

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 655                      DOC employees/additional employment  
**SPONSOR(S):** Zapata  
**TIED BILLS:**    **IDEN./SIM. BILLS:** SB 1684

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>	_____	<u>Whittier</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	_____	_____	_____
3) <u>State Administration</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Currently, no Department of Corrections (DOC or department) officer or employee can accept secondary employment with any entity that has a contract with the department. Specifically, s. 944.38, F.S., provides that no officer or employee of the department shall receive any compensation whatsoever, directly or indirectly, for any act or service which she or he may do or perform for or on behalf of any officer or employee or agent, or employee of a contractor.

The bill amends s. 944.38, F.S., to provide that nothing in the section should be construed to prevent any officer or employee of the department from accepting secondary employment or following any pursuit that does not interfere with the "full and faithful discharge of duty to the state" by the officer or employee. Specifically, the bill states that the section should not be construed to prevent any officer or employee from accepting secondary employment with an entity that contracts with the department so long as the officer has no responsibilities towards, or other involvement with, the awarding or management of department contracts or the process of making referrals to or the evaluation of the contracting entity.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" 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:

#### B. EFFECT OF PROPOSED CHANGES:

Currently, no Department of Corrections (DOC or department) officer or employee can accept secondary employment with any entity that has a contract with the department. Specifically, s. 944.38, F.S., provides that no officer or employee of the department shall receive any compensation whatsoever, directly or indirectly, for any act or service which she or he may do or perform for or on behalf of any officer or employee or agent, or employee of a contractor. Subsection (3) provides that for any violation of the section, the officer or employee of the state is to be discharged and "every contractor, or employee, or agent of a contractor engaged therein, and a party thereto, shall be expelled from the institutional grounds, and not again permitted within the same as a contractor, agent, or employee."

Section 112.313(7)(a), F.S., further provides that

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee...nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

In seeming contradiction, s. 112.316, F.S., provides the following:

It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

The Commission on Ethics throughout the last two decades has been issuing opinions on specific questions having to do with conflicts of interest based on these two sections of chapter 112, F.S. In cases where the state employee was secondarily employed by an entity having a contract with the employee's state agency, if the employee had no role in the contracting

process between the agency and the secondary employer, the Commission on Ethics found “no prohibited conflict of interest.”<sup>1</sup>

The bill amends s. 944.38, F.S., to provide that nothing in the section should be construed to prevent any officer or employee of the department from accepting secondary employment or following any pursuit that does not interfere with the “full and faithful discharge of duty to the state” by the officer or employee. Specifically, the bill states that the section should not be construed to prevent any officer or employee from accepting secondary employment with an entity that contracts with the department so long as the officer has no responsibilities towards, or other involvement with, the awarding or management of department contracts or the process of making referrals to or the evaluation of the contracting entity.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 944.38, F.S., addressing acceptance of remuneration from contractors.

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

## 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:

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<sup>1</sup> Several examples of these opinions include: CEO 85-72, CEO 86-63, CEO 88-39, and CEO 99-1.

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**