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**DATE:** March 20, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
STATE ADMINISTRATION  
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)

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I. SUMMARY:

Currently, the state university's president or the president's designee makes the hiring decisions. These decisions are usually based upon recommendations made by the dean or department head. In the district school system, the district school boards make the hiring decisions. Their decision is based upon recommendations made by the school superintendent, which have been submitted by the school's principal.

This committee substitute prohibits public officials<sup>1</sup> of a university, community college district, or district school board from appointing, employing, promoting, or advancing a relative<sup>2</sup> within the university, community college district, or district school board. It accomplishes this 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 such public official from advocating for appointment, employment, promotion, or advancement, of such relative, for a position that is under the jurisdiction of such public official.

In addition, CS/HB 459 repeals the definition of a "collegial body" and eliminates from the definition of a "public official" a "member of a collegial body." 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.

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

See "Other Comments" section for concerns.

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<sup>1</sup> 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."

<sup>2</sup> Section 112.3135(1)(d), F.S., defines "relative" with respect to a public official, as an individual "who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

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:

**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". The 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.<sup>3</sup>*

The president may assign a designee to perform the personnel and employment duties. Frequently, the provost<sup>4</sup> is designated by the university president to handle university hiring.<sup>5</sup>

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<sup>6</sup> 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

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<sup>3</sup> Section 240.227(5), F.S.

<sup>4</sup> An academic administrator serves in the same capacity as a provost.

<sup>5</sup> Francis White, Florida Board of Regents, telephone call on March 16, 2001.

<sup>6</sup> The university is made up of different schools. For example, the university may have a school of medicine, school of social work, school of education, or school of criminology, within the university. Each school specializes in a particular area of interest.

the president. The president then decides whether or not to hire the applicant. The president may appoint a designee to make the hiring decision.<sup>7</sup>

### **District School Board Hiring**

Each county constitutes a school district.<sup>8</sup> Each school district must constitute a “unit for the control, organization, and administration of schools.”<sup>9</sup> The district school system is managed, controlled, operated, administered, and supervised as follows:

- District System – The district school system shall be considered a part of the state system of public education. All actions of district school officials must be consistent and in harmony with state laws and with rules and minimum standards of the state board and the commissioner.
- School Board – The district school boards must operate, control, and supervise all free public schools in their respective district.
- Superintendent – As provided by law, the superintendent is responsible for the administration and management of the schools and for the supervision of instruction in the district.
- Principal or Head of School – The principal or school head is responsible for the administration of any school or schools at a given school center, for the supervision of instruction therein, and for providing leadership in the development or revision and implementation of a school improvement plan.<sup>10</sup>

The duty of the district school board includes designating positions to be filled, prescribing qualifications for those positions, and providing for “appointment, compensation, promotion, suspension, and dismissal.”<sup>11</sup> 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.”<sup>12</sup> The superintendent of schools must consider nominations received from school principals of the respective schools, when making recommendations for positions to be filled.<sup>13</sup> 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.”<sup>14</sup>

### **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.

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<sup>7</sup> Francis White, Florida Board of Regents, telephone call on March 16, 2001.

<sup>8</sup> See s. 230.01, F.S.

<sup>9</sup> Section 230.01, F.S.

<sup>10</sup> See s. 230.03, F.S.

<sup>11</sup> Section 230.23(5), F.S.

<sup>12</sup> Section 230.23(5)(a), F.S.

<sup>13</sup> See s. 230.23(5)(a), F.S. and s. 230.33(7)(a), F.S.

<sup>14</sup> Section 231.085(2), F.S.

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<sup>15</sup> 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.”<sup>16</sup> An agency may recommend a policy authorizing temporary employment of individuals whose employment would otherwise be prohibited, in the event of an emergency.<sup>17</sup> During legislative sessions, Legislators’ relatives may be employed as pages or messengers.<sup>18</sup>

Currently, universities prohibit direct reporting between spouses and relatives because this is considered a conflict of interest.<sup>19</sup>

### C. EFFECT OF PROPOSED CHANGES:

CS/HB 459 amends s. 112.3135, F.S., to prohibit employment of a relative within the university, community college district, or district school board, by public officials of a university, community college district, or a district school board. It accomplishes this 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 such public officials from appointing, employing, promoting, or advancing such relative in the state university, community college district, or district school board. It also prohibits such public official from advocating for appointment, employment,

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<sup>15</sup> Section 112.3135(1)(a), F.S., states that an “agency” means: “1. A state agency, except an institution under the jurisdiction of the Division of Universities of the Department of Education; 2. An office, agency, or other establishment in the legislative branch; 3. An office, agency, or other establishment in the judicial branch; 4. A county; 5. A city; and 6. Any other political subdivision of the state, except a district school board or community college district.”

<sup>16</sup> See s. 112.3135(2)(b), F.S.

<sup>17</sup> See s. 112.3135(3), F.S.; s. 252.34(3), F.S., defines “emergency” as “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”

<sup>18</sup> See s. 112.3135(4), F.S.

<sup>19</sup> Francis White, Florida Board of Regents, telephone call on March 16, 2001.

promotion, or advancement, of such relative, for a position that is under the jurisdiction of such 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:

See "Effect of Proposed Changes."

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:

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Jacqueline Pepper, a Miami-Dade School Board member, hired her husband to serve as one of her administrative aides.<sup>20</sup> She said that her husband would assist her in school construction management and that there was "absolutely no one else who would do the job for the salary offered."<sup>21</sup> The Miami Herald questioned Jacqueline Pepper's motives, because she did not interview anyone else for the position.<sup>22</sup> Because of this incident, the sponsor has filed this bill.<sup>23</sup> The sponsor of CS/HB 459 believes that public officials should not be allowed to hire their immediate family members.<sup>24</sup>

Opponents of this committee substitute include the Florida Board of Regents and the Florida School Boards Association, Inc. The Florida Board of Regents is opposed to CS/HB 459, because they believe it will negatively affect their hiring capabilities.<sup>25</sup> Husband and wife teams are one of the main marketing tools used when recruiting university professors.<sup>26</sup> 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.<sup>27</sup>

The Florida School Boards Association, Inc. is opposed to CS/HB 459, because they believe it will cause a tremendous handicap in the hiring process.<sup>28</sup> 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.<sup>29</sup> 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

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<sup>20</sup> Miami Herald, "Pepper's Bad Hire", Editorial Section, January 30, 2001.

<sup>21</sup> *Id.* at 6B.

<sup>22</sup> *Id.*

<sup>23</sup> Angela Lane, Legislative Assistant to Representative Brutus, telephone call on February 26, 2001.

<sup>24</sup> Electronic mail received from Angela Lane on March 16, 2001.

<sup>25</sup> Francis White, Florida Board of Regents; Telephone conversation on February 28, 2001.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Wayne Blanton, Florida School Boards Association, Inc.; Telephone conversation on March 6, 2001.

<sup>29</sup> *Id.*

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.

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:

Prepared by:

Staff Director:

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Heather A. Williamson, M.S.W

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J. Marleen Ahearn, Ph.D., J.D.