

STORAGE NAME: h0295a.er

DATE: December 16, 1999

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

BILL #: HB 295

RELATING TO: Candidates for Public Office

SPONSOR(S): Representative Brummer

TIED BILL(S):

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

- (1) ELECTION REFORM (PRC) YEAS 5 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS (PRC)
 - (3) LAW ENFORCEMENT AND CRIME PREVENTION (CJCC)
 - (4)
 - (5)
-

I. SUMMARY:

This bill eliminates the requirement that a subordinate officer, deputy sheriff, or police officer who is seeking public office and who is not required to resign to run for that office must, upon qualifying, take a leave of absence without pay during the period of his or her candidacy.

HB 295 does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. 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.

"Florida's resign-to-run law serves two chief purposes: To prevent an officeholder from using the power and prestige of one office to seek another and to spare the taxpayer the expense of having to finance a special election when an incumbent officeholder is elected to another office and is, therefore, compelled to resign from the one he or she currently holds." *Op. Att'y Gen. 79-81* (1979); *citing*, Preamble to Chapter 70-80, Laws of Florida. *See also, Holley v. Adams*, 238 So.2d 401, 408 (Fla. 1970); *Op. Div. Elect. DE 80-02* (Dec. Stmt. January 15, 1980).

Section 99.012(5), F.S. (1999), provides an exemption to the resign-to-run law for a subordinate officer, deputy sheriff, or police officer, except that such an officer must resign effective upon 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." For purposes of this section, a "subordinate officer" is defined as:

[A] person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

s. 99.012(1)(b), F.S. (1999).

Subsection 99.012(5)(b), F.S. (1999), further provides that a subordinate officer, deputy sheriff, or police officer, who qualifies for public office other than against an individual who

has the authority to appoint, employ, promote, or otherwise supervise that person must take a leave of absence without pay upon qualifying for elective office. (emphasis added). 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), *rev. denied* 624 So.2d 266 (Fla. 1993).

C. EFFECT OF PROPOSED CHANGES:

HB 295 eliminates the requirement that a subordinate officer, deputy sheriff, or police officer who is seeking public office and who is not required to resign under subsection 99.012(5)(a), F.S. (1999) must take a leave of absence without pay during the period of his or her candidacy.

This act will take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. 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.

STORAGE NAME: h0295a.er

DATE: December 16, 1999

PAGE 4

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Subordinate officers, deputy sheriffs, and police officers currently required to take a leave of absence without pay while campaigning, will derive an economic benefit from the provisions of this bill to the extent that they will continue to draw a paycheck.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is an act relating to elections.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

STORAGE NAME: h0295a.er

DATE: December 16, 1999

PAGE 5

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Staff Director:

Dawn Kimmel Roberts

Dawn Kimmel Roberts