

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 771 w/CS Columbia County
SPONSOR(S): Stansel
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>9 Y, 0 N</u>	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>19 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Cutchins</u>
3) <u>State Administration</u>	<u></u>	<u>Williamson</u>	<u>Everhart</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates a career service system, including certain rights and procedures regarding the transition period following the election or appointment of a new Sheriff; the creation of a Career Service Appeals Board; and an appeals process for employees of the Columbia County Sheriff's Office.

This bill does not impact the state budget according to the Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

This bill creates the Columbia County Career Service Appeals Board for the purpose of hearing appeals from certain career employees terminated from employment.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a career service system and appeals process for all full-time certified and noncertified persons employed by the Columbia County Sheriff's Office. It does not, however, apply to the:

- Sheriff;
- Special Deputy Sheriffs;¹
- Members employed pursuant to a grant whose continued existence or funding is subject to the expiration or withdrawal of the grant;
- Nondisciplinary termination of employment arising out of a reduction of force, layoff, or partial or total abolition or cessation of a program, service, operation, or department at the discretion of the Sheriff;
- Members of the Sheriff's Reserve Unit;
- Individuals appointed as part-time Deputy Sheriffs² unless any such person is also employed full-time by the Columbia County Sheriff's Office.

It also does not apply to a person who claims that termination of employment was for lawful off-duty political activity, or who claims that termination of employment was for discriminatory purposes.³

Career status is acquired after one calendar year of service following initial hire or rehire. Once career status with the Columbia County Sheriff's Office is achieved, termination may only occur for just cause after an employee is notified in writing of the proposed action and given an opportunity to respond to the reasons for the termination. However, if delay could result in damage or injury, an employee may be relieved of duty immediately and notice and reasons for the termination must be provided within 24 hours of such action.

This bill provides that just cause for initiating an internal investigation that may result in termination of employment must include violation of the provisions of law or office rules or direct violation of published sheriff's office policy. With respect to any felony or misdemeanor, just cause for initiating an internal investigation also must include:

- Adjudication of guilt by a court of competent jurisdiction,
- A plea of guilty or of nolo contendere, or

¹ This exception applies to Special Deputy Sheriffs appointed pursuant to s. 30.09(4), F.S.

² This exception applies to Deputy Sheriffs as defined by the Criminal Justice Standards and Training Commission.

³ Such claims are already covered under current law.

- Adjudication of guilty withheld,

and the accused must be placed on probation. The filing of felony or misdemeanor charges by the state attorney also constitutes just cause for initiating an internal investigation.

A newly elected or appointed sheriff must continue the employment of all currently