

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 449 Criminal Justice
SPONSOR(S): Taylor and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 146

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Government Operations Subcommittee | 13 Y, 0 N, As CS | Meadows | Williamson |
| 2) Criminal Justice Subcommittee | | | |
| 3) Government Operations Appropriations Subcommittee | | | |
| 4) State Affairs Committee | | | |

SUMMARY ANALYSIS

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.

The bill provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate. It further requires state agencies and regulatory boards to submit to the Governor and the Legislature a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety.

The bill provides that this act shall take effect upon becoming law.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Restoration of Civil Rights

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.¹ Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.²

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, s. 8(a) of the Florida Constitution.

Eligibility for restoration of civil rights requires that a felon have completed all sentences, that all conditions of supervision have been satisfied or expired, and that there is no outstanding victim restitution. Once eligibility has been established, felons fall into one of three categories based upon the Clemency Board's assessment of the seriousness of the offense:

- Immediately eligible for automatic approval of restoration;
- Immediately eligible for restoration without a hearing; or
- Eligible for restoration without a hearing after 15 years.

The Florida Parole Commission acts as the agent of the Clemency Board in verifying eligibility, and has prioritized processing of the automatic approval cases for which it conducts a less extensive review. A more extensive investigation is conducted for those who are immediately eligible for restoration without a hearing.

Restrictions on Employment of Ex-Offenders

A person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S.³ An ex-offender may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought. In addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.⁴

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards apply to different types of employees and licensees.⁵

Effect of Proposed Changes

The bill provides that the act may be cited as the "Jim King Keep Florida Working Act."

¹Article VI, s. 4 of the Florida Constitution.

²Section 944.292, F.S., provides: "[u]pon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."

³Section 112.011(1)(a), F.S.

⁴In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. See *Yeoman v. Construction Industry Licensing Bd.*, 919 So. 2d 542 (Fla. 1st DCA 2005); *Scherer v. Dep't of Business and Professional Regulation*, 919 So. 2d 662 (Fla. 5th DCA 2006); *Vetter v. Dep't of Business and Professional Regulation, Electrical Contractors' Licensing Bd.*, 920 So. 2d 44 (Fla. 2d DCA 2005).

⁵Section 112.011, F.S.

Restrictions on the Employment of Ex-Offenders

The bill requires each state agency, including professional and occupational regulatory boards, to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2011, and resubmit the report every four years thereafter. The report includes policies imposed by the agency or board that disqualify a person who has been convicted of a crime from employment or licensure. It must take into account these disqualifications and consider less restrictive ways to protect public safety while offering employment opportunities for ex-offenders.

Restoration of Civil Rights

Effective January 1, 2012, the bill provides that the restoration of rights may no longer be used as a measure of fitness for public employment and licensure. It amends s. 112.011(1)(b), F.S., to exclude any reference to restoration of civil rights.

The bill authorizes a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first-degree misdemeanor. The denial must be relevant to the standards normally associated with or determined by the regulatory authority to be necessary for the protection of the public or other parties for which the license, permit, or certificate is required.

The bill precludes the disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment on the grounds that his or her civil rights have not been restored. However, exemptions are retained for state, county, and municipal positions deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments.

The bill provides that otherwise qualified persons may not be precluded from employment if they have a prior conviction for a crime not related to the position, license, certificate, or permit for which they seek.

B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 provides legislative intent; requires state agencies and regulatory boards to prepare reports that identify and evaluate restrictions on licensing and employment of ex-offenders.

Section 3 amends s. 112.011, F.S., to prohibit state agencies from denying an application for a license, permit, certification, or employment based on a person's lack of civil rights; to provide exceptions.

Section 4 provides an effective date of becoming a law unless otherwise expressly provided.

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:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute.

The committee substitute decouples the link between the restoration of civil rights and the eligibility for employment and occupational licensure, effective January 1, 2012. It also seeks to make employment opportunities available to ex-offenders in a manner that preserves and protects the health, safety, and welfare of the general public.

Additionally, the committee substitute requires state agencies to file a report that provides a list of statutes or rules that disqualify people from employment or licensure and how information regarding those disqualifications is provided to the public. The report is due to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2011, and every four years thereafter.

The bill required an employer to review and consider the results of a criminal history background investigation and take certain steps consistent with the findings of the investigation in order to satisfy a statutory presumption against civil liability for negligent hiring. The committee substitute removes this language.

The bill provided that an ex-offender may lawfully deny or fail to acknowledge any arrests or subsequent dispositions covered by a sealed or expunged record and provided that a person was not liable for perjury for doing so on an employment application. Furthermore, the bill provided that the subject of the records may authorize the disclosure of the expunged records without a court order. The committee substitute removes this language.

Finally, the bill allowed for the second sealing of criminal history records under certain circumstances. The committee substitute removes this language.