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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
ANALYSIS**

BILL #: HB 65
RELATING TO: Restriction on the Employment of Relatives by Public Officials
SPONSOR(S): Representative(s) Phillip Brutus
TIED BILL(S): None

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

- (1) EDUCATION INNOVATION
 - (2) STATE ADMINISTRATION
 - (3) COUNCIL FOR LIFELONG LEARNING
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Current law exempts public officials of school district boards, state universities, and community college districts from the prohibition against the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials. Additionally, current law exempts public officials of school district boards, state universities, and community college districts from the prohibition against advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials.

Current law also prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body. A collegial body is defined as "a governmental entity marked by power or authority vested equally in each of a number of colleagues."

This bill no longer exempts public officials of school district boards, state universities, and community college districts from the prohibition against the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials. Additionally, this bill no longer exempts public officials of school district boards, state universities, and community college districts from the prohibition against advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials.

Lastly, this bill deletes the language that prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body; deletes the definition of a collegial body; and removes a member of a collegial body from the definition of a public official.

This bill 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 type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

This bill appears not to support the principles of individual freedom and family empowerment because it prevents public officials of school district boards, state universities, and community college districts from the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials. Additionally, this bill appears not to support the principles of individual freedom and family empowerment because it prevents public officials from advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials.

B. PRESENT SITUATION:

RESTRICTIONS ON THE EMPLOYMENT OF RELATIVES BY PUBLIC OFFICIALS

According to s. 112.3135(2)(a), F.S., a public official may not appoint, employ, promote, or advance an individual who is a relative of the public official into a position in the agency in which the public official is serving or over which the public official exercises jurisdiction or control. Additionally, s. 112.3135(2)(a), F.S., provides that a public official may not advocate for the appointment, employment, promotion, or advancement of an individual who is a relative of the public official into a position in the agency in which the public official is serving or over which the public official exercises jurisdiction or control. Lastly, s. 112.3135(2)(a), F.S., prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body.

Pursuant to s. 112.3135(1)(c), F.S., the term "public official" is defined as "an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals."

Pursuant to s. 112.3135(1)(d), F.S., the term "relative," with respect to a public official, is defined as "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

Pursuant to s. 112.3135(1)(a), F.S., the term "agency" is defined as "a state agency, except an institution under the jurisdiction of the Division of Universities of the Department of Education; an

office, agency, or other establishment in the legislative branch; an office, agency, or other establishment in the judicial branch; a county; a city; and any other political subdivision of the state, except a district school board or community college district.”

Pursuant to s. 112.3135(1)(b), F.S., the term “collegial body” is defined as “a governmental entity marked by power or authority vested equally in each of a number of colleagues.”

SCHOOL DISTRICT ORGANIZATION

SCHOOL DISTRICT- According to s. 230.01, F.S., each county must constitute a school district and each school district must constitute a unit for the control, organization, and administration of schools.

SCHOOL BOARD- Pursuant to s. 4(a), Art. IX of the State Constitution, each school district must have a school board composed of five or more members chosen by the electors in a nonpartisan election. Provisions in s. 4(b), Art. IX of the State Constitution, require the school board to operate, control, and supervise all free public schools within the school district.

SUPERINTENDENT- Subsection 230.03(3), F.S., provides the superintendent with the responsibility for the administration and management of the schools and for the supervision of instruction in the school district.

PRINCIPAL- Subsection 230.03(4), F.S., provides the principal with the responsibility for the administration of any school or schools at a given school center, for the supervision of instruction therein, and for providing leadership in the development or revision and implementation of a school improvement plan.

SCHOOL DISTRICT PERSONNEL

Provisions in s. 230.23(5), F.S., require the school board to designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees. Additionally, s. 230.23(5)(a), F.S., requires the school board to act upon written recommendations submitted by the superintendent for positions to be filled and for minimum qualifications for personnel for the various positions. Lastly, s. 230.23(5)(e), F.S., requires the school board to act upon recommendations submitted by the superintendent regarding the transfer and promotion of employees.

Provisions in s. 230.33(7)(a), F.S., require the superintendent to recommend to the school board those duties and responsibilities that need to be performed and those positions that need to be filled. These statutory provisions require the superintendent to recommend minimum qualifications for those positions that need to be filled and nominate individuals to fill those positions. Additionally, s. 230.23(7)(a), F.S., requires the superintendent to consider recommendations submitted by principals before nominating individuals to fill instructional positions.

According to s. 231.085(2), F.S., the principal is responsible for recommending to the superintendent the employment of instructional personnel to be assigned to the school to which the principal is assigned.

