to "results related" to the 3 major tropical storms. Consequently, the FEFP for the district was recalculated and the district is receiving less state funding than budgeted. The district reports that it has hired teachers, paraprofessionals and other support staff anticipating state budgeted funding.

Emergency Management

Part 1 of chapter 252, F.S., is the State Emergency Management Act. Section 252.311, F.S., declares that it is the intent of the Legislature to provide for "the coordination of activities relating to emergency preparedness, response, recovery, and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with the private sector."

B. EFFECT OF PROPOSED CHANGES:

This bill provides for certain offenses to be reclassified to the next higher degree if the offense is committed during a state of emergency or a mandatory evacuation order. The bill establishes how gain-time is calculated under the reclassification scheme.

The bill provides for a school district's funding under the Florida Education Finance Program to be recalculated if the district's enrollment falls following a disaster. This provision is applied retroactively to the 1998-1999 school year.

Also, the bill requires that preference be given to local organizations, firms, and individuals with respect to awarding contracts for clean-up and reconstruction activities following a major disaster or emergency. However, this provision does not restrict the use of resources from the Department of Defense in providing assistance following a major disaster.

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?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments are required to give preference to local organizations, firms, and individuals with respect to awarding contracts for clean-up and reconstruction activities following a major disaster or emergency.

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

School districts funding may be recalculated under the Florida Education Finance Program if the districts' enrollment falls following a disaster.

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?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

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?

N/A

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

N/A

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:

Chapters 921, 236, and 252, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 requires that certain crimes be reclassified to the next higher degree if the jurisdiction where the offence was committed was under a state of emergency or a mandatory evacuation order.

Subsection (2) provides that the reclassification applies to the violation of the following offenses:

- s. 489.127, F.S., relating to construction contracting;
- chapter 806, F.S., relating to arson and criminal mischief;
- chapter 810, F.S., relating to burglary and trespass;
- chapter 812, F.S., relating to theft, robbery, and related crimes;
- s. 817.034, F.S., relating to the Florida Communications Fraud Act;

- s. 825.103, F.S., relating to the exploitation of an elderly person or disabled adult;
- s. 843.08, F.S., or s. 843.085, F.S., relating to falsely personating an officer and unlawfully using a police badge; and
- chapter 870, F.S., relating to affrays (brawls), riots, routs, and unlawful assembly.

For the purposes of sentencing under chapter 921, F.S., and determining incentive gain-time eligibility under chapter 944, F.S., a felony offence that is reclassified under this section is ranked one level above the ranking under chapter 921, F.S., of the offense committed, and a misdemeanor of the first degree is reclassified to a felony of the third degree.

Section 2 creates s. 236.081(10), to allow county school districts within a declared disaster area to request their current allocation under the Florida Education Finance Program be “held harmless” to the most recent membership calculation prior to the disaster declaration. As a condition of granting such a request, supporting documents are required. If supported by the Commissioner of Education, subsequent calculations of the district’s funding entitlement must use the same FTE student enrollment used in calculating the year prior to the disaster. This provision applies retroactively to the 1998-1999 school year.

Section 3 creates s. 252.375, to require, to the extent feasible and practicable, in actions using state and federal funds, that local organizations, firms, and individuals be contracted with to provide debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. This language is substantially the same as Section 307 of the Stafford Act (42 USC 5150), which addresses the expenditure of federal funds for disaster activities.

Section 4 provides that the act takes effect upon becoming a law, except that section 1 takes effect on October 1, 1999.

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:

To the extent that preference is given to local organizations, firms, and individuals with respect to awarding contracts for clean-up and reconstruction activities following a major disaster or emergency, local businesses and individuals will benefit, while non-local businesses will not benefit.

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 require cities or counties to spend money or take action that requires expenditure of money.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce revenue raising authority.

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

This bill does not reduce the state tax shared with cities and counties.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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