

STORAGE NAME: h0845.lgva.doc

DATE: January 22, 2002

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

BILL #: HB 845

RELATING TO: Palm Beach Co. Sheriff's Employees

SPONSOR(S): Representative Atwater

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (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.

This bill amends provisions of special acts relating to the civil service system of the Palm Beach County Sheriff's Office. Specifically, the bill amends provisions regarding the composition, designation, and proceedings of a hearing review board that hears appeals of career service employees from personnel actions.

Additionally, the bill provides that the findings and recommendations of the hearing review board are binding upon the Sheriff; and that no further appeal right exists except in the case of termination.

The bill also establishes a collective bargaining right for deputy sheriffs. The bill provides that deputies are public employees raising an issue that is currently before the Florida Supreme Court. **See IV. Comments Section.**

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. (See section II.C. "EFFECT OF PROPOSED CHANGES:").

The bill does not appear to have an impact upon state revenues. According to the Economic Impact Statement, the fiscal impact of the bill on the county is undetermined.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" 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 checked="" type="checkbox"/> | No <input 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 type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

1. This bill provides an additional governmental process.

B. PRESENT SITUATION:

Career service status for employees of the Palm Beach County Sheriff's Office was created by ch. 93-376, Laws of Florida, which has been amended four times.

Currently, the Sheriff is required to consider, but is not compelled to accept, the findings and recommendations of the hearing review board. Additionally, the Sheriff's decision is final and not subject to appeal except in the case of termination which is appealable to the Termination Review Board.

The hearing review board presently is required to consist of five members of the Office of the Sheriff; and the special acts provide a member selection method.

Regarding the conduct of the hearing, presently there is no requirement for the review board chair to submit witness statements prior to the hearing, or to furnish copies of exhibits to be introduced at the hearing.

Present provisions do not provide for the presence or participation of an employee representative.

Witness appearance notification is currently authorized through the chain of command and does not address non-employee witness appearance notification.

Presently, employee reinstatement is provided for only upon exoneration.

Upon termination, an employee may presently seek, within 10 days of notice of termination, resubmittal of the appeal to the original hearing review board. Reversal of a termination decision requires four of five votes.

The Sheriff may not substantially reduce certain benefits except in the case of exigent operational necessity except for longevity pay for those at the rank of captain or its civilian equivalent, which monies shall be disbursed in accordance with objective performance related criteria. The criteria are required to take into consideration input from a committee including those at the rank of captain or its civilian equivalent.

The Sheriff may enhance benefits and emoluments for appointees of the Sheriff's Office.

Deputy sheriffs do not presently enjoy public employee status or the rights, privileges and obligations thereof. Deputy sheriffs also are not authorized to collectively bargain.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the Palm Beach County Sheriff's Office's career service system to provide for the composition, designation, and proceedings, of a hearing review board to hear appeals of career service employee personnel actions. Additionally, the bill provides that the findings and recommendations of the hearing review board are binding upon the Sheriff; and that further appeals are authorized only in the case of termination.

The bill also provides that longevity pay may not be reduced except in the case of exigent operational necessity; removes the Sheriff's authority to enhance the benefits and emoluments for appointees of the Sheriff's Office; and that contractual obligations resulting from collective bargaining may not be used to challenge the budget allocation provided by the Board of County Commissioners.

The bill also provides that deputy sheriffs shall be considered public employees entitled to all rights, privileges, and obligations granted by law, including the right to organize and collectively bargain.

The bill appears to be an exception of s. 30.53, F.S., which in relevant part provides as follows:

The independence of the sheriffs shall be preserved concerning...selection of personnel, and the hiring, firing, and setting of salaries of such personnel; provided that nothing herein contained shall restrict the establishment or operation of any civil service system or civil service board created pursuant to s. 14, Art. III, of the Constitution of Florida, provided, further that nothing contained in ss. 30.48-30.53 shall be construed to alter, modify or change in any manner any civil service system or board, state or local, now in existence or hereafter established.

Subsection 1(2)(1) of the bill provides that the Sheriff is bound by the findings and recommendations of the hearing review board. Therefore, this provision appears to provide an exception from general.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 2, chapter 93-367, Laws of Florida, as amended by ch. 98-517, Laws of Florida, regarding employees of the Palm Beach County Sheriff's Office as follows:

Subsection 2(1) is amended to provide that the Sheriff is bound by the findings and recommendations of the majority vote of the hearing review board; and removes the right to appeal the decision of the hearing review board.

Paragraph 2(2)(a) is amended to delineate the composition, member selection and chairperson selection of the hearing review board pool; term of office; and replacement method should the board number be reduced to 18.

Paragraph 2(2)(b) is amended to provide the criteria for, and method of selecting a hearing review board for a particular hearing.

Paragraph 2(2)(c) is amended to provide qualifications for potential hearing review board pool designees and the right to decline to be named as a designate.

Paragraph 2(2)(d) is amended to provide that no member should be above the rank of Major or be on probationary status.

Paragraph 2(2)(e) is amended to provide that membership on the hearing review board is not mandatory, but that all members shall serve an on-duty status and shall not discuss matters to be heard before the board until the board is convened.

