

STORAGE NAME: h0459s1.ei.doc
DATE: April 6, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
EDUCATION INNOVATION
ANALYSIS**

BILL #: CS/HB 459
RELATING TO: Public Officials/Relative Employment
SPONSOR(S): Committee on State Administration, Representative(s) Brutus and others
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
- (2) EDUCATION INNOVATION
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

Currently, there are no statutory limitations for the hiring of relatives by public officials at state universities, community colleges, or school boards. Any restrictions relating to the employment of relatives of officials at these entities would be through adopted organizational policy.

This committee substitute prohibits public officials of a university, community college district, or district school board from appointing, employing, promoting, or advancing a relative within the university, community college district, or district school board. This prohibition is accomplished by removing the current exemption from the restriction on employment of such relatives given to universities, community college districts, and district school boards. This committee substitute also prohibits public officials from advocating for appointment, employment, promotion, or advancement, of a relative for a position that is under the jurisdiction of the public official.

Additionally, CS/HB 459 deletes reference to "collegial bodies." This change appears to allow members of "collegial bodies," such as school board members, to continue the practice of voting on the appointment, employment, promotion, or advancement of a relative.

CS/HB 459 does not appear to have a fiscal impact on state or local governments.

This bill will take effect July 1, 2001.

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 checked="" type="checkbox"/> | N/A <input 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"/> |

This committee substitute may limit individual freedom by preventing "public officials" in education from hiring their relatives.

B. PRESENT SITUATION:

State University Hiring

Section 240.202, F.S., provides that the "powers, duties, and authority vested with a university shall be with the president of the university or his or her designee". According to s. 240.227(3), F.S., a university president must:

[a]ppoint university personnel and provide for the compensation and other conditions of employment such as recruitment, non-reappointment, benefits and hours of work, evaluation, recognition, inventions and works, learning opportunities, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment, consistent with applicable law, collective bargaining agreements, and the Board of Regents rules.

According to the Florida Board of Regents, the president may assign a designee to perform the personnel and employment duties. Frequently, the provost is designated by the university president to handle university hiring. If a position becomes available within the university, the vacancy is publicized and the university begins recruiting for the position. Generally, the personnel office screens the applications. The applications that meet the university's requirements are then sent to the school or department that is hiring. The school's dean or the head of the department then further reviews the applications. Upon further screening of the applicants, interviews are conducted within the department or school. Once the department head or dean decides on an applicant, he or she then provides the choice to the president. The president then decides whether or not to hire the applicant. The president may appoint a designee to make the hiring decision.

According to the Florida Board of Regents, universities prohibit direct reporting between spouses and relatives because it is considered a conflict of interest.

Community College Hiring

Section 240.335, F.S., provides for the hiring procedures in the Florida community college system. Section 240.335(1), F.S., states, "Employment of all personnel in each community college shall be upon recommendation of the president, subject to rejection for cause by the board of trustees..."

District School Board Hiring

Sections 230.23 and 231.085, F.S., provide for the hiring duties of the district school board, superintendent of schools, and the principal. The duty of the school board includes designating positions to be filled, prescribing qualifications for those positions, and providing for "appointment, compensation, promotion, suspension, and dismissal." The board acts upon written recommendations submitted by the superintendent of schools "for positions to be filled and for minimum qualifications for personnel for the various positions." The superintendent of schools must consider nominations received from school principals of the respective schools, when making recommendations for positions to be filled. The principal is responsible for "recommending to the superintendent of schools the employment of instructional personnel to be assigned to the school to which the principal is assigned."

Chapter 112, F.S., Public Officers and Employees: General Provisions.

Chapter 112, F.S., outlines general provisions affecting public officers and employees. Part III of chapter 112, F.S., contains the code of ethics for public officers and employees.

Section 112.3135(2)(a), F.S., provides that

[a] *public official* may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a *relative* of the public official.

Section 112.3135(1)(c), F.S., defines "public official" as "an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rules, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals."

Section 112.3135(1)(d), F.S., defines "relative", with respect to a public official, as a person related to the public official as "father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

Exceptions are provided for in s. 112.3135, F.S. Approval of budgets will not be enough to constitute "jurisdiction or control." An agency may recommend a policy authorizing temporary employment of individuals whose employment would otherwise be prohibited, in the event of an emergency. During legislative sessions, Legislators' relatives may be employed as pages or messengers.

C. EFFECT OF PROPOSED CHANGES:

This committee substitute prohibits public officials of a university, community college district, or district school board from appointing, employing, promoting, or advancing a relative within the university, community college district, or district school board. This prohibition is accomplished by removing the current exemption from the restriction on employment of such relatives given to universities, community college districts, and district school boards. This committee substitute also prohibits public officials from advocating for appointment, employment, promotion, or advancement, of a relative for a position that is under the jurisdiction of the public official.

This committee substitute repeals the definition of a "collegial body." It also eliminates from the definition, of "public official," a "member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals." Accordingly, a member of a "collegial body," for example, a member of a school board, is not considered a public official for purposes of restriction on employment of relatives; and thus, is not prohibited from voting on the appointment, employment, promotion, or advancement of a relative.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 112.3135, F.S., deletes phrases within the definition of "agency" and "public official" which provide exceptions to provisions prohibiting the hiring of relatives; deletes the definition of "collegial body"; deletes mention of "collegial body" in the provision prohibiting the hiring of a relative.

Section 2: Amends s. 721.05(18)(a), F.S., corrects a cross-reference.

Section 3: Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This committee substitute does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This committee substitute does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This committee substitute does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This committee substitute does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This committee substitute does not appear to have a direct impact on the private sector.

D. FISCAL COMMENTS:

See above.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute 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 committee substitute 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 committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This committee substitute does not appear to violate any constitutional provisions.

B. RULE-MAKING AUTHORITY:

This committee substitute does not grant additional rule-making authority.

C. OTHER COMMENTS:

Opponents of this committee substitute include the Florida Board of Regents and the Florida School Boards Association.

The Florida Board of Regents is opposed to CS/HB 459, because they believe it will negatively affect their hiring capabilities. Husband and wife teams are one of the main marketing tools used when recruiting university professors. If the ability to hire husband and wife teams is taken from the universities, then they feel it will be more difficult to recruit professors to teach.

The Florida School Boards Association is opposed to CS/HB 459, because they believe it will cause a tremendous handicap in the hiring process. In rural areas, relatives work together in the school system, and since there is already a shortage of teachers, this will only create a bigger burden in these areas. For example, if this committee substitute becomes law, then because the definitions of "public official" and "relative" are broad, a principal or school superintendent would not be permitted to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement if the individual is a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Committee on State Administration heard HB 459. The committee adopted one amendment by Representative Brutus. Representative Brutus offered an amendment to repeal the definition of a "collegial body" from the bill, and to eliminate from the definition of "public official" a "member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals." The committee reported the bill out favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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