

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 Committee on Judiciary

BILL: SB 58

INTRODUCER: Senator Book

SUBJECT: Legislature

DATE: January 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

The bill requires any person, before addressing a legislative committee, to take an oath or affirmation, either orally or in writing, and declare that he or she will speak truthfully.

The bill provides exceptions to the oath or affirmation requirement for:

- A legislative member acting in his or her official capacity;
- A legislative employee acting in his or her capacity as a legislative employee; and
- A child, if the committee chair determines that the child understands the duty to tell the truth or the duty not to lie.

The bill provides a third degree felony penalty for anyone who makes a false statement that he or she does not believe to be true, under oath or affirmation, in regard to any material matter. The bill provides a second degree felony penalty for anyone who makes a false statement that he or she does not believe to be true, under oath or affirmation, in regard to any material matter when compelled by subpoena to testify as a witness.

The act is named the “Truth in Government Act” and takes effect July 1, 2019.

II. Present Situation:

Background and History

An oath is a solemn pledge, accompanied by a swearing to God or other supreme being, that the statement being made is true. An affirmation, in contrast, is also a solemn pledge but it does not refer to a supreme being and does not involve swearing.¹ An affirmation is available in most legal jurisdictions as an alternative for someone who is unable to make an oath because of a lack

¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

of religious belief² or because of a belief that swearing an oath is prohibited by a religious belief. Both oaths and affirmations may be written or oral.³

The purpose of swearing an oath or making an affirmation is the same: to impress upon the maker a sense of duty or legal obligation to tell the truth.⁴ In addition to emphasizing the duty to be truthful, administering an oath or affirmation makes the person subject to prosecution if the testimony given is perjured.⁵

The swearing of oaths is an ancient custom that was recorded thousands of years ago and has surfaced across a variety of cultures. The swearing of oaths is recorded in the Bible⁶ and can also be found in the religious practices of ancient Rome⁷ and the traditions of early Greek democracy.⁸ As medieval lawyers began to develop into a recognizable profession in the 13th century, they were required to take an oath of admission before being admitted to practice in court. In 1237, Cardinal Otto da Tenengo, a representative of the Pope to England, developed an oath that required all practitioners in the ecclesiastical courts to swear to abide by certain professional standards of ethical conduct when admitted to the legal practice.⁹ The cardinal also issued a decree that required an accused to make a sworn statement that he or she would answer truthfully to all questions asked so that the truth could be uncovered and that actions would be timely resolved throughout England.¹⁰

Current Law

State Constitution

Article III, Section 5 of the Florida Constitution provides that each house of the Legislature may compel the attendance of witnesses and the production of documents and other evidence involving any matter under investigation before it or any of its committees. Each house may establish a limited fine or imprisonment, or both, for the disorderly or contemptuous conduct¹¹ of anyone before it or for anyone who refuses to obey a lawful summons or answer lawful questions.¹²

² 58 AM JUR. 2D *Oath and Affirmation* s. 8 (2018).

³ *Id.*, s. 2 (2018).

⁴ *Id.*, s. 5 (2018).

⁵ *Id.*, s. 6 (2018).

⁶ See for example, Numbers 30:2, Matthew 5:33, and Hebrews 6:16.

⁷ CYRIL BAILEY, *THE RELIGION OF ANCIENT ROME* 7 (1907).

⁸ ALAN J. SOMMERSTEIN AND ISABELLE C. TORRANCE, *OATHS AND SWEARING IN ANCIENT GREECE* 137-140 (2014).

⁹ James A. Brundage, *The Rise of the Professional Jurist in the Thirteenth Century*, 20 SYRACUSE J. INT'L L. & COM. 185 (1994).

¹⁰ Elwood Earl Sanders, Jr., *Willful Violations of Miranda: Not a Speculative Possibility But an Established Fact*, 4 FLA. COASTAL L.J. 29, 61 (2002).

¹¹ "Contempt" is defined in Black's Law Dictionary as being "conduct that defies the authority or dignity of a court or legislature." BLACK'S LAW DICTIONARY (10th ed. 2014). Section 38.22, F.S., provides that "Every court may punish contempts against it" and under case law this includes giving false testimony involving a pertinent issue at hand. See *M.L. v. State*, 819 So. 2d 240 (Fla. 2d DCA 2002).

¹² FLA. CONST. art. III, s. 5. The provision states: Investigations; witnesses.—Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law

Statutes – Penalties for Giving False Testimony to the Legislature

Two distinct statutes provide criminal penalties for giving false testimony to a legislative committee: false swearing and perjury.

The first statute, s. 11.143, F.S., which this bill amends, addresses false swearing. Whoever willfully affirms or swears falsely regarding a material matter or thing before a legislative committee commits a second degree felony.¹³

The second statute, involving perjury in official proceedings, is contained in s. 837.02, F.S. In pertinent part, the statute provides that “... 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.”¹⁴ An “official proceeding” is defined to include a proceeding before a legislative body, which would be a legislative committee.¹⁵ A “material matter” is any subject which could affect the course or outcome of the proceeding.¹⁶ A statement that is alleged to be perjury must be a statement of fact, not a statement of opinion or belief. For a statement to be material, it must be germane to the inquiry and have a bearing on a determination in the underlying case.¹⁷

The Administration of Oaths in Legislative Committee Meetings

Section 11.143, F.S., grants to each legislative standing or select committee, or its subcommittee, the authority to invite public officials and employees and private individuals to appear before the committee for the purpose of submitting information.¹⁸ Additionally, and 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. The chair or any other member of the committee may administer oaths and affirmations as prescribed by law to witnesses who appear before the committee for the purpose of testifying in any matter for which the committee desires evidence.¹⁹

III. Effect of Proposed Changes:

Mandating an Oath or Affirmation

This bill creates the “Truth in Government Act.” The newly created section requires any person, before addressing a legislative standing or select committee, or its subcommittee, to take an oath or affirmation and declare that he or she will speak truthfully. The chair or any member of the committee is required to administer the oath or affirmation.

upon committees when the legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

¹³ A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ A third degree felony is punishable by a maximum of 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁵ Section 837.011(1), F.S.

¹⁶ Section 837.011(3), F.S.

¹⁷ *Vargas v. State*, 705 So. 2d 270 (Fla. 3d DCA 2001).

¹⁸ Section 11.143(1), F.S.

¹⁹ Section 11.143(3)(a), F.S.

The bill provides that the oath or affirmation must be in substantially the following form: “Do you swear or affirm that the information you are about to share will be the truth, the whole truth, and nothing but the truth?” The person’s answer must be noted in the record.

Exemptions

Exempted from taking this oath or affirmation are members of the Legislature acting in an official capacity and legislative employees acting in the capacity as an employee. However, the bill does specify that those exempted individuals are subject to discipline by their respective presiding officer for making a false statement that he or she does not believe to be true. The bill also excludes minors from taking the oath or affirmation if the chair of the committee determines that the child understands the duty to tell the truth or the duty not to lie to the committee. Through this exclusion, a minor who understands the requirement to tell the truth is exempted from the criminal consequences of lying to the committee. Additionally, the bill provides that, notwithstanding the exceptions, a standing or select committee, or its subcommittee, may require, if it deems necessary, any person who addresses the committee to take an oath or affirmation and be subject to the penalties of the bill.

A Written Alternative

As an alternative to taking an oral oath or affirmation, the bill states that the Senate and House may provide by rule that someone appearing before a committee may instead complete and sign an appearance form before addressing the committee. The appearance form must include a statement notifying the person that “signing the form constitutes a written affirmation to speak the truth, the whole truth, and nothing but the truth” and subjects him or her to the penalties provided in the bill.

Penalties

The bill deletes the existing second degree felony offense for someone who willfully provides false testimony to a committee. In its place, the bill creates penalties for making a false statement which the person does not believe to be true, under the oath or affirmation, regarding any 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 by statute.²⁰ However, if a person is compelled by subpoena as a witness before a committee and makes a false statement under oath or affirmation, the person commits a felony of the second degree, punishable as provided by statute.²¹ Legislative committees are currently granted the authority to issue subpoenas and compel the attendance of witnesses in s. 11.143(3)(a), F.S.²²

²⁰ A third degree felony is punishable by imprisonment not exceeding 5 years and a fine not exceeding \$5,000 according to ss. 775.082, and 775.083, F.S. Violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders may be subject to a different punishment depending on the category he or she is subject to pursuant to s. 775.084, F.S.

²¹ A second degree felony is punishable by imprisonment not exceeding 15 years and a fine not exceeding \$10,000, according to ss. 775.082 and 775.083, F.S.

²² Committees may also compel by subpoena duces tecum the production of other documents it desires to examine in reference to any matter before the committee. Section 11.143(3)(b), F.S.

Conforming Changes

Finally, the bill makes conforming changes to s. 11.143, F.S., to account for the new provisions in the bill. The bill eliminates the provision granting members of a legislative committee the authority to administer oaths or affirmations to witnesses testifying before the committee when the committee desires evidence. The bill also eliminates the penalty for false swearing before a legislative committee. These changes appear to account for the new provisions regarding oaths and providing penalties for all persons who address a legislative committee, not just those from whom the committee desires to gain evidence.

Effective Date

The bill takes effect July 1, 2019.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The legislative appearance cards would need to be revised to contain an oath and penalty explanation. This could result in a slight fiscal impact to cover the cost of revising appearance cards.

VI. Technical Deficiencies:

The bill uses the term “child” when describing one of the categories exempt from taking the oath or affirmation. Because the term is not defined in the bill but is defined differently throughout the statutes, perhaps for clarification the use of the term “minor” might be appropriate as an alternative.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.