Paragraph 2(2)(f) is amended to provide that the employee requesting the hearing be asked to provide a short statement about what a witness is expected to testify; and to furnish copies of all exhibits to be introduced in the hearing.

Paragraphs 2(3)(a), (b), and (c) are amended for grammatical clarification.

Paragraph 2(3)(e) is amended to provide that either an employee or the employee's representative has the right to be present and to present the case, but neither shall disrupt the proceedings.

Paragraph 2(3)(f) is amended to delete a prohibition against the employee's representative actively participating in the proceeding.

Paragraph 2(3)(h) is amended to clarify that witnesses shall be notified of the date and time of the hearing by the chairperson of the board; employee witnesses shall be notified through their chain of command; employee witnesses shall be required to testify; and deletes the requirement that non employee witnesses' written statements should be used in lieu of personal appearances, and that employee witnesses should only be called to appear before the board at the request of the board.

Paragraph 2(4)(c) is amended to provide that employees and their representatives shall have an opportunity to present evidence, conduct cross-examination, and submit rebuttal evidence.

Paragraph 2(5)(a) is amended to clarify that each finding of the review board shall consider among other factors, the employee's past conduct.

Paragraph 2(5)(b) is amended to provide that the board may place before the Sheriff any recommended disposition of the charges before it and that their recommendation may include that no disciplinary action be taken or that the original policy violation charge be sustained or reversed.

Paragraph 2(5)(c) is deleted to remove the authority of the Sheriff to either approve or disapprove of the board recommendation; and paragraph 2(5)(d) is renumbered and amended to provide that the Sheriff shall notify the employee of the final results and the reasoning of the review board.

Paragraph 2(5)(e) is renumbered as 2(5)(d) and amended to provide that if the employee's discipline is reduced, the employee shall be returned to work; and to delete language that the employee be reinstated only if exonerated.

Paragraph 2(5)(f) is renumbered as 2(5)(e).

Paragraph 2(5)(g) is deleted removing language which provided that there was no appeal except in the case of a termination which could be appealed to the Termination Review Board.

Paragraph 2(5)(h) is renumbered as 2(5)(f).

Paragraph 2(5)(i) is renumbered as 2(5)(g).

Paragraphs 2(6)(a) and (b) are deleted removing an employee's right to request a resubmittal of a termination decision; and review board authority regarding the review board's termination review.

Paragraph 2(6)(c) is renumbered as 2(6), renamed "Criminal Charges," and amended to refer to the hearing review board instead of the Termination review board.

Section 2. Amends s. 3, ch. 93-367, Laws of Florida, as amended by chs. 96-450, 97-325, and 98-517, Laws of Florida, to provide as follows:

Paragraph 3(2) is amended to delete an exception to the restriction against substantially reducing employer-paid benefits and emoluments as to longevity pay for certain employees. The effect of the amendment to this section is that longevity pay may not be substantially reduced except in case of exigent operational necessity.

Paragraph 3(3) is amended to delete authority of the Sheriff to enhance benefits and emoluments for appointees of the Sheriff's Office.

Paragraph 3(4) is amended to provide any contractual obligations entered into by the Sheriff's office resulting from collective bargaining rights shall not be used by the Sheriff in any appeal or challenge against the yearly lump sum budget allocation approved by the board of county commissioners for the Sheriff's total annual budget.

Section 3. Adds s. 4, to ch. 93-367, Laws of Florida, to provide that all full-time deputy sheriffs shall be deemed "public employees" as defined in part II of ch. 447, F.S. Additionally, in that capacity, deputy sheriffs shall be entitled to all rights, privileges, and obligations granted by law, including the right to organize and collectively bargain, pursuant to part II, ch. 447, F.S.

Section 4. Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

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

IF YES, WHEN?

December 5, 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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 3 of the bill raises the issue of whether or not deputy sheriffs are "public employees" entitled to collective bargaining rights pursuant to s. 6, Article I, State Constitution and ch. 447, F.S. This issue was orally argued before the Florida Supreme Court on April 4, 2001. The Court has not yet issued its opinion in that matter: *Coastal Florida Police Benevolent Association v. Williams*, Case No. SC00-1860.

State Constitution

Article I, s. 6, State Constitution provides:

The rights of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

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, some have argued that pursuant to the State Constitution deputy sheriffs are employees authorized to collectively bargain. Others however, have argued that deputy sheriffs are not employees with a collective bargaining right, but rather appointees pursuant to statutory authority which: 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. This issue as it applies to Florida has been tried and decided numerous times in both state and federal courts. Because of the uncertainty of seemingly disparate decisions, the issue is once again before the Florida Supreme Court in the *Coastal* case.

B. RULE-MAKING AUTHORITY:

None.

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C. OTHER COMMENTS:

According to a telephone conversation with a representative of the Palm Beach County Police Benevolent Association (PBPBA), the PBPBA supports this bill and spoke in favor of the bill before the Palm Beach County Legislative Delegation.

The Sheriff was contacted by telephone on January 28, 2002, and stated that he did not oppose this bill.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Sponsor has agreed to an amendment to clarify that an employee and the employee's representative or attorney may appear and participate at review board hearings.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith