

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 268

INTRODUCER: Senators Villalobos and Ring

SUBJECT: Truth in Government Act/Legislature

DATE: February 5, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires any person who wishes to address a committee of the Florida Legislature to take an oath or affirmation, either written or oral, prior to addressing the committee, declaring that he or she will speak truthfully. Legislators and legislative staff would be required to sign a card that complies with the oath or affirmation at the start of each regular or special session. The bill provides for two exceptions to the oath requirement: (1) a member of the general public who is not a registered lobbyist and who is not being paid to appear before the committee he or she is addressing; and (2) a minor, who is determined to understand the duty to tell the truth. This bill also provides penalties for making a false statement after taking the oath or affirmation.

This act is to be cited as the "Truth in Government Act."

This bill substantially amends section 11.143, Florida Statutes, and creates section 11.1435, Florida Statutes.

II. Present Situation:

Background of Oaths and Affirmations

The use of the oath commenced in English history in 1236 when Cardinal Otho issued a constitution to be followed by English ecclesiastical courts.¹ The constitution declared, "We establish that the oath of calumny to tell the truth in ecclesiastical causes, in order that truth may

¹ Elwood Earl Sanders, Jr., *Willful Violations of Miranda: Not a Speculative Possibility but an Established Fact*, 4 FLA. COASTAL L.J. 29, 61 (2002).

be more easily uncovered and causes more speedily finished, shall henceforth be administered throughout the realm of England, according to the canons and lawful sanctions, notwithstanding any custom to the contrary.”² In modern times, the purpose of the oath is to encourage truthful testimony. If a witness lies while under oath, he or she commits perjury and is subject to prosecution for providing false testimony.³

An oath or affirmation is a solemn and formal declaration that the contents of a declaration, written or oral, are true.⁴ Black’s Law Dictionary defines an “oath” as:

1. A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false.
2. A statement or promise made by such a declaration.
3. A form of words used for such a declaration.
4. A formal declaration made solemn without a swearing to God or a revered person or thing; AFFIRMATION.⁵

The main purpose of the oath “is to impress upon the affiant the solemnity of the occasion and the need to tell the truth.”⁶ However, the oath also functions to provide a basis for a perjury action.⁷

Perjury in Florida

Florida’s perjury law, codified as ch. 837, F.S., provides, in part, that “whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding⁸ in regard to any material matter, commits a felony of the third degree.”⁹ A person has no constitutional right to commit perjury.¹⁰ The elements of perjury in an official proceeding are: (1) making a false statement, (2) which one does not believe to be true, (3) under oath in an official proceeding, (4) in regard to any material mater.¹¹ Materiality is a threshold issue determined by looking at whether the statement is germane to the inquiry and has a bearing on a

² *Id.*

³ Michael J. Frank, *Trying Times: The Prosecution of Terrorists in the Central Criminal Court of Iraq*, 18 FLA. J. INT’L L. 1, 78-79 (2006).

⁴ *State v. Assuntino*, 429 A.2d 900, 904 (Conn. 1980); see also 58 AM. JUR. 2D *Oath and Affirmation* s. 2 (2007).

⁵ BLACK’S LAW DICTIONARY (8th ed. 2004). An “affirmation” is a “pledge equivalent to an oath but without reference to a supreme being or to ‘swearing’; a solemn declaration made under penalty of perjury, but without an oath. While an oath is ‘sworn to,’ an affirmation is merely ‘affirmed,’ but either type of pledge may subject the person making it to the penalties for perjury.” *Id.*

⁶ 67 C.J.S. *Oaths and Affirmations* s. 1 (2007).

⁷ *Id.*

⁸ An official proceeding includes a proceeding before a legislative agency. Section 837.011(1), F.S.

⁹ Section 837.02(1), F.S.

¹⁰ See generally 16 FLA. JUR. 2D *Criminal Law* s. 4151 (2007).

¹¹ *Vargas v. State*, 795 So. 2d 270, 272 (Fla. 3d DCA 2001).

determination.¹² Additionally, a statement alleged to be perjury must be one of fact, and not of opinion or belief.¹³

Administering Oaths in Legislative Hearings

Currently, “[a]ny member of either House of Congress may administer oaths to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof.”¹⁴

Under current law, s. 11.143, F.S., grants each standing or select committee of the Florida Legislature authority to invite public officials and employees and private individuals to appear before the committee for the purpose of submitting information. In addition, in order to carry out its duties, a committee may issue subpoena and other necessary process to compel the attendance of witnesses before the committee.¹⁵ The chair or any other member of a committee may administer all oaths or affirmations prescribed by law to witnesses¹⁶ who appear before the committee for purposes of testifying¹⁷ in any matter which the committee desires evidence.¹⁸ Section 11.143, F.S., also provides a penalty on a person who willfully swears or affirms falsely in regard to a material matter.¹⁹ The penalty provided under s. 11.143, F.S., is higher than the penalty for perjury under s. 837.02(1), F.S.²⁰

Requiring persons voluntarily testifying before legislative committees in Florida to take an oath or affirmation is not unprecedented. In 2003, the Senate Judiciary Committee required witnesses to swear “to tell the truth, the whole truth, and nothing but the truth” during hearings on medical malpractice insurance.²¹ At the time of the 2003 hearings, it was reported that it was the third time in the past decade that witnesses were sworn in before testifying.²² In January 2008, the Senate created a Select Committee on Property Insurance Accountability for the purpose of taking sworn testimony from insurance company executives relating to property insurance rate filings.²³ The select committee swore in witnesses at hearings held on February 4 and 5, 2008.

¹² *Id.*

¹³ *Id.*

¹⁴ 2 U.S.C. s. 191.

¹⁵ Section 11.143(3)(a), F.S.

¹⁶ Section 11.143, F.S., does not define “witnesses.” A “witness” is “1. One who sees, knows, or vouches for something; 2. One who gives testimony under oath or affirmation (1) in person, (2) by oral or written deposition, or (3) by affidavit.”

BLACK’S LAW DICTIONARY (8th ed. 2004).

¹⁷ Section 11.143, F.S., does not define “testifying.” The term “testify” is defined as “1. To give evidence as a witness; 2. (Of a person or thing) to bear witness.” BLACK’S LAW DICTIONARY (8th ed. 2004).

¹⁸ Section 11.143(3)(a), F.S. The rules of the Senate mirror this language in Rule 2.2. Rule 2.2(3) states, “Any member of a standing committee, standing subcommittee, or select committee may administer all oaths and affirmations, in the manner prescribed by law, to witnesses who appear before such committees to testify in any matter requiring evidence.” Rules and Manual of the Senate of the State of Florida 2.2 (November 21, 2006).

¹⁹ Section 11.143(4)(a), F.S., provides, “Whoever willfully affirms or swears falsely in regard to any material matter or thing before such committee is guilty of false swearing, which constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.”

²⁰ Section 837.02(1), F.S., provides that whoever makes a false statement under oath in an official proceeding commits a felony of the third degree.

²¹ Stephen L. Goldstein, *Refreshing Honesty*, SUN-SENTINEL, July 23, 2003, at 21A.

²² Steve Bousquet, *Lawmakers Like Oath’s Effect*, ST. PETERSBURG TIMES, July 20, 2003, at 1B.

²³ Press Release, The Florida Senate, Senate President Ken Pruitt Appoints the Senate Select Committee on Property Insurance Accountability (Jan. 10, 2008) (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

This bill provides that the act may be cited as the “Truth in Government Act.”

This bill creates s. 11.1435, F.S., which requires any person who addresses a standing or select committee of the Legislature, or subcommittee thereof, to first declare that he or she will speak truthfully, by taking an oath or affirmation. The oath or affirmation may be oral and administered by the chair or any other member of the committee. The oath or affirmation may also be written if the rules of the respective houses require a person wishing to address a legislative committee to complete and sign an appearance form. By signing the form, the person affirms that he or she will speak truthfully. The bill requires that the appearance form include a statement notifying the person that signing the form constitutes an affirmation and notifying the person of the penalties for making a false statement after signing the form. Additionally, the bill provides that legislators and legislative staff shall also sign a card that complies with proposed s. 11.1435, F.S., at the start of every regular or special session.

The bill creates penalties for making a false statement, which the person does not believe to be true, under oath or affirmation in regard to a material matter before a legislative committee. If a person addresses a committee voluntarily and makes a false statement under oath or affirmation, the person commits a felony of the third degree, punishable as provided in ss. 775.082,²⁴ 775.083,²⁵ or 775.084,²⁶ F.S. However, if a person is compelled by subpoena as a witness before a committee²⁷ and makes a false statement under oath or affirmation, the person commits a felony of the second degree, punishable as provided in ss. 775.082,²⁸ 775.083,²⁹ or 775.084, F.S.

The bill exempts certain people from having to take an oath or affirmation before speaking before a legislative committee. Those exempted include:

- A member of the general public who is not a registered lobbyist and who is not being paid to appear before the committee on the issue he or she is addressing; and
- A minor, if the chair of the committee determines the minor understands the duty to tell the truth or the duty not to lie.

The bill makes conforming changes to s. 11.143, F.S., to eliminate the provision granting authority for members of a legislative committee to administer oaths or affirmations to witnesses testifying in a matter in which the committee desires evidence. The bill also eliminates the penalty in this section for false swearing before a legislative committee. These changes appear to account for the new provisions in the bill regarding oaths and providing for penalties for all persons who address a legislative committee.

²⁴ Section 775.082, F.S., provides that a felony of the third degree is punishable by imprisonment not exceeding five years.

²⁵ Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁶ Section 775.084, F.S., deals with violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders. This section provides a different punishment depending on in which category the person falls.

²⁷ Section 11.143(3), F.S., grants legislative committees the authority to issue subpoenas and compel the attendance of witnesses before such committees.

²⁸ Section 775.082, F.S., provides that a felony of the second degree is punishable by imprisonment not exceeding 15 years.

²⁹ Section 775.083, F.S., provides that a felony of the second degree is punishable by a fine not to exceed \$10,000.

This act shall take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill requires each legislator and all legislative staff to sign a card at the beginning of each regular and special session, which lasts the duration of that session, affirming that he or she promises to speak the truth. This provision may draw scrutiny, if challenged, on whether it violates the United States or Florida constitutions or Florida common law, which appear to provide legislators and staff with certain immunity related to their legislative duties.

Article I, section 6, clause 1 of the United States Constitution, commonly referred to as the “Speech and Debate Clause,” provides, in part, “The Senators and Representatives shall ... in all Cases, except Treason, Felony and Breach of the Peace, be privileged ... and for any Speech or Debate in either House, they shall not be questioned in any other Place.” The federal Speech or Debate Clause protects both legislators and their staff against certain civil and criminal liability, as well as against compelled questioning or document production, as long as the matter is “‘an integral part of the deliberative and communicative processes’ of legislating.”³⁰ The purpose of the Speech or Debate Clause is to “protect the ‘independence and integrity’ of members of the legislature from ‘intimidation’ by both the executive branch and the judiciary.”³¹

Forty-three state constitutions contain a privilege for state legislators analogous to the federal Speech or Debate Clause.³² The seven states that do not have constitutional language granting the privilege are: California, Florida, Iowa, Mississippi, Nevada, North Carolina, and South Carolina.³³ All but Florida and North Carolina exempt legislators

³⁰ Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 WM. & MARY L. REV. 221, 225 (2003) (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)).

³¹ Todd B. Tatelman, *The Speech or Debate Clause: Recent Developments*, CRS REPORT FOR CONGRESS (Congressional Research Service, Washington, D.C.), April 17, 2007, at 1-2 (quoting *United States v. Johnson*, 383 U.S. 169, 181 (1966)).

³² Huefner, *supra* note 30, at 221.

³³ *Id.* at 237 n. 54.

from arrest during a legislative session.³⁴ Florida's 1865 Constitution provided for a speech or debate clause similar to the United States Constitution, but the clause was omitted from the 1868, 1885, and 1968 Florida Constitutions.³⁵ While Florida courts have acknowledged that state legislators are immune from *civil suits* while acting in their legislative capacity,³⁶ the Fourth District Court of Appeal emphasized that "[n]o Florida legislative *testimonial privilege* has been recognized in the Evidence Code, statutes, or Florida constitution. The federal courts which have acknowledged and applied the privilege have done so based largely on the Speech and Debate Clause There is no counterpart to this clause in Florida's constitution or laws."³⁷ It has been argued, however, that a legislative privilege may exist without needing a constitutional clause. For example, the Florida Supreme Court has indicated it may be willing to recognize a legislative privilege as a matter of common law.³⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Senate and House of Representatives currently have appearance cards, but they do not contain an oath or penalty explanation. If the Senate or House of Representatives decided to use the appearance card option provided for in the bill, there may be a slight fiscal impact to cover the cost of revising appearance cards.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁴ *Id.*

³⁵ *Girardeau v. State of Florida*, 403 So. 2d 513, 515 n. 3 (Fla. 1st DCA 1981).

³⁶ *Walker v. President of the Senate*, 658 So. 2d 1200, 1200 (Fla. 5th DCA 1995) (emphasis added).

³⁷ *City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So. 2d 455, 457 (Fla. 4th DCA 2006) (emphasis added).

³⁸ *See Hauser v. Urchisin*, 231 So. 2d 6, 8 (Fla. 1970); *Girardeau*, 403 So. 2d at 516-17.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