STATE UNIVERSITY SYSTEM ORGANIZATION

According to s. 240.2011, F.S., the State University System is composed of the Board of Regents,¹ the University of Florida, Florida State University, the University of South Florida, the University of

¹ Pursuant to s. 229.003(5), F.S., the Board of Regents was abolished effective July 1, 2001. All of the powers, duties, functions, records, personnel and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Board of Regents are transferred to the Florida Board of Education.

Central Florida, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida International University, the University of West Florida, the University of North Florida, Florida Gulf Coast University, and New College of Florida.

Provisions in s. 229.008(1)(a), F.S., require the Governor to appoint a 13-member board of trustees, subject to Senate confirmation, for each university in the State University System. Subsection 229.0081(1), F.S., provides that each university board of trustees is vested with the authority to govern and set policy for its university.

STATE UNIVERSITY SYSTEM PERSONNEL

According to s. 229.0081(2)(m), F.S., each university board of trustees may adopt rules and policies relating to personnel administration within its university, including compensation and other conditions of employment, recruitment and selection, non-reappointment, standards for performance and conduct, evaluation, benefits and hours of work, recognition, inventions, travel, learning opportunities, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment.

Subsection 229.0082(3), F.S., requires each university president to establish and implement policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel in accordance with the rules of the Florida Board of Education and the rules or policies of the university board of trustees.

COMMUNITY COLLEGE SYSTEM ORGANIZATION

Pursuant to s. 240.313(1), F.S., each community college district is an independent, separate, legal entity created for the operation of a community college.

According to s. 240.3031, F.S., the Community College System is composed of the State Board of Community Colleges,² Brevard Community College, Broward Community College, Central Florida Community College, Chipola Community College, Daytona Beach Community College, Edison Community College, Florida Community College at Jacksonville, Florida Keys Community College, Gulf Coast Community College, Hillsborough Community College, Indian River Community College, Lake City Community College, Lake-Sumter Community College, Manatee Community College, Miami-Dade Community College, North Florida Community College, Okaloosa-Walton Community College, Palm Beach Community College, Pasco-Hernando Community College, Pensacola Junior College, Polk Community College, St. Johns River Community College, St. Petersburg Junior College, Santa Fe Community College, Seminole Community College, South Florida Community College, Tallahassee Community College, and Valencia Community College.

Subsection 240.313(3), F.S., requires the Governor to appoint members to the board of trustees of each community college, subject to the approval of four members of the State Board of Education and Senate confirmation. The number of members on the board of trustees varies based on whether a community college district is confined to one or two or more school districts. According to s. 240.319(1), F.S., each community college district board of trustees is vested with the responsibility to operate its respective community college.

² Pursuant to s. 229.003(5), F.S., the State Board of Community Colleges was abolished effective July 1, 2001. All of the powers, duties, functions, records, personnel and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the State Board of Community Colleges are transferred to the Florida Board of Education.

COMMUNITY COLLEGE SYSTEM PERSONNEL

Pursuant to s. 240.319(4)(l), F.S., each community college board of trustees may adopt rules, procedures, and policies related to the appointment, employment, and removal of personnel. Additionally, s. 240.319(4)(l), F.S., requires each board of trustees to determine the compensation, including salaries and fringe benefits, and other conditions of employment for all personnel, including the president.

Presently, s. 240.335(1)(a), F.S., provides that employment of all community college personnel must be upon the recommendation of the community college president, subject to rejection for cause by the community college board of trustees.

C. EFFECT OF PROPOSED CHANGES:

This bill no longer exempts public officials of school district boards, state universities, and community college districts from the prohibition against the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials. Additionally, this bill no longer exempts public officials of school district boards, state universities, and community college districts from the prohibition against advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials.

This bill also deletes the language that prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body; deletes the definition of a collegial body; and removes a member of a collegial body from the definition of a public official.

Lastly, this bill corrects a statutory cross-reference.

FAVORITISM

Since this bill effectively prohibits a public official from the appointment, employment, promotion, or advancement or from advocating for the appointment, employment, promotion, or advancement of an individual who is related to the public official, this bill appears to reduce any occurrences of favoritism that may exist within school districts, state universities, and community college districts. Consequently, it can be argued that this bill may prevent individuals that are related to a public official from being hired and placed in positions that they are not qualified to serve.

PUBLIC SCHOOL TEACHER SHORTAGE

A study by the Legislature's Office of Economic and Demographic Research projects that over the next 10 years there will be a need for 162,000 teachers to replace the teachers expected to retire or otherwise terminate their employment in Florida's public schools. Demographics indicate that the need for teachers will be remarkably steady, spread out over the ten years, with a projection of almost exactly 16,000 new teachers each year.

Because the current definition of "relative" is extremely broad, a public official within a school district is prohibited from the appointment, employment, promotion, or advancement or from advocating for the appointment, employment, promotion, or advancement of an individual who is the public official's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. Consequently, this bill may perpetuate the inability for school districts, especially rural school districts, to alleviate the aforementioned projected teacher shortage.

POSTSECONDARY EDUCATION INSTITUTIONS

According to the Division of Colleges & Universities within the Florida Board of Education, married couples engaged in professional postsecondary education careers are frequently recruited and relocated. Should a postsecondary education institution recruit and hire an individual that meets the definition of a "public official" and is married, this bill appears to prohibit such individual from advocating that his or her spouse also be recruited and hired by the postsecondary education institution. Consequently, the Division of Colleges & Universities argues that this bill may limit the recruitment and employment of well-qualified individuals engaged in professional postsecondary education careers.

COLLEGIAL BODY MEMBERS

Although this bill deletes the language that prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body; deletes the definition of a collegial body; and removes a member of a collegial body from the definition of a public official, it is still unclear whether or not a collegial body is permitted to appoint, employ, promote, or advance an individual who is a relative of any member of the collegial body because the bill continues to prohibit a "public official" from the appointment, employment, promotion, or advancement or from advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of the public official.

As mentioned in the Present Situation of this bill analysis, current law includes an "officer" in the definition of a "public official." While this bill does not provide an official definition of an "officer," s. 112.3145(1)(a), F.S., relating to the disclosure of financial interests and clients represented before agencies, includes in its definition of an "officer" every person who is elected to office in any political subdivision of the state and any appointed member of a community college board of trustees. Additionally, s. 112.313(1), F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys, defines an officer as any person elected or appointed to hold office in any agency. If the first definition is applied to the provisions of the bill, it appears that a school board member and a community college board of trustees member are still prohibited from the appointment, employment, promotion, or advancement or from advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such member. If the latter definition is applied to the provisions of the bill, it appears that a university board of trustees member is still prohibited from the appointment, employment, promotion, or advancement or from advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such member. Further clarification of this matter is recommended (please see OTHER COMMENTS for additional information).

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends s. 112.3135, F.S., in order to (1) no longer exempt public officials of school district boards, state universities, and community college districts from the prohibition against the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials; (2) no longer exempt public officials of school district boards, state universities, and community college districts from the prohibition against advocating for the appointment, employment, promotion, or advancement of an individual who is a relative of such public officials; (3) delete the language that prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body; (4) delete the definition of a collegial body; and (5) remove a member of a collegial body from the definition of a public official.

SECTION 2: Amends s. 721.05(18)(a), F.S., in order to correct a statutory cross-reference.

SECTION 3: Establishes an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

Please see above.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action that requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties and municipalities have to raise revenues.

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

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not appear to violate any constitutional provisions.

B. RULE-MAKING AUTHORITY:

This bill does not grant additional rule-making authority.

C. OTHER COMMENTS:

The sponsor of the bill intends to file an amendment that clearly prohibits a collegial body from the appointment, employment, promotion, or advancement of an individual who is a relative of any member of the collegial body.

STATE UNIVERSITIES

Pursuant to s. 20.15(3), F.S., the Division of Universities is established within the Department of Education. Since the Department of Education is a state agency, state universities are also classified as state agencies and thus, are affected by the provisions of HB 65.

Under the current and ongoing reorganization of the education governance system, some members of the education community have discussed classifying state universities as something other than state agencies. Should state universities be eventually classified as something other than state agencies, the impact of HB 65 on state universities is indeterminate.

SCHOOL DISTRICTS

Pursuant to s. 1.01(8), F.S., a political subdivision of the state includes all school districts. Should school districts be classified as something other than political subdivisions under the current and ongoing reorganization of the education governance system, the impact of HB 65 on school districts is indeterminate.

COMMUNITY COLLEGES

Pursuant to s. 240.317, F.S.,³ a political subdivision of the state includes all community colleges. Should community colleges be classified as something other than political subdivisions under the current and ongoing reorganization of the education governance system, the impact of HB 65 on community colleges is indeterminate.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Staff Director:

Daniel Furman

Daniel Furman

³ Pursuant to ch. 2000-321, L.O.F., s. 240. 317, F.S., is repealed on January 7, 2003 and must be reviewed by the Legislature prior to that date.