

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 299 Appearances Before Legislative Committees
SPONSOR(S): Galvano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Jaroslav	Havlicak
2) Rules Sub.			
3) Procedure			
4)			
5)			

SUMMARY ANALYSIS

Current law defines, and provides for the punishment of, the crime of perjury in an official proceeding. Current law also empowers committees of the Legislature to place anyone appearing before them under oath, thus subject to criminal penalties for perjury in an official proceeding. However, in practice this is rarely done.

This bill provides that a person who appears before a committee of either chamber of the Legislature, or a joint committee of both, is considered to be under oath and, if he or she willfully testifies falsely, is subject to penalties for perjury as provided by law.

This bill also provides that before a person may testify before a legislative committee, he or she must complete an appearance card that includes, but need not be limited to

- the individual's name;
- the individual's business address;
- the agency that he or she represents, if any; and
- the individual's signature.

This appearance card must contain a notice in legible type above the signature line stating that, by signing the card, the individual acknowledges being under oath and subject to penalties for perjury if he or she does not testify truthfully.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME h0299.ju.doc
DATE February 2, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

This bill could be described as increasing government and diminishing personal freedom because it imposes new requirements on those who seek to address legislative committees, and indirectly creates criminal penalties for failing to comply with those requirements.

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Perjury

Section 837.02, F.S., entitled “Perjury in official proceedings,” provides:

(1) Except as provided in subsection (2), whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding that relates to the prosecution of a capital felony, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) or subsection (2), and the defendant's mistaken belief that the statement was not material is not a defense.

A second-degree felony is normally punishable by up to fifteen years' imprisonment¹ and a fine of up to \$10,000.² A third-degree felony is normally punishable by up to five years' imprisonment³ and a fine of up to \$5,000.⁴ These terms may be doubled for habitual felony offenders; they serve as mandatory minimum sentences for habitual violent felony offenders; and they must be doubled for three-time violent felony offenders.⁵

Section 837.011, F.S., defines an “official proceeding” for purposes of the perjury chapter as:

a proceeding heard, or which may be or is required to be heard, before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, master in chancery, administrative law judge, hearing officer, hearing

¹ See s. 775.082(3)(c), F.S.

² See s. 775.083(1)(b), F.S.

³ See s. 775.082(3)(d), F.S.

⁴ See s. 775.083(1)(c), F.S.

⁵ See s. 775.084, F.S.

examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

Present Situation: Appearances Before Committees

Under s. 11.143(3)(a), F.S., “[t]he chair or any other member [of a legislative standing committee, select committee, or subcommittee] may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the committee for the purpose of testifying in any manner concerning which the committee desires evidence.” In practice, the use of this statutory authority is extremely infrequent; statements to legislative committees in Florida are rarely made under oath, and thus are not usually subject to criminal sanction for perjury in an official proceeding under s. 837.02, F.S. By contrast, testimony before congressional committees is often made under oath, and therefore subject to criminal penalties under the analogous federal perjury statutes.⁶

Rule 16.1(c) of the Rules of the Florida House of Representatives currently provides:

FALSE SWEARING. Whoever willfully affirms or swears falsely in regard to any material matter or thing before any standing or select committee is guilty of perjury in an official proceeding, which is a felony of the third degree and shall be punished as provided in section 775.082, section 775.083, or section 775.084, Florida Statutes.

There do not appear to be analogous provisions in the Senate Rules or Joint Rules, although Joint Rule 1.2(1) requires that lobbyists’ registration forms be signed under oath.⁷

Proposed Changes

This bill provides that a person who appears before a committee of either chamber of the Legislature, or a joint committee of both (hereinafter “legislative committee”), is considered to be under oath and, if he or she willfully testifies falsely, is subject to penalties for perjury as provided by law.

This bill also provides that before a person may testify before a legislative committee, he or she must complete an appearance card that includes, but need not be limited to

- the individual’s name;
- the individual’s business address;
- the agency that he or she represents, if any; and
- the individual’s signature.

This appearance card must contain a notice in legible type above the signature line stating that, by signing the card, the individual acknowledges being under oath and subject to penalties for perjury if he or she does not testify truthfully.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of the Florida Statutes providing that appearances before legislative committees are considered to be under oath, requiring committee appearance cards, and providing for certain required statements on those cards.

Section 2. Provides an effective date of July 1, 2004.

⁶ See 18 U.S.C. §§ 1621 *et seq.*

⁷ Both chambers of the Legislature do have rules specifically authorizing the administration of oaths to witnesses. See House Rule 7.30(c); Senate Rule 2.2(3). The Joint Rules do not have any specific provision on the subject; however, under s. 11.143, F.S., joint committees also possess such authority.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Due Process

Both the Fourteenth Amendment to the United States Constitution, and Article I, s. 9 of the Florida Constitution forbid the state to deprive any person "of life, liberty or property, without due process of law." Florida courts have largely treated the requirements of the federal and state Due Process Clauses as identical.

Procedural due process generally requires that a party who may be deprived of life, liberty or property receive adequate notice and an opportunity to be heard.⁸ The degree to which due process protections apply varies with the nature of the interests implicated.⁹ Although the "opportunity to be heard" would be provided by any court that would hear the trial of a defendant charged with perjury under the provisions of this bill, a court could hold that this bill provides persons testifying before

⁸ See *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950).

⁹ See *Matthews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Department of Administration*, 411 So.2d 1984 (Fla. 1982)

legislative committee with inadequate notice that they are under oath, at least as applied in particular circumstances. Were a court to so hold, the remedy would be to dismiss the prosecution, even if the court did not hold that this bill's provisions could never be applied in a constitutional manner.

It is also possible that a court could find this bill's provisions facially invalid under the void-for-vagueness doctrine. A statute must clearly delineate prohibited conduct so that persons of ordinary intelligence are not forced to guess about its meaning or application; if a statute fails to provide such notice, it is void for vagueness and violates procedural due process on its face.¹⁰ Because this bill refers to "penalties for perjury as provided by law," but the definition of perjury in an official proceeding in s. 837.02, F.S., contains elements (such as materiality) in addition to those required under this bill, it may not be clear what this bill prohibits and, as such, it could be subject to constitutional challenge as void for vagueness.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears that this bill would require Representatives or Senators who are presenting legislation, or otherwise making statements of fact, before a legislative committee, to sign an appearance card and be subject to potential criminal penalties for perjury.

It is unclear if this bill's reference to committees also applies to select committees or subcommittees. Since the test of this question would be a criminal prosecution for perjury, a court could apply the rule of lenity and construe the lack of such a direct reference in favor of a defendant charged with willfully making a false statement to a select committee or subcommittee.¹¹

This bill does not appear to contain a penalty or other remedy for a person's testifying before a legislative committee and failing, intentionally or unintentionally, to sign the required appearance card.

Not every person addressing a legislative committee may have a business address, as required by this bill to be included on the mandatory appearance card.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

¹⁰ See *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

¹¹ The rule of lenity requires that courts construe a criminal statute strictly, such that where the statute is "susceptible of differing constructions, it shall be construed most favorably to the accused." *Cabal v. State*, 678 So.2d 315, 318 (Fla. 1996). Unlike some states, Florida has also adopted the rule of lenity by statute. See s. 775.021(1), F.S.