

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 95 Legislature

**SPONSOR(S):** Llorente and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>10 Y, 0 N</u>	<u>Camara</u>	<u>Williamson</u>
2) <u>Government Efficiency &amp; Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Rules &amp; Calendar Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

## SUMMARY ANALYSIS

The Florida Constitution requires the House and Senate to determine its rules of procedure. The House and Senate Rules authorize the chair or any member of a council, committee, or subcommittee to administer oaths and affirmations to witnesses.

There are two distinct sections of statute that currently provide criminal sanctions for providing false testimony to legislative committees. The first section is perjury in an official proceeding, which is a felony of the third degree. The second section provides a more severe punishment for the act of willfully affirming or swearing falsely about any material matter or thing before any legislative committee, which is a second degree felony.

This bill codifies an oath or affirmation that must be taken by any person as a precondition to their addressing a legislative committee. The bill excludes from its provisions citizens who are not registered lobbyists and who are not paid to testify before the committee on the issue they are providing testimony. It also excludes a minor when the chair of the committee determines that the minor understands the duty to tell the truth. As an alternative to taking the oath, the bill provides that the House and Senate may allow a person appearing before a committee to complete and sign an appearance form that would constitute a written affirmation.

This bill removes the current second degree felony offense for anyone who willfully provides false testimony to a committee and creates in its place two levels of felony offenses. The bill creates a third degree felony for any person who intentionally makes a false statement about any material matter. This offense is elevated to a second degree felony if the person providing the false statement was compelled to appear by subpoena.

Although amending the criminal aspects of statute applicable to the conduct of witnesses who appear before legislative committees, this bill will not bind future Legislatures to abide by its procedures if subsequent Legislatures provide for different procedures in rules they adopt for themselves.

This bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates new criminal offenses relating to knowingly providing false information to committees of the Legislature.

#### B. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

##### LEGISLATIVE AUTHORITY OVER THE COMMITTEE PROCESS

Article III, s. 4(a) of the Florida Constitution provides in relevant part, “[e]ach house shall determine its rules of procedure.” Section 4(e) also provides that “[e]ach house shall be the sole judge for the interpretation, implementation, and enforcement of this section.” Pursuant to these provisions both houses of every edition of the Florida Legislature has the authority to decide for themselves how to conduct the state’s legislative business for the duration of their respective terms. Accordingly, during the organizational session of each newly elected Legislature, both the House and Senate adopt their respective rules to govern all aspects of the legislative process including the conduct of committee meetings, and the powers and privileges of committee chairs and members.

House Rule 13.5 states:

These rules are adopted pursuant to the specific authority granted and the inherent powers vested in the House of Representatives by the Florida Constitution. These rules are intended to facilitate the orderly, practical, and efficient completion of legislative work undertaken by the House. These rules shall govern procedures in the House notwithstanding any inconsistent parliamentary tradition and notwithstanding any joint rule or any statute enacted by a prior Legislature. Adoption of these rules constitutes the determination of the House that they do not violate any express regulation or limitation contained in the Florida Constitution. These rules may not be construed to limit any of the powers, rights, privileges, or immunities vested in or granted to the House by the Florida Constitution or other organic law.

Therefore, in terms of the hierarchy of legislative authority over its own procedure, the constitution is the supreme authority, the rules adopted by each chamber supersede any statute, and the statute may be used to the extent each succeeding Legislature chooses to follow it, or acquiesces to it, without adopting any rule that contradicts the statute. No prior or present Legislature can bind a future successor Legislature through the adoption rules or statute.<sup>1</sup>

##### LEGISLATIVE INVESTIGATIONS AND WITNESS TESTIMONY

Article III, s. 5 of the Florida Constitution provides:

Investigations; witnesses.--Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding

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<sup>1</sup> See Art. III, ss. 1 – 4 of the Florida Constitution. The one exception to this is a recently adopted constitutional amendment requiring the Legislature to create a joint rule to govern the joint legislative budget commission “which shall remain in effect until repealed or amended by concurrent resolution.” Art. III, s. 19 of the Florida Constitution; CS/SJR 2144 (2005).

one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law upon committees when the legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

Under this provision both houses of the Legislature may compel the attendance of witnesses while in session and during any interim period. In addition, this provision authorizes each house, while in session, to punish directly by a \$1,000 fine and imprisonment up to 90 days, any person who refuses to obey a lawful legislative summons or answer a lawful question.

House Rules 7.21 and 16.1 and Senate Rule 2.2 authorize the chair or any member of a council, committee, or subcommittee to administer oaths and affirmations “in the manner prescribed by law to witnesses. . .” There also are parallel rules providing authority for each chamber’s presiding officer to authorize the issuance of subpoenas for their respective committees.<sup>2</sup>

Currently, the only statute that expressly provides the specific text of an oath to be administered for a witness giving sworn testimony is found in s. 90.605, F.S., of the Evidence Code. The Evidence Code, although not applicable to legislative committee meetings, serves as a template for the administration of oaths to witnesses in a manner provided by law through the language of s. 90.605, F.S.<sup>3</sup> This section provides, in part:

Before testifying, each witness shall declare that he or she will testify truthfully, by taking an oath or affirmation in substantially the following form: [d]o you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

This language is commonly adapted for use in committee meetings and special master hearings on claim bills for putting witnesses under oath prior to providing testimony.

#### CRIMES INVOLVING LYING TO THE LEGISLATURE

Two sections of statute provide criminal sanctions for providing false testimony to legislative committees. The first section is perjury in an official proceeding under s. 837.02, F.S., which provides in part, “. . . whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree.”<sup>4</sup>

The second section of statute provides a more severe punishment than the perjury statute for the specific act of willfully affirming or swearing falsely about any material matter or thing before any standing or select committee or subcommittee. Section 11.143(4), F.S., makes this offense a second degree felony.<sup>5</sup>

#### **PROPOSED CHANGES**

This bill codifies an oath or affirmation that must be taken by any person as a precondition to

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<sup>2</sup> As used in this analysis “committee” refers to councils and committees, including select committees, in the House and committees and subcommittees, including select committees, in the Senate. House Rules 7.20 and 16.1; Senate Rule 2.2.

<sup>3</sup> Section 90.103, F.S.

<sup>4</sup> A third degree felony is punishable by a maximum of five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S. The definition of “official proceeding” for use in the perjury statute includes legislative committee meetings. Section 837.011, F.S. A “material matter” is any subject that could affect the course or outcome of the proceeding. See s. 837.011, F.S. For purposes of perjury, the false statement must be one of fact not one of opinion or belief. *Vargas v. State*, 795 So.2d 270 (Fla. 3<sup>rd</sup> DCA 2001).

<sup>5</sup> A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 75.082 and 775.083, F.S.

their addressing a legislative committee. The bill states the oath or affirmation must be in substantially the following form: "Do you swear or affirm that the information you are about to share will be the truth, the whole truth, and nothing but the truth?" The person's response must be noted in the record.

The bill excludes from its mandate members of the public who are not registered lobbyists and who are not paid to appear before the committee on the issue they are addressing. It also excludes minors when the chair of the committee determines that the minor understands the duty to tell the truth.

As an alternative to taking the required oath, the bill authorizes the House and Senate, by rule, to require a person addressing a committee to complete and sign an appearance form before speaking to the legislative committee. The signed appearance form constitutes a written affirmation to "speak the truth, the whole truth, and nothing but the truth," and subjects a person to the penalties provided in the bill.

This bill removes the current second degree felony offense for anyone who willfully provides false testimony to a committee. The current offense applies regardless of whether the person providing false testimony to the committee was compelled to appear by subpoena.

This bill creates in its place two levels of felony offenses within chapter 11, F.S.:

- Any person who knowingly provides false testimony under oath or affirmation commits a third degree felony.<sup>6</sup>
- Any person who knowingly provides false testimony under oath or affirmation and who is compelled to appear by subpoena commits a felony of the second degree.<sup>7</sup> This offense is punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.

In short, the bill limits the circumstances in which someone lying under oath to the Legislature is subject to a second degree felony to only those instances where the person was compelled to appear by subpoena.

