

STORAGE NAME: h0629a.sgc.doc
DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT**

BILL #: HB 629
RELATING TO: Citrus Co./Sheriff Employees and Appointees
SPONSOR(S): Representative Argenziano
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 6 NAYS 0
 - (2) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The Citrus County Sheriff's Office established a Career Service Act through agency policy in 1999. This Act has been in effect for one year. Prior to this time, Citrus County Sheriff's Office employees served exclusively at the will of the sheriff.

This bill provides career service status for certain employees and appointees of the Office of the Citrus County Sheriff, including deputy sheriffs.

This bill specifically authorizes creation of an appeals board and details procedures relating to dismissals, appeals, and transitions between administrations.

According to the Economic Impact Statement, this bill has an insignificant fiscal impact.

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 type="checkbox"/> | N/A <input checked="" 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"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Career Service for Sheriff's Employees in Other Counties

Thirty counties currently have career service systems established by the Legislature through a special act. They are the following counties: Alachua, Bay, Brevard, Broward, Charlotte, Clay, Escambia, Flagler, Indian River, Lake, Lee, Leon, Manatee, Marion, Martin, Monroe, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Santa Rosa, Sarasota, Seminole, and Volusia. Some of these counties, such as Clay, Lake, Pasco and St. Johns, have reenacted the provisions of their special acts as ordinances.

Citrus County Sheriff's Office

The Citrus County Sheriff's Office established a Career Service Act through agency policy in 1999. The Act has been in effect for one year. Prior to this time, employees served exclusively at the will of the sheriff.

Florida Constitution

Art. III, s. 14, Florida Constitution, provides for a civil service system as follows:

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

Statutory Authority

Chapter 30, F.S., provides legislative authority regarding the service of sheriffs.

More particularly, s. 30.07, F.S., provides that:

Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.

Section 30.09(1)(a), F.S., provides, in part, that:

Each deputy sheriff who is appointed shall give bond as required by the board of county commissioners. A deputy sheriff may not perform any services as deputy until he or she subscribes to the oath prescribed for sheriffs.

Therefore, statutory authority grants deputies the same power as sheriffs, holds sheriffs liable for deputies, authorizes the county to impose bonds on deputy sheriffs, and requires deputies to take oaths.

The powers of the governing body of a county are set forth in s. 125.01(1)(u), F.S., as follows:

The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to . . . [c]reate civil service boards.

In general, local governments are vested with the authority to establish civil service systems through local ordinance. (*City of Casselberry v. Orange County Police Benevolent Association*, 482 So.2d 336 (Fla. 1986)) However, the Florida Supreme Court has determined that appointed deputy sheriffs are not classified as public employees. (*Murphy v. Mack*, 358 So.2d 822, (Fla. 1978)). In fact, “[a]bsent a civil service requirement imposed by the legislature, the status of a deputy sheriff is clearly that of an at will employee.” (*Andreu v. Sapp*, 919 F.2d 637 (11th Cir. 1990)). The court in *Ison v. Zimmerman*, 372 So.2d 431 (Fla. 1979), implies that the reason for this distinction involves the very close proximity between a deputy sheriff and that of a sheriff. A deputy sheriff is so neatly aligned with the sovereign power of the sheriff, the court reasons, that the sheriff should have absolute control over a deputy sheriff’s retention. The federal court in *Brown v. Neumann*, 188 F.3d 1289 (11th Cir. 1999), rejected the argument that a deputy’s identity is aligned with a sheriff’s identity such that the deputy actually functions as an alter ego of a sheriff. The sheriff still retains final policymaking authority. Nevertheless, one clear principle emerges from the body of case law cited, which is that extending career service status to deputy sheriffs does require legislative authority.

House Rule 5.6(a)

House of Representatives Rule 5.6(a) provides, in part:

If a committee or council determines that the substance of a local bill may be enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk.

Section 125.01(1)(u), F.S., appears to authorize local governments to create civil service boards through local ordinance. As indicated in *Murphy* and *Andreu*, however, providing career service protection to deputy sheriffs does require legislative action. Therefore, the subject matter of this bill is appropriately before the legislature and this bill does not appear to violate House Rule 5.6 (a).

It should be noted that a case is currently pending before the Florida Supreme Court, which questions whether deputy sheriffs have the right to collectively bargain, and whether deputy sheriffs are considered to be public employees (if the court rules that deputy sheriffs are public employees, future career service acts which include protection for deputy sheriffs can be handled at the local level.) Coastal Florida Police Benevolent Association v. Williams, 25 Fla. L. Weekly D2051 (Fla. 5th DCA, August 2000) (Case Number: SC 00-1860), is set for oral argument in the Florida Supreme Court on April 3, 2001.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a new special act providing career service protections for employees and appointees of the Citrus County Sheriff. This bill specifically authorizes creation of an appeals board and details procedures relating to dismissals, appeals, and transitions between administrations.

As the career appeals board's decisions are non-binding on the sheriff, the board's authority potentially carries little weight.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides the following for employees and appointees of the Citrus County Sheriff:

- (1) **Applicability** -- Provides that this act applies to all certified and non-certified employees or appointees, except for commanders or the highest ranked certified law enforcement officer or officers reporting directly to the sheriff, special deputy sheriffs (appointed by the sheriff), members of a sheriff's posse or reserve, certain part-time appointees and employees, independent contractors, temporary, contract, or grant employees; clarifies that "appointee" and "employee" are treated equally under this act; exempts from the act's provisions a person who brings a claim for wrongful dismissal due to legal, off-duty political activity or for discrimination; specifies that this act does not authorize the right of collective bargaining where it is not otherwise granted by law; and, clarifies that this act does not apply to non-disciplinary dismissals, such as for downsizing, layoffs, and partial or total elimination of a program or department.
- (2) **Definitions** -- Defines the following: "appointee" -- a person selected by the sheriff to serve as a deputy sheriff or certified correctional officer; "employee" -- any person hired by the sheriff for a position that does not require certification by the Criminal Justice Standards and Training Commission, Department of Law Enforcement; "dismissal" -- the discharge or withdrawal of appointment by the sheriff, or designee, of an employee or appointee; "initial probationary period" -- one year of conditional employment or appointment which is extendable at the sheriff's discretion for a certain time period; "career appeals board" -- a board formed to hear only disciplinary dismissal appeals; and, "reemployment" -- reappointment or reemployment of a previous appointee or employee.
- (3) **Career Status** -- Provides for career service status following the probationary period and clarifies that reemployment requires a new probationary period; authorizes sheriff to dismiss a probationer without the right of appeal; requires written notice prior to dismissal; provides that when an emergency situation exists, required notice is extended to no more than two calendar days following dismissal, unless impracticable; and, authorizes a career service employee to appeal a disciplinary dismissal to the board.
- (4) **Transition** -- Preserves career service positions when a new sheriff takes office; authorizes sheriff to reduce ranks for a commander, captain, or a judicial services commander by one rank; authorizes the new sheriff to reassign civilian directors, public information officers, and the sheriff's secretary to the next highest position classification; provides for sheriff discretion after six months; requires certain salaries for displaced officers or employees; and, preserves right to appeal for employees facing reduction in rank or reassignment.

- (5) Administration – Authorizes the sheriff to adopt rules to implement this act, and specifies that this act does not affect budget powers of county commissioners.

Section 2. Provides for the creation of career appeals boards, as follows:

- (1) Function of Boards – Requires that career appeals boards be appointed to hear appeals of career service employees, based on disciplinary dismissal; authorizes the board to assist the sheriff and to take actions authorized by the sheriff; specifies that the board issues non-binding recommendations to the sheriff, on whether the dismissal was for a violation of sheriff’s office policy, rule, regulation, procedure, or practice; and, precludes right of appeal when employee enters a plea to certain crimes.
- (2) Membership of Board – Authorizes appointment of the board upon sheriff request or the filing of an appeal; provides for the appointment of five members, including a chair, using a specified procedure; authorizes the chair to have certain powers; specifies the period of time for hearings and clarifies that members serve uncompensated; provides that members sit until the board issues recommendations and, unless reconvened, the board dissolves; and, requires the director of personnel or the director’s designee to serve as an ex officio, non-voting board member.
- (3) Appeal Procedure – Provides that complaining party may file a written request for a hearing with the sheriff within seven calendar days upon receiving a dismissal notice; requires the career appeals board to meet within thirty calendar days following receipt of notice of appeal; authorizes good cause and joint stipulation extensions; authorizes the right to a public hearing with representation, to present evidence and to cross-examine; clarifies that the rules of evidence and civil procedure do not apply; authorizes board with the powers to administer oaths, issue subpoenas, compel witness presence and document production; authorizes certain contempt powers; requires that witnesses receive certain compensation by the party calling the witness, or by the board calling the witness; clarifies that disposal of the appeal requires majority vote and an issuance of written recommendations, to the sheriff; specifies that the sheriff retains the right of final determination and that no person may be reinstated without sheriff concurrence; exempts the board’s deliberations from public meeting requirements; exempts the board’s and the sheriff’s actions from appeals authorized under the Administrative Procedures Act; and, provides a severability clause.

Section 3. Provides for an effective date of upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

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

IF YES, WHEN?

January 22, 2001

WHERE?

Citrus County Chronicle

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

According to the Economic Impact Statement, a minimal fiscal impact will result. Additional administrative expenditures are already budgeted, and this bill will not generate the need for an increase in personnel. The Citrus County Sheriff's Office has not expended any funds, to date, in the implementation of the Career Service Act.

A spokesperson with the Florida Police Benevolent Association indicates that the Association is not taking a position on this bill.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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