

STORAGE NAME: h1103.ca

DATE: March 20, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 1103

RELATING TO: Monroe County (Sheriff's Office Classified Service)

SPONSOR(S): Representative Horan

COMPANION BILL(S): SB 1988 (i)

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

- (1) COMMUNITY AFFAIRS
 - (2) FINANCE AND TAXATION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill updates and recodifies the classified (civil) service system for employees of the Monroe County Sheriff's Office's.

The Economic Impact Statement indicates there is no fiscal impact associated with this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1989 Legislature provided, by two identical special acts, a classified service (civil service system) for employees of the Monroe County Sheriff's Office (Sheriff's Office). The special acts have not been amended since their passage.

The present law applies to all certified deputies, certified correctional officers, and noncertified support staff of the Sheriff's Office. Persons *not included* are the:

- ✓ Sheriff,
- ✓ Undersheriff,
- ✓ Directors,
- ✓ Legal Advisors, and
- ✓ Personnel at the rank of captain or above or equivalent noncertified support positions,
- ✓ Contract personnel,
- ✓ Nonsalaried personnel,
- ✓ Any special deputy sheriffs,
- ✓ Members of the Sheriff's Posse or Auxiliary Unit, or
- ✓ Any person appointed as a part-time deputy sheriff, unless the person is employed full time by the Sheriff's Office.

Present law authorizes an advisory personnel system. The law's intent is to maintain the full powers of the Sheriff and to continue the limitations on the right of collective bargaining provided in Part II, Chapter 447, Florida Statutes, applicable to all employees of the Sheriff's Office, including deputy sheriffs.

A Disciplinary Review Board (Board), functioning as an advisory agency to the Sheriff, is composed of nine members. Selection of the Board is as follows:

- Four members appointed by the Sheriff, one from each district substation and one from Corrections;
- Four members nominated by members of the civil service system and appointed by the Sheriff, one from each district substation and one from Corrections;
- One member nominated by the other eight appointed members of the Board, appointed by the Sheriff. This member serves as Chairperson of the Board.
- One alternate member selected by the eight appointed members, appointed by the Sheriff. This member must be from a different district than the chairperson is from and this member serves as alternate chairperson.

None of the Board members or the alternate, may be a candidate for or incumbent of political office or a member of a committee of a political party. Board members relatives may not serve or be serving in any of those capacities. Board members must be at least

21 years old, of good moral character and reputation in the community and a resident of Monroe County at least 2 years prior to appointment to the Board.

The Director of the Division of Human Resources is designated the Civil Service Administrator, serves as secretary to the Board, and is an ex officio member of the Board having no vote. The initial term of the Board is one calendar year from date of appointment; however, the Sheriff may reappoint members for additional terms.

Appointment to a position in the civil service is not complete until the expiration of one year of probationary service. During that year, the Sheriff may terminate or otherwise discipline an employee without a hearing before the Board. Exceptions are made to the probationary period for reasons of nonservice connected to a disability or other justifiable cause. The promotional probation period is 6 months. Should the employee not satisfactorily complete the promotional probation, the employee returns to the rank from which he/she was promoted, provided he/she was regularly appointed.

Prior to suspension, demotion or dismissal, the employee must be furnished a written statement of the action and the reasons for the action, signed by the Director of Operations. The employee has an opportunity to respond orally or in writing to the Director of Operations. Upon final action by the Director of Operations, an appeal of disciplinary actions may be made by the employee. This appeal is presented in writing to the Board for review of the disciplinary action -- which may either be:

- dismissal;
- demotion; or
- suspension without pay of greater than one day.

This appeal process occurs before a Board consisting of seven members. The Board members assigned to the district to which the affected member is currently assigned may not sit on the Board. If the chairperson is assigned to the same district as the affected member, the alternate chairperson participates in the appeal Board.

The Board conducts a hearing taking evidence and testimony from both sides. The Board's decision must be reached by majority vote with at least three concurring votes required. If the Board determines that discipline is justified, it may recommend a penalty. The Sheriff is not bound by the recommendation. The actions of the Board and Sheriff are not subject to the provisions of chapter 120, Florida Statutes.

When a newly elected or appointed Sheriff assumes office, the service of all employees continues without reappointment. The incoming Sheriff may maintain current employees assigned to the rank of Captain or above or the equivalent noncertified support positions or the Sheriff may transfer those employees.

If the positions are filled with a new person the rank is reduced to lieutenant or the equivalent noncertified support position immediately and his or her salary reduced immediately. Following election or appointment of a Sheriff, appointments of all personnel remain at the pleasure of the Sheriff. Employees in the classified positions may be terminated pursuant to the provisions of this act.

Current law provides no vested rights or interest in any position in the Sheriff's civil service system.

B. EFFECT OF PROPOSED CHANGES:

This bill updates and recodifies the special acts (act) providing for the classified (civil) service system for employees of the Monroe County Sheriff's Office.

This bill clarifies the applicability of the act. The bill re-states the intent of *the act is not to grant collective bargaining to persons employed by the Sheriff's Office*, not otherwise enjoying that right, or to offer an expectation of continued employment unless otherwise provided by the act.

After the employee in the classified service has completed one calendar year of service, the employee is granted permanent status and entitled to appeal any disciplinary action. The bill clarifies that once an employee of the Sheriff's Office attains permanent status and subsequently separates from the Office, upon rehiring, the employee must again complete one calendar year of service to regain permanent status and the right to appeal a disciplinary action.

Upon promotion to higher rank, the probationary period is six consecutive months of service. Should the employee not attain satisfactory completion of promotional probation, the employee must be returned to the rank from which he or she was promoted provided the employee was regularly appointed.

Any employee in classified service covered by the act is entitled to appeal any suspension (without pay for more than 40 hours), demotion or termination. However, if the demotion, termination or suspension is based on conduct where probable cause exists to believe a felony was committed or a misdemeanor involving perjury, false statement or controlled substance was committed, the right of appeal is void.

The Disciplinary Review Board hears appeals. The Board is composed of five members, all of whom must be members of the classified service of the Sheriff's Office. The Board is selected as follows:

- ✓ Two members selected by the appealing employee;
- ✓ Two members selected by the Sheriff; and
- ✓ A fifth member, serving as chairperson, selected by a majority of the other four members.

Board members may not be a family member of the appealing employee or be involved in the investigation of, a witness to, or involved with the disciplinary procedure that is the cause of the appeal.

A procedure for the appeal places the responsibility on the appealing employee to initiate the proceedings. The Sheriff must then respond by making his Board member appointments within five days after receiving notice of the appeal. Even though subsection (3)c. provides the fifth member selected by the other four members serves as chairperson, subsection (4)(c) further provides that the chairperson is selected by majority vote of the four members already selected. A clarifying amendment may be

necessary to subsection (3)c to provide selection must be by majority vote of the four selected members.

The Board must set a place, date and time for the hearing within ten calendar days after receipt of the Sheriff's selection of his representatives. The hearing must be conducted within thirty days of the selection of the chairperson unless four-fifths majority of the Board agrees to a later date.

If a chairperson is not selected within ten days after the appeal is requested, the Sheriff, upon notification by the other four Board members must be furnished a list of fifteen names of employees of the classified services chosen at random. The four appointed Board members must then vote on each of the fifteen named employees to select a chairperson. The first employee selected by majority vote serves as chairperson. A process for challenging a Board appointment by the appealing employee is authorized.

The appeal hearing is public and must be conducted in a fair manner though formal rules of evidence do not apply. The burden is on the Sheriff to prove, by a preponderance of the evidence, the appropriateness of the disciplinary action. The appealing employee may present his or her own case and cross-examine each witness or complainant.

The appealing employee also may enlist the assistance of another classified employee for purposes of examining or cross-examining witnesses, addressing the Board or presenting arguments. The Sheriff or appealing employee may offer rebuttal evidence and the Board may hear arguments from both sides supporting their positions.

At the conclusion of the hearing, the Board decides the issue by majority vote. The written decision must be rendered within three days after the hearing concludes, unless extended by majority vote of the Board members. There appears to be confusing language in this section which needs a clarifying amendment.

The Board is authorized to accept, reject, increase or decrease the disciplinary recommendation causing the appeal. The Board's decision is *final and binding* upon the Sheriff and the appealing employee.

There is a provision for a *non-binding Board decision* when there is indication that probable cause exists involving criminal conduct on the part of the employee. The employee is, nevertheless, entitled to a review of the disciplinary action by the Board.

When a newly-elected or appointed Sheriff takes office, service of all personnel is continued without formal reappointment. The Sheriff has the option of maintaining those personnel at the rank of Captain or above or the equivalent noncertified support positions or transferring them. They may be transferred to a reduced rank no lower than lieutenant or the equivalent noncertified support position, with his or her salary reduced accordingly. That employee becomes a member of the classified service when assuming the new position.

The Sheriff is authorized to eliminate positions during the budget submission process. The eliminations must be made with due regard to the seniority of employees of the Sheriff's Office. If a position is eliminated, this act prohibits replacement during the following fiscal year.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapters 89-410 and 89-461, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

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

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

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

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

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?

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

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

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?

Not applicable.

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

Not applicable.

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

No.

3. Personal Responsibility:

Not applicable.

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

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

4. Individual Freedom:

Not applicable.

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

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

5. Family Empowerment:

Not applicable.

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

(1) Who evaluates the family's needs?

- (2) Who makes the decisions?
 - (3) Are private alternatives permitted?
 - (4) Are families required to participate in a program?
 - (5) Are families penalized for not participating in a program?
- b. Does the bill directly affect the legal rights and obligations between family members?
- 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?
 - (2) service providers?
 - (3) government employees/agencies?

E. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends chapters 89-411 and 89-461, Laws of Florida, to:

- ✓ establish applicability of the act;
- ✓ establish intent not to grant the right of collective bargaining to employees of the Sheriff's Office who do not otherwise have that right or the expectation of continued employment unless otherwise provided;
- ✓ require probationary period of one year prior to entitlement of appealable disciplinary action;
- ✓ provide probationary period upon promotion to higher rank;
- ✓ provide right of appeal under certain circumstances and conditions to a Disciplinary Review Board (Board);
- ✓ provide for selection of Board members;
- ✓ establish procedure for appeals and the conduct of an appeals hearing which is public; decisions of the Board **are binding** upon the sheriff;
- ✓ establish process for disciplinary hearing when employee conduct may be criminal, in those instances, Board's decisions **are not binding** upon the Sheriff;
- ✓ provide continued employment when a new Sheriff takes office, except those employees in the rank of Captain or above;

STORAGE NAME: h1103.ca

DATE: March 20, 1997

PAGE 9

- ✓ authorize Sheriff to eliminate positions as necessary when formulating his/her budget; and
- ✓ require consideration of employees' seniority when determining elimination of positions.

Section 2 -- Provides an effective date of upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 19, 1997

WHERE? The Citizen, Key West, Monroe County, FL

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

IV. COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Several amendments are recommended and agreed to by the legal counsel for the Sheriff's Office and the bill's sponsor. The amendments accomplish the following:

Amendment #1 -- Reorganizes and clarifies the Procedure for Appeals when an employee wishes to challenge a disciplinary action of the Sheriff; adds a provision requiring a majority vote of the four selected members to select a fifth member who serves as chairperson.

Amendment #2 -- Corrects citation.

Amendment #3 -- Corrects and clarifies language relating to the Review Board's decision relating to the disciplinary action and the extension of time for rendering the decision.

Amendment #4 -- Provides for repeal of existing special acts.

STORAGE NAME: h1103.ca

DATE: March 20, 1997

PAGE 10

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Joan E. Highsmith-Smith

Jenny Underwood Dietzel