

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 179 Practice of Law
SPONSOR(S): Needelman
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 174

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|------------------|----------------|-----------------------|
| 1) <u>Committee on Courts</u> | <u>5 Y, 0 N</u> | <u>Bond</u> | <u>Bond</u> |
| 2) <u>Safety & Security Council</u> | <u>14 Y, 0 N</u> | <u>Bond</u> | <u>Havlicak</u> |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

Current law prohibits the elected sheriff or clerk of the court from practicing law. The same law also prohibits deputy sheriffs and deputy clerks from practicing law.

This bill provides that part-time deputy sheriffs and part-time deputy clerks are not prohibited from practicing law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Section 454.18, F.S., prohibits the following persons from practicing law:

- Sheriff
- Any deputy sheriff
- Clerk of the Court
- Any Deputy Clerk of the Court.

The law was enacted in 1925. It is unknown why this prohibition was enacted. When enacted, the legislature could regulate the practice of law. The current constitution provides that the Supreme Court alone may regulate the practice of law,¹ and s. 454.18, F.S., has been superceded to the effect that it is in conflict with the Supreme Court's exclusive power to regulate the practice of law.² There is no corresponding express prohibition in the Rules Regulating the Florida Bar that would generally prohibit sheriffs or clerks from practicing law, although conflict of interest rules could substantially limit the type and scope of such persons should they attempt to practice law.

The current effect of the bill is felt primarily by reserve contingents of the Sheriff's offices, where practicing attorneys have been prohibited from joining the reserves because of the statute.

This bill amends s. 454.18, F.S., to limit the restriction related to deputy sheriffs and deputy clerks to full-time employees. Thus, this bill has the effect of allowing attorneys to work as part-time deputy sheriffs or part-time deputy clerks.

C. SECTION DIRECTORY:

Section 1 amends s. 454.18, F.S., regarding the practice of law.

Section 2 provides an effective date of July 1, 2007.

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 Article V, s. 15, Fla.Const., provides: "The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

² Rule 3-7.14 of the Rules Regulating the Florida Bar.

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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill does not change the traditional duty that elected sheriffs or elected clerks have to the public. Although allowed by this bill, sheriffs and clerks should not employ a part-time deputy whose duties as a practicing attorney would cause a conflict of interest with the duties to the public as a deputy sheriff or deputy clerk. Likewise, such deputies who would practice law would be governed by conflict of interest rule promulgated by the Florida Supreme Court.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.