

STORAGE NAME: h0265.er

DATE: March 9, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
ELECTION REFORM
ANALYSIS**

BILL #: HB 265

RELATING TO: Felons Right To Vote

SPONSOR(S): Representative(s) Logan, Bradley and others.

COMPANION BILL(S): SB 210(i)

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

- (1) CRIME AND PUNISHMENT (CJCC) YEAS 6 NAYS 0
 - (2) ELECTION REFORM (PRC)
 - (3) JUDICIARY (CJC)
 - (4) CRIMINAL JUSTICE APPROPRIATIONS (FRC)
 - (5)
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I. SUMMARY:

This bill would automatically restore the right to register and vote to a person convicted of one or more felonies one year after "completion and satisfaction" of all sentences imposed. "Completion and satisfaction of all sentences" occurs when:

1. A person is released from incarceration upon expiration of sentence and has achieved or completed all other nonmonetary terms and conditions of the sentence or subsequent supervision; or
2. A person who has not been incarcerated has achieved or completed all nonmonetary terms and conditions of community supervision imposed by the court.

If a majority of the Board of Executive Clemency objects to the automatic restoration anytime during the one year time frame, the felon must directly apply to the Board for review of his or her restoration of rights.

This bill has a minimal fiscal impact.

This bill takes effect upon the effective date of any amendment to the State Constitution which authorizes or removes impediment to the enactment of the bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Convicted Felons Prohibited from Voting.

Article VI, Section 4 of the Florida Constitution limits the ability of convicted felons to vote as follows:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

Section 97.041(2), F.S., provides that the following persons are not entitled to register or vote:

(a) A person who has been adjudicated mentally incapacitated with respect to voting in this or any other state and who has not had his or her right to vote restored pursuant to law.

(b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.

Section 104.15, F.S., makes it a third degree felony for a convicted felon to vote if the person is aware that he or she is not qualified to vote.

The prohibition against voting by convicted felons is further expressed in section 944.292(1), F.S.:

(1) Upon conviction of a felony as defined in section 10, Article X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to section 8, Article IV of the State Constitution.

First time felony offenders who do not commit violent crimes typically receive a withhold of adjudication instead an adjudication of guilt. A withhold of adjudication is not considered a conviction and does not prohibit a person from voting or possessing a firearm.

Clemency

Article IV, Section 8(a) establishes the authority for clemency as follows:

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, ... with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Clemency Hearings

The Florida Administrative Code (27 FAR. T. 27, A.P.) sets forth the procedure and requirements for clemency that includes the following:

1. All applications for clemency must be filed with the Coordinator for the Office of Executive Clemency on standard forms provided by that office (Rule 6).
2. The Florida Parole Commission investigates the applicants and issues a report and recommendation (Rule 7).

3. All criminal sentences imposed must be completed unless a waiver of the rules is granted by the Governor and two members of the Cabinet (Rule 5IE.).
4. The Parole Commission shall make reasonable efforts to inform the victim(s) of the application (Rule 6II).
5. The Governor and two members of the Cabinet may require the coordinator for the office of Executive Clemency to place a case on the agenda to be heard by the Clemency Board (Rule 8IC.). The Clemency Board is the Cabinet and the Governor.

Restoration of Civil Rights without a Hearing

The Rules of Executive Clemency, Rule 9, establish an expedited procedure for a convicted felon to have his or her civil rights restored without a hearing if the person meets a number of requirements including:

1. The entire sentence imposed including all supervision has been completed.
2. There are no pending criminal charges.
3. No money is owed for fines, cost of supervision or restitution resulting from a criminal charge.
4. The person has not been convicted of a capital or life felony.
5. The person has not had his or her civil rights restored in Florida.
6. The person does not have more than two felony convictions if the convictions were separate transactions.
7. The person is a United States citizen.

This review occurs automatically and no application or other action is required by the convicted felon. The Department of Corrections automatically notifies the Florida Parole Commission of all persons who complete a criminal sentence. If the Florida Parole Commission determines that the above criteria have been met, then the Coordinator shall issue a certificate that would grant restoration of civil rights or residence rights in the State of Florida without the specific authority to possess a firearm. If any member of the Cabinet objects to the restoration of civil rights without a hearing then the applicant must have a clemency hearing before the Cabinet and Governor. This process can take up to 12 months to complete. In 1998, The Parole Commission reviewed 9,989 inmates released from prison and 7,676 persons whose community supervision including probation had terminated. A total of 1,254 persons received the restoration of their civil rights without a hearing. The remaining were either not qualified or were objected to by the Clemency Board.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed." "Completion and satisfaction of all sentences " occurs when:

1. A person is released from incarceration upon expiration of the sentence and has achieved or completed all other nonmonetary terms and conditions of the sentence or subsequent supervision; or
2. A person who has not been incarcerated has achieved or completed all nonmonetary terms and conditions of community supervision imposed by the court.

Monetary conditions of a sentence, such as restitution to a victim and costs of supervision, would not have to be paid in order for a convicted felon to have his or her right to vote automatically restored.

The bill provides that a majority of the Board of Executive Clemency may prevent the automatic restoration of the right to vote if an objection is made. Such an action would require application to and approval by the Board of Executive Clemency. The Board of Executive Clemency consists of the Cabinet and the Governor.

There is no limit as to the number of felony convictions a person may have in order to be eligible for automatic restoration provided by this bill.

The bill takes effect upon the effective date of any amendment to the State Constitution which authorizes or removes impediment to the enactment of the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

(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?

The bill gives more responsibilities to convicted felons in that far more felons will be able to vote if the constitutional amendment is passed.

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

No.

a. 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?
No. The persons whose voting rights will be restored do not pay any costs or fees.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
Yes, more people will have the right to vote.
- 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?

Not applicable.

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. STATUTE(S) AFFECTED:

Section 97.041, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed."

Section 2: Provides that the bill takes effect upon the effective date of any amendment to the State Constitution which authorizes or removes impediment to the enactment of the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not applicable.

2. Recurring Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Total Revenues and Expenditures:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Not applicable.

2. Recurring Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

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

Not applicable.

D. FISCAL COMMENTS:

The Department of Correction currently notifies the Office of Executive Clemency of all felons whose sentence has been completed. The Office of Executive Clemency already reviews these cases to see if the felons qualify to have their voting rights restored. The position of the Office of Executive Clemency is that the bill will not have a fiscal impact on that agency.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

A substitute amendment should be offered to amendment #2 as passed by the Committee on Crime & Punishment. The substitute is needed to correct an oversight which incorrectly references the Senate Joint Resolution to the number identifying the House Joint Resolution. Page 2, line 5 of the bill should be amended to remove the text "Senate Joint Resolution No. ____" and insert "House Joint Resolution No. 263."

Section 944.292(1), F.S., should be amended so as not to conflict with the bill. Nonetheless, the language contained in the bill would be controlling since it is more recent. [See text of s. 944.292(1), F.S., in Present Situation section of this analysis.

Also, before HB 265 can take effect, the Florida Constitution must be amended to remove the disqualification to voting found in Art. VI, s. 4, of the Florida Constitution. In 1974 the legislature passed Section 28, Chapter 74--112 providing that the civil right of a person convicted for a felony shall be suspended until the person is discharged from parole at which time civil rights are automatically reinstated. In re Advisory Opinion of the Governor Civil Rights, 306 So.2d 520 (Fla. 1975), the Florida Supreme Court held the law to be an unconstitutional invasion of the authority given exclusively to the Executive Branch. House Joint Resolution 263, would remove the disqualification to voting for a person convicted of a felony provided in Art. VI, s. 4, of the Florida Constitution. This constitutional amendment (HJR 263) would not supplant the authority granted to the Governor by Art. IV, s. 8, of the Florida Constitution.

According to a report by the Human Rights Watch & The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, at (www.hrw.org/hrw/reports98/vote/usvot98o.htm), Florida is one of 12 states that permanently disenfranchise felony offenders who have completed their criminal sentences. In two of these states, the offenders are disenfranchised after a second felony. [See also, *Criminal Justice Newsletter*, vol. 29, number 16]. However, in a recent approval of a constitutional amendment, the State of Utah became the 13th state to ban felons from voting or holding office until their rights have been restored. *Election Administration Reports*, vol. 29, number 2. Nonetheless, Florida allows automatic restoration of a person's civil rights including the right to vote, subject to an objection by the Clemency Board, if the person has two or fewer felony convictions and all terms of the sentence are completed including monetary conditions (Rules of Executive Clemency - Rule 9).

It should be noted that the "Losing the Vote" report asserted that Florida disenfranchised 647,000 people because of felony convictions. However, due to various factors used in the methodology portion of the *Sentencing Project's* report, this figure appears to be overstated. First, the database utilized by the researchers was one used for gun purchase background checks and include out-of-state felons residing in Florida. Second, this figure does not take into account those who have had their civil rights restored through the Board of Executive Clemency or those which are currently incarcerated, on probation, or on parole. Additionally, felons who have moved out-of-state or have died have not been accounted for in the report's totals. Consequently, when correcting for these discrepancies, the number of felons without the right to vote is 343,675. This statistic includes all felons dating back to 1950. [FDLE statistical assessment of the "Losing the Vote" report, March 1999]. FDLE cautions that the data used by both the Department and *The Sentencing Project* are difficult to derive due to the complexity of the issue. Marc Mauer of *The Sentencing Project* acknowledges their figures may be overstated to the extent that the data received from the governmental agencies canvassed was incorrect. Additionally, felons who have had civil rights restored through executive clemency are not accounted for in their aggregate numbers. [Conversation with Marc Mauer, March 18, 1999]. Although both estimates include statistical assumptions to arrive at their respective figures, FDLE contends their figures are more realistic once the noted discrepancies have been considered.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Logan offered two technical amendments to the bill in the Crime and Punishment Committee on March 3, 1999, and both amendments passed favorably. The first amendment distinguishes voting rights from civil rights in Florida Statutes relating to the statewide voter registration application and in the section relating to the central voter file. The second amendment added the

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resolution number for HJR 263 to the provision relating to the effective date of the bill to clarify that the bill would take effect upon the passage of the resolution.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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Staff Director:

J. Willis Renuart

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AS REVISED BY THE COMMITTEE ON ELECTION REFORM:

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