

STORAGE NAME: h0875.lgva.doc

DATE: March 25, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 875

RELATING TO: Palm Beach Co./Career Service

SPONSOR(S): Representative Bucher

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (2) STATE ADMINISTRATION (SGC)
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

This bill redefines career service employee, and extends career service protection to undersheriffs.

This bill provides that the Hearing Review Board's (Board) decisions are binding on the Sheriff, and removes the next level of appeal, that of the Termination Review Board, for the terminated employee.

This bill places additional restrictions and responsibilities on the Board members, and grants collective bargaining status to deputy sheriffs.

The Sponsor of the bill proposes a strike-everything amendment, both technical and substantive in nature. This amendment represents compromise language, negotiated to by the Sheriff's Office and the Police Benevolent Association.

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:

General Authority

Article X, Section 14, Florida Constitution, provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

The Legislature adopted Part VII, Chapter 112, F.S., to implement the provisions of Article X, Section 14, Florida Constitution. Part VII, Chapter 112, F.S., also establishes minimum standards for operating and funding public employee retirement systems and plans.

Local police and firefighter pension and retirement plans are reviewed by the Retirement Administrator of Municipal Police Officers and Firefighters Retirement Funds, of the Bureau of Local Retirement Systems, State Division of Retirement. Chapters 175 and 185, F.S. provide statutory authority for this program. The program was established to provide a uniform retirement system for the benefit of firefighters and police officers. The retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the Municipal Police Officers Retirement Trust Funds and the Firefighters Pension Trust Funds.

Palm Beach County Sheriff Career Service Act

Employees of the Palm Beach County Sheriff were first extended career service protection through special act in 1993 (ch. 93-367, L.O.F.) Since that time, the Act has been amended four times, through chs. 96-450, 97-325, 98-517, and 99-437, L.O.F.

Ch. 93-367, L.O.F., as amended, provides as follows:

- Defines career service employee as those employees hired at entry level who have passed probation, includes certain higher ranking employees, excludes the undersheriff;
- Provides for applicability to all certified and non-certified persons, including deputy sheriffs; excludes sheriff, undersheriff, special deputy or part-time deputy sheriffs; preserves the budget-making authority of the Board of County Commissioners, allows the Sheriff's Office to approve staff reductions;
- Requires a minimum of one calendar year of service prior to the attachment of career service protection, to begin the first day of orientation or field training;

- Restricts suspension or dismissal to for cause cases, provides certain due process except when an emergency exists, details examples of dismissal or suspension;
- Provides procedures regarding transitions, including requiring the new Sheriff to continue employment of all career service employees, allows certain higher ranked employees to be demoted; authorizes downsizing and precludes such appeals;
- Provides procedure regarding hearing review boards, precludes certain types of appeals; clarifies that rulings by the Board are non-binding on the Sheriff and that the Sheriff's decision is final, except when a termination exists;
- Details Board membership; clarifies that the Board has no investigative powers, provides for a Chair; provides for employee rights, such as the right to be present, present a case, defend, cross-examine, and secure counsel;
- Provides that the Sheriff has the power to overrule a Board decision; authorizes higher termination appeals to the Termination Review Board;
- Authorizes certain performance-based disbursements to the captain or a civilian equivalent.

Statutory Authority

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

S. 30.07, F.S., provides:

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.

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

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, F.S.

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...Create civil service boards. (s. 125.01(1)(u), F.S.)

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, "Absent 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), refused the proposition, however, that a deputy is so imbued with a sheriff's identity that the deputy actually functions as an alter ego of a sheriff, in determining that 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 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 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 extends the definition of career service protection, to apply, most notably, to undersheriffs, provides that the Board's decisions are binding on the Sheriff, requires Hearing Review Board members to be of the same discipline as the employee, expands Hearing Review Board chair's responsibilities, requires live testimony from non-employee witnesses, in addition to employee witnesses, removes Sheriff discretion to overrule the Board, removes the Termination Review Board from the process, and imbues deputy sheriffs with collective bargaining status.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Expands definition of career service employee to include deputy sheriffs of non-supervisory rank, sergeants, lieutenants, captains, majors, colonels or undersheriffs, with certain time stipulations, non-managerial, non-sworn personnel who have completed probation, and non-sworn supervisors or managers promoted through the ranks with at least five years of service or with at least ten years of service, limits demotion of an undersheriff, colonel, or major to only that of captain, provides that career service employees below the rank of major cannot be demoted or dismissed without just cause; limits demotion of civilian equivalent of colonel or major to that of captain; restricts reductions in salary during a transition.

Section 2. Provides that the Board's decisions are binding on the Sheriff; provides that there will be a fixed pool of potential Board members, as well as potential chairs; sets criteria for potential board members; requires that Hearing Review Board members must be of the same discipline as the employee; provides that selectees are chosen from an established list, clarifies that selectees can refuse service for good cause, precludes those members from serving that are above the rank of captain or are on probation, requires members to serve on an on-duty status, expands Hearing Review Board chair's responsibilities; prohibits employee from disrupting hearing; provides for direct notification of the hearing to witnesses and for employee witnesses, through the appropriate chain of command; deletes provision authorizing written statements as a substitute for live

testimony for non-employee witnesses; clarifies that the Board can recommend no disciplinary action, removes the Termination Review Board from the process.

Section 3. Includes performance-based disbursements in list of preserved employee benefits.

Section 4. Clarifies that all full-time deputy sheriffs are public employees, and possess the right to organize and collectively bargain.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 31, 2001

WHERE?

Sun-Sentinel

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

According to the Economic Impact Statement, the fiscal impact of the bill is unascertainable at this time.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

A representative with the Division of Retirement has been contacted and has not provided an analysis, to date.

The Palm Beach County Local Legislative Delegation is meeting on April 4, 2001 to approve the changes in the strike-everything amendment.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Sponsor of the bill proposes a strike-everything amendment, both technical and substantive in nature. This amendment represents compromise language, negotiated by the Sheriff's Office and the

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Police Benevolent Association. The amendment does not substantively affect the published notice. The strike-everything primarily differs from the bill as introduced, substantively, in the following respects:

- The certified bargaining agent assumes the role of striking names of sheriff nominees for the Board; alternatively, if there is no certified bargaining agent, then an employee-elected committee substitutes;
- The board member designees and alternates are removed from the established list if they are disciplined, other than through written reprimand, during their term;
- In notifying the employee of the final results of the Hearing Review Board, the Sheriff does not need to provide an explanation;
- Regarding preservation of employee benefits, this section now applies, additionally, to those employees above the rank of Captain or its civilian equivalent.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Cindy M. Brown

Joan Highsmith-Smith