

STORAGE NAME: h1917.cp

DATE: March 13, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME & PUNISHMENT
ANALYSIS**

BILL #: HB 1917 (PCB 05)

RELATING TO: Compelled Testimony

SPONSOR(S): Committee on Crime & Punishment and Representative Ball

TIED BILL(S):

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

(1) CRIME & PUNISHMENT YEAS 5 NAYS 0

(2)

(3)

(4)

(5)

I. SUMMARY:

HB 1917 authorizes the Commission on Ethics, with the permission of the local state attorney, to apply to the chief judge of the judicial circuit for a grant of immunity to compel a witness to testify. If the immunity is granted, information which is derived from the testimony cannot be used against the witness in any criminal prosecution or commission proceeding.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In a criminal case, "the privilege against self-incrimination does not deprive the state of the authority to compel statements that may be incriminating, as long as the state grants immunity." Zile v. State, 710 So.2d 729, 732 (Fla. 4th DCA 1998); Kastigar v. United States, 406 U.S. 441, 92 S.Ct. 1653 (1972). Section 914.04 provides that:

No person who has been duly served with a subpoena or subpoena duces tecum shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, or state attorney upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to convict him or her of a crime or to subject him or her to a penalty or forfeiture, but no testimony so given or evidence so produced shall be received against the person upon any criminal investigation or proceeding. Such testimony or evidence, however, may be received against the person upon any criminal investigation or proceeding for perjury committed while giving such testimony or producing such evidence or for any perjury subsequently committed.

The Commission on Ethics is required to receive and investigate sworn complaints of violations of the code of ethics by public officers and employees. Sec. 112.322, F.S.; Art. II, Section 8(f), Fla. Const. The commission has the authority to subpoena witnesses and compel their attendance and testimony. Sec. 112.322(4), F.S.

On September 15, 1999, Governor Bush established the Public Corruption Study Commission. The fifteen member commission was tasked to complete a comprehensive review of current laws, policies and procedures related to Florida's response to public corruption and prepare specific recommendations on how Florida might better prevent and respond to acts of public corruption. Fifteen members served on the commission including Representative Randy Ball and Senator Jim Sebesta. The commission held four meetings and issued a report on December 14, 1999. According to the report of the Public Corruption Study Commission:

In several instances, the Ethics Commission has tried to obtain testimony from witnesses to a public official's ethics violation who have been entitled to claim a fifth

amendment privilege because of the possibility of criminal prosecution for involvement. Even though no criminal investigation was underway and no criminal prosecution was likely, the public was denied access to the truth of what happened. Although a State Attorney can grant immunity to the witness, in order to obtain the witness' testimony, a grant of immunity currently is not available unless the State Attorney has an ongoing proceeding in which the witness' testimony is needed.

The Public Corruption Study Commission recommended that the Ethics Commission be given the authority to apply to the chief judge of the judicial circuit, with the permission of the state attorney, for a judicial grant of immunity. The Public Service Commission has the statutory authority to grant a witness immunity in order to compel testimony. The statute provides:

If any person called to testify in a commission proceeding shall refuse to testify because of a claim of possible self-incrimination, the commission, after consultation with the appropriate state attorney, may apply to the chief judge of the appropriate judicial circuit for a judicial grant of immunity ordering the testimony of such person notwithstanding his or her objection, but in such case no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal prosecution.

Sec. 350.124, F.S.

C. EFFECT OF PROPOSED CHANGES:

HB 1917 provides that if any person called to give evidence in a commission proceeding refuses to testify because of a claim of possible self-incrimination, the commission, with the written authorization of the appropriate state attorney, may apply to the chief judge of the judicial circuit for a grant of immunity ordering the testimony or other evidence of the person. If the judge grants the person immunity to testify, no information directly or indirectly derived from such testimony or other information compelled under the order may be used against the witness in any criminal prosecution or commission proceeding.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Authorizes Commission on Ethics to seek immunity for certain witnesses.

Section 2: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1917 does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

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:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz