

**STORAGE NAME:** h0065s1a.llc.doc  
**DATE:** February 28, 2002

**HOUSE OF REPRESENTATIVES**  
**COUNCIL FOR LIFELONG LEARNING**  
**ANALYSIS**

**BILL #:** CS/HB 65  
**RELATING TO:** Relatives/Employment/School Board  
**SPONSOR(S):** Committee on Education Innovation, Representative(s) Brutus and others  
**TIED BILL(S):** None

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

- (1) EDUCATION INNOVATION YEAS 13 NAYS 0
  - (2) STATE ADMINISTRATION YEAS 3 NAYS 0
  - (3) COUNCIL FOR LIFELONG LEARNING YEAS 12 NAYS 0
  - (4)
  - (5)
- 

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 district school 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 district school 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 appointing, employing, promoting, or advancing an individual who is a relative of any member of that 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 provides that, notwithstanding any provisions of law to the contrary, a school board member may not appoint, employ, contract with, promote, or advance an individual who is a relative of that school board member.

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"/>            |

Since this bill limits the ability of an individual school board member from appointing, employing, contracting with, promoting, or advancing a relative, this bill may not support the principles of individual freedom and family empowerment.

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.

The aforementioned restrictions on the employment of relatives do not apply to public officials within state universities, district school boards, and community college districts because s. 112.3135(1)(a), F.S., defines the term "agency" 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)(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)(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 GOVERNANCE**

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. 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.

### **SCHOOL BOARD POWERS & DUTIES RELATING TO PERSONNEL EMPLOYMENT**

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. Provisions in s. 230.23(5)(e), F.S., require the school board to act upon recommendations submitted by the superintendent regarding the transfer and promotion of employees.

Lastly, s. 230.2301(11), F.S., authorizes the school board to adopt policies and procedures necessary for the management of all personnel of the school system.

#### **C. EFFECT OF PROPOSED CHANGES:**

This bill provides that, notwithstanding any provisions of law to the contrary, a school board member may not appoint, employ, contract with, promote, or advance an individual who is a relative of that school board member.

The term “relative” is defined pursuant to s. 112.3135, F.S., and includes 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.

### **FAVORITISM**

Since this bill prohibits a school board member from appointing, employing, contracting with, promoting, or advancing to a position within the school system an individual who is a relative of that school board member, this bill appears to reduce any occurrences of favoritism that may exist among individual school board members. Consequently, it can be argued that this bill may prevent individuals that are related to an individual school board member from being hired and placed in positions that they are not qualified to serve.

#### **D. SECTION-BY-SECTION ANALYSIS:**

**SECTION 1:** Amends s. 230.23(5), F.S., to provide that an individual school board member may not appoint, employ, contract with, promote, or advance an individual who is a relative of the individual school board member.

**SECTION 2:** 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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 5, 2002, the Committee on Education Innovation adopted a strike-everything amendment without objection. The amendment differs from the original bill in the following ways:

- Notwithstanding any provisions of law to the contrary, it only prohibits an individual school board member from appointing, employing, contracting with, promoting, or advancing to a position within the school system an individual who is a relative of the individual school board member.
- It no longer amends current law that exempts public officials of district school 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.
- It no longer amends current law that exempts public officials of district school 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.
- It no longer amends current law 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.

The Committee on Education Innovation reported HB 65 favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Daniel Furman

Staff Director:

Daniel Furman

AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS FURTHER REVISED BY THE COUNCIL FOR LIFELONG LEARNING:

Prepared by:

Daniel Furman

Council Director:

Patricia Levesque