

STORAGE NAME: h0125.er

DATE: January 14, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
ANALYSIS**

BILL #: HB 125

RELATING TO: Candidates for Public Office

SPONSOR(S): Representative(s) Alexander and Fasano

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM (PRC)
 - (2) GOVERNMENTAL OPERATIONS (PRC)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 125 would require a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying for public office against his or her incumbent superior who has sought reelection. If the subordinate officer, deputy sheriff, or police officer is seeking public office but not against his or her superior, that subordinate officer, deputy sheriff, or police officer must take a leave of absence without pay during the period of his or her candidacy.

This bill has a minimal fiscal impact on the Department of State.

HB 125 provides an effective date upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Resign-to-Run Law codified in section 99.012, F.S., requires an officer of the state to resign his or her position if the terms of the office currently held and that of the office sought overlap. The resignation is irrevocable and must be submitted at least 10 days prior to the first day of the qualifying period for the office sought. The resignation must be effective no later than the earlier of the following: 1) The date the officer would take office; or 2) The date the officer's successor is required to take office.

An exemption is provided in subsection (5) of section 99.012, F.S., for a deputy sheriff, police officer, or subordinate officer. These officers need not resign unless they are seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise that person and such individual has qualified for reelection to that office. In this instance, the competing officer would be required to resign his or her position effective as noted above.

Subsection 99.012(5), F.S., further provides that a deputy sheriff, police officer, or subordinate officer who qualifies for public office other than against an individual who has the authority to appoint, employ, promote, or otherwise supervise that person is required to take a leave of absence without pay upon qualifying for elective office.

However, the Division of Elections has interpreted this provision to provide that a subordinate officer, deputy sheriff, or police officer who is a candidate for an office other than that sought by his or her incumbent superior, may choose to either take a leave of absence or resign under the provisions of this section. Division of Elections Opinion, 90-12. Therefore, a subordinate officer, deputy sheriff, or police officer who is a candidate for public office other than against an incumbent superior, may file a letter of resignation that is effective on the day that the person would take office if elected and continue to work in that department while continuing to campaign. Under this ruling such an officer is not required to take a leave of absence. This opinion of the Division of Elections has been followed by at least one District Court of Appeals in Florida. Gonzalez v. Vogel, 616 So. 2d 473 (Fla. 2d DCA 1993).

B. EFFECT OF PROPOSED CHANGES:

HB 125 requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the officer is a candidate for a public office which is currently held by that officer's superior and who is running for reelection.

The requirements with respect to a leave of absence are clarified but remain the same.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, this bill requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if running against an incumbent superior who has qualified for reelection.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, this bill requires a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if running against an incumbent superior who has qualified for reelection.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends subsection (5) of section 99.012, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsection (5) of section 99.012, Florida Statutes, to require a person who is a subordinate officer, deputy sheriff, or police officer to resign effective upon qualifying if the person is qualifying for a public office which is currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

This section also clarifies that a subordinate officer, deputy sheriff, or police officer must take a leave of absence without pay when he or she is a candidate for public office that is not currently held by an officer who has the authority to appoint, employ, promote, or otherwise supervise that person.

Section 2: Provides an effective date upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Minimal. Can be handled with current staffing.

2. Recurring Effects:

Minimal. Can be handled with current staffing.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

STORAGE NAME: h0125.er

DATE: January 14, 1999

PAGE 7

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h0125.er

DATE: January 14, 1999

PAGE 8

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Staff Director:

R. Michael Paredes

Dawn K. Roberts