

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 655 DOC Employees/Additional Employment

SPONSOR(S): Zapata, and others

TIED BILLS: none **IDEN./SIM. BILLS:** SB 1684 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>	<u>5 Y, 0 N</u>	<u>Whittier</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>17 Y, 0 N</u>	<u>Whittier</u>	<u>De La Paz</u>
3) <u>State Administration</u>	<u></u>	<u>Bond</u>	<u>Everhart</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, Department of Corrections employees cannot accept secondary employment with any entity that has a contract with the department. This bill provides that any officer or employee of the department can accept secondary employment that does not interfere with the "full and faithful discharge of duty to the state" by the officer or employee; provided that, if the secondary employer has a contract with the department, the officer or employee is not involved in that contract's procurement or management.

This bill does not appear to have a fiscal impact on state or local governments.

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

STORAGE NAME: h0655c.sa.doc
DATE: March 26, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 944.38, F.S., prohibits any officer or employee of the Department of Corrections from receiving 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. Upon violation of the prohibition, the employee must be discharged and the contractor barred from the prison. The effect of this prohibition is that many department employees are barred from secondary employment with a number of outside businesses.

Section 112.313(7)(a), F.S., applicable to all state employees, is similar in intent, but narrower in scope. It prohibits secondary employment 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. See also, s. 112.316, F.S., which allows secondary employment by state employees, provided such employment does not impede the full and faithful discharge of his or her public duties.

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."¹

Effect of Bill

The bill amends s. 944.38, F.S., to allow secondary employment by a Department of Corrections employee, provided that the secondary employment does not interfere with the "full and faithful discharge of duty to the state" by the officer or employee. If the secondary employment is with an entity that contracts with the department, it is allowable provided the officer or employee has no responsibilities towards, or other involvement with, the awarding or management of the contract, or the process of making referrals to or the evaluation of the contracting entity.

C. SECTION DIRECTORY:

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

Section 1. Amends s. 944.38, F.S., to allow secondary employment by DOC employees, with conditions.

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. This bill does not affect a state revenue source.

2. Expenditures:

None. This bill does not affect a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.