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DATE: March 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON RULES, ETHICS, & ELECTIONS
ANALYSIS**

BILL #: HB 51

RELATING TO: Felon's Right to Vote

SPONSOR(S): Representative(s) Smith & Others

TIED BILL(S): HJR 49

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

- (1) RULES, ETHICS & ELECTIONS (PRC)
 - (2) JUDICIAL OVERSIGHT (SGC)
 - (3) PROCEDURAL & REDISTRICTING COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

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 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.

This bill has a one-time fiscal impact of \$71,000 associated with the redesign and printing of new statewide voter registration cards to conform.

This bill shall become effective upon the adoption of HJR 49 or another amendment to the State Constitution, which removes the impediments of a felon to register or vote.

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 checked="" type="checkbox"/> | No <input 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"/> |

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

B. PRESENT SITUATION:

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. (Emphasis added).

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. (Emphasis added).

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 s. 8, Art. IV of the State Constitution.

First time felony offenders who do not commit violent crimes may receive a withhold of adjudication instead of 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.

Restoration of Civil Rights

Executive Clemency is a power vested in the Governor by the Florida Constitution. Article IV, Section 8(a) of the Constitution establishes the authority for clemency as follows:¹

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

Under the Florida Rules of Executive Clemency, AClemency@is an act of grace proceeding from the power entrusted with the execution of the laws and exempts the individual upon whom it is bestowed from all or any part of the punishment the law inflicts for a crime committed. Rule T. 27, App., F.A.C.

The Governor and members of the Cabinet collectively are the Clemency Board.

The Governor has the unfettered discretion to deny any request for clemency. Likewise, the Governor, with the approval of three Cabinet members, has the unfettered discretion to grant the following acts of grace:

- Full Pardon
- Conditional Pardon
- Commutation of Sentence
- Remission of Fines and Forfeitures
- Specific Authority To Own, Possess, or Use Firearms
- Restoration of Civil Rights in Florida
- Restoration of Residence Rights in Florida

Id.

The review process for restoring the civil rights of the majority of felons convicted in Florida is designed to be automatic, and should take place without the need for the individual to file any application or request. Under the Florida Rules of Executive Clemency, upon release of a felon from prison or supervision (i.e., probation), the Department of Corrections is required to submit each individual's name to the Florida Parole Commission. The Parole Commission then reviews specified criteria to determine whether the individual is eligible to have his or her civil rights restored.

The specific criteria for eligibility is set forth in Rule 9. A, Florida Rules of Executive Clemency:

- The applicant has completed service of all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release, and conditional release.
- The applicant does not have an outstanding detainer or any pending criminal charges.
- The applicant does not have any outstanding pecuniary penalty resulting from a criminal conviction or traffic infraction, including but not limited to, fines, court costs, restitution pursuant to a Court Order, restitution pursuant to s. 960.17(1) of the Florida Statutes, and unpaid costs of supervision pursuant to s. 945.30 of the Florida Statutes.

¹

Effective January 7, 2003, Article IV, Section 4 of the Florida Constitution is amended to reduce the number of elected Cabinet officers from six to three. In addition, Article IV, Section 8, relating to Clemency, reduces the number of cabinet members from three to two, which along with the Governor, is required to grant clemency.

- The applicant has not been convicted of a capital or life felony.
- The applicant has not previously had his or her civil rights restored in the State of Florida.
- The applicant does not have more than two felony convictions. For the purpose of the requirement contained in this subsection only, each felony conviction shall include all related offenses which are those triable in the same court and are based on the same act or transaction or on two or more connected acts or transactions.
- The applicant is a citizen of the United States, if he or she is requesting restoration of civil rights.
- The applicant must be a legal resident of the State of Florida, if he or she was convicted in a court other than a Florida state court and is requesting a restoration of civil rights.
- The applicant must be domiciled in the State of Florida, if he or she is requesting restoration of residence rights.
- The applicant was not a public official who during his or her term of office committed a criminal offense for which he or she was subsequently convicted.

If the Florida Parole Commission determines that the above criteria have been met, a certificate that would grant restoration of civil rights or residence rights in the State of Florida is issued without the specific authority to possess a firearm. **If any member of the Board of Executive Clemency objects to the restoration of civil rights then the applicant must have a clemency hearing before the Board of Executive Clemency.**

The review process takes anywhere from 8 to 12 months to complete but can be accelerated if the individual contacts the Board directly and files an application for clemency.

A felon who has lost his or her civil rights is required to re-register to have his or her name restored to the voter registration books. [s. 98.093(4), F.S.].

C. EFFECT OF PROPOSED CHANGES:

Restoration of Civil Rights

The bill provides that convicted felons will automatically have their right to register or vote restored one year after "completion and satisfaction of all sentences imposed." The bill defines "completion and satisfaction of all sentences" to occur when:

- 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
- 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 register or vote if that objection is made prior to the automatic restoration (1 year) - a higher standard than is currently provided by rule. Under this circumstance, the person would be required to file an application with the Board of Executive Clemency for review.

The Board of Executive Clemency currently consists of seven members - six Cabinet officers and the Governor. This will be reduced to four (three Cabinet officers and the Governor) due to the

passage of Constitutional Amendment No. 8, which amended Article IV, Section 4, Florida Constitution.

The bill also provides a title of the "Citizens Empowerment Act" and amends ss. 97.052, 97.053, and 98.0975 to conform. These sections govern the uniform statewide voter registration application and the central voter file maintenance program.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There is a one-time cost of \$71,000 to redesign and print new voter registration cards to conform to the requirements of this bill. The Division of Elections will bear the cost of this expense.

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:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Before HB 51 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 Chapter 74-112, Laws of Florida, providing that the civil rights of a person convicted of a felony shall be suspended until the person is discharged from parole at which time civil rights are automatically reinstated. In 1975, the Florida Supreme Court held the law to be an unconstitutional invasion of the authority given exclusively to the Executive Branch. *In re Advisory Opinion of the Governor Civil Rights*, 306 So.2d 520 (Fla. 1975). House Joint Resolution 49, 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 49) would not supplant the authority granted to the Governor by Art. IV, s. 8, of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON RULES, ETHICS, & ELECTIONS:

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