Although amending the criminal aspects of statute applicable to the conduct of witnesses who appear before legislative committees, this bill will not bind future Legislatures to abide by the particular procedure set forth in it if subsequent Legislatures provide for different procedures in rules adopted for them.

#### C. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 amends s. 11.143, F.S., to delete current provisions relating to the administration of oaths by legislators and to remove an offense regarding providing false testimony to the Legislature.

Section 3 creates s. 11.1435, F.S., to require the administration of oaths to persons testifying before legislative committees and to create crimes and penalties for providing false testimony to the Legislature.

Section 4 provides an effective date of July 1, 2008.

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<sup>6</sup> This offense is punishable as provided in ss. 775.082, 775.083, and 775.084, F.S. A felony of the third degree is punishable by imprisonment not exceeding five years and a fine not to exceed \$5,000.

<sup>7</sup> This offense is punishable as provided in ss. 775.082, 775.083, and 775.084, F.S. A felony of the second degree is punishable by imprisonment not exceeding 15 years and a fine not to exceed \$10,000.

## **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:**

The Florida House of Representatives and the Senate both have appearance cards for persons speaking before committees. If the House or Senate opted to use the appearance card option provided in the bill, there may be an insignificant fiscal impact associated with the cost of redesigning and printing the new appearance cards.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

#### **2. Other:**

This bill requires each legislator and all legislative staff to sign a card at the beginning of each regular and special session, which lasts the duration of that session, affirming that he or she promises to speak the truth. This provision may draw scrutiny, if challenged, on whether it violates the United States or Florida constitutions or Florida common law, which appear to provide legislators and staff with certain immunity related to their legislative duties.

Article I, section 6, clause 1 of the United States Constitution, commonly referred to as the "Speech and Debate Clause," provides, in part, "[t]he Senators and Representatives shall ... in all Cases, except Treason, Felony and Breach of the Peace, be privileged ... and for any Speech or Debate in either House, they shall not be questioned in any other Place." The federal Speech or Debate Clause protects both legislators and their staff against certain civil and criminal liability, as well as against compelled questioning or document production, as long as the matter is "an integral part of

the deliberative and communicative processes' of legislating."<sup>8</sup> The purpose of the Speech or Debate Clause is to "protect the 'independence and integrity' of members of the legislature from 'intimidation' by both the executive branch and the judiciary."<sup>9</sup>

Florida's 1865 Constitution provided for a speech or debate clause similar to the United States Constitution, but the clause was omitted from the 1868, 1885, and 1968 Florida Constitutions.<sup>10</sup> While Florida courts have acknowledged that state legislators are immune from civil suits while acting in their legislative capacity,<sup>11</sup> the Fourth District Court of Appeal emphasized that

No Florida legislative testimonial privilege has been recognized in the Evidence Code, statutes, or Florida constitution. The federal courts which have acknowledged and applied the privilege have done so based largely on the Speech and Debate Clause ... There is no counterpart to this clause in Florida's constitution or laws.<sup>12</sup>

It has been argued, however, that a legislative privilege may exist without needing a constitutional clause. For example, the Florida Supreme Court has indicated it may be willing to recognize a legislative privilege as a matter of common law.<sup>13</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.

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<sup>8</sup>Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 WM. & MARY L. REV. 221, 225 (2003) (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)).

<sup>9</sup>Todd B. Tatelman, *The Speech or Debate Clause: Recent Developments*, CRS REPORT FOR CONGRESS (Congressional Research Service, Washington, D.C.), April 17, 2007, at 1-2 (quoting *United States v. Johnson*, 383 U.S. 169, 181 (1966)).

<sup>10</sup>*Girardeau v. State of Florida*, 403 So.2d 513 (Fla. 1st DCA 1981).

<sup>11</sup>*Walker v. President of the Senate*, 658 So.2d 1200, 1200 (Fla. 5th DCA 1995) (emphasis added).

<sup>12</sup>*City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So.2d 455, 457 (Fla. 4th DCA 2006) (emphasis added).

<sup>13</sup>*See Hauser v. Urchisin*, 231 So.2d 6, 8 (Fla. 1970); *Girardeau*, 403 So.2d at 516-17.