

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 449 Criminal Justice

SPONSOR(S): Government Operations Subcommittee; Taylor, Rouson and others

TIED BILLS: None **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) Judiciary Committee	16 Y, 0 N	Krol	Havlicak
3) State Affairs Committee			

SUMMARY ANALYSIS

The civil rights of a convicted felon are suspended until restored by pardon or through restoration of civil rights process. 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.

The bill 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 does not appear to have a fiscal impact on state or local government and is effective date of upon becoming a law unless otherwise expressly provided.

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.

On March 9, 2011, the Governor convened a special meeting of the Board of Executive Clemency to discuss and vote on amending the rules of clemency for ex-offenders.³ Changes made to the restoration of civil rights process require felons to demonstrate that they desire and deserve clemency by applying only after they have shown a willingness to abide by the law.

- A person seeking restoration of civil rights must submit an application;
- The Clemency Board must review each application individually before deciding whether to grant restoration of civil rights; and
- There are two ways an applicant may have his or her rights restored:
 - 1) "Without a Hearing"- A person who has never been convicted of specified offenses⁴ is not required to attend a hearing if he or she has not been arrested for

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

² Section 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."

³ "Governor Scott and Florida Cabinet Discuss Amended Rules of Executive Clemency." Press Release. March 9, 2011.

https://fpc.state.fl.us/PDFs/clemency_press_release.pdf (Last accessed on April 4, 2011.)

⁴ "Restoration of Civil Rights or Alien Status under Florida Law Without a Hearing." Rule 9. Rules of Executive Clemency. An applicant is permitted to apply to have his or her civil rights restored without a hearing if he or she has never been convicted of the following offenses: murder, attempted murder, attempted felony murder, manslaughter (ch. 782 F.S.); DUI manslaughter, DUI serious bodily injury (s. 316.193 F.S.); leaving the scene of an accident involving injury or death; sexual battery, attempted sexual battery, unlawful sexual activity with a minor, female genital mutilation (ch. 794 F.S.); any violation of ch. 800 F.S.; lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (s. 825.1025, F.S.); sexual performance by a child, attempted sexual performance by a child (s. 827.071, F.S.); aggravated child abuse (s. 827.03, F.S.); failure to register as a sexual predator (ch. 775 F.S.) or sexual offender (s. 943.0435, F.S.); computer pornography, transmission of computer pornography, or any crime involving a minor in violation of (ch. 847 F.S.); kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (ch. 787 F.S.); aggravated battery, attempted aggravated battery (s. 784.045, F.S.); felony battery, domestic battery by strangulation (s.784.041 F.S.); robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (ch. 812 F.S.); poisoning of food or water (F.S. 859.01); abuse of a dead human body (s. 872.06, F.S.); burglary of a dwelling, first degree burglary, or attempted first degree burglary (s. 810.02, F.S.); arson, attempted arson, or conspiracy to commit arson (s. 806.01, F.S.); aggravated assault (s. 784.021, F.S.); aggravated stalking (s. 784.048, F.S.); aggravated battery, battery, or aggravated assault on a law enforcement officer or other specified officer (s. 784.07, F.S.); trafficking or conspiracy to traffic in illegal substances (s. 893.135, F.S.); all other first and second degree felonies described in ch. 893 F.S.; aircraft piracy (s. 860.16, F.S.); unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.161, F.S.); facilitating or furthering terrorism (s. 775.31, F.S.); treason (s. 876.32, F.S.); possession of a firearm by a convicted felon (s. 790.23, F.S.) or possession of a firearm or ammunition by a violent career criminal (s. 790.235, F.S.); bribery, misuse of public office (ch. 838 F.S.); extortion by officers of the state (s. 839.11, F.S.); misappropriations of moneys by commissioners to make sales (s. 839.17, F.S.); any crime committed by an elected official while in office; illegal use of explosives; RICO; exploitation of the elderly;

misdemeanor or felony for a period of five years after completion of his or her sentence.⁵

- 2) "With a Hearing" – A person who has been convicted of the specified offenses is required to attend a hearing if he or she has no new felony convictions for a period of seven years after completion of his or her sentence.⁶

If the Board denies the restoration of civil rights of an applicant without a hearing, the applicant may choose to pursue restoration through a hearing.⁷

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.⁸ 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.⁹

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.¹⁰

Effect of Proposed Changes

Restrictions on the Employment of Ex-Offenders

The bill provides legislative intent that the Legislature seeks to make employment opportunities available to ex-offenders in a manner that serves to preserve and protect the general public.

The bill requires each state agency, including, but not limited to, state agencies responsible for 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 bill requires the report to include:

- A list of statutes or rules that would disqualify a person who has been convicted of a crime from employment or licensure;
- A determination of whether the disqualifying statutes or rules are readily available to the prospective employers and licensees; and
- The identification and evaluation of alternatives to disqualifying statutes or rules which protect the public health, safety, and welfare of the general public without impeding gainful employment of ex-offenders.

public corruption; any felony violation of an election law; any crime designated a "dangerous crime" under s. 907.041, F.S.; and any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in the state; and the applicant has not been declared to be one of the following: a habitual violent felony offender under s. 775.084(1)(b), F.S.; a three-time violent felony offender under s. 775.084(1)(c), F.S.; a violent career criminal under s. 775.084, F.S.; a prison releasee reoffender under s. 775.082(9)(a), F.S.; or a sexual predator under s. 775.21, F.S.

⁵ *Id.*

⁶ "Restoration of Civil Rights or Alien Status under Florida Law With a Hearing." Rule 10. Rules of Executive Clemency.

⁷ *Supra* Rule 9. Rules of Executive Clemency.

⁸ Section 112.011(1)(a), F.S.

⁹ In 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).

¹⁰ Section 112.011, F.S.

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 that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific position that requires such license, permit, or certificate.

The bill precludes the disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment solely 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.

These changes imply that otherwise qualified persons may not be precluded from employment if they have a prior conviction of a crime that is not related to the position, license, certificate, or permit for which they seek.

B. SECTION DIRECTORY:

Section 1. Provides this act may be cited as the "Jim King Keep Florida Working Act."

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., relating to felons; removal of disqualifications for employment, exceptions.

Section 4. Provides an effective date of upon 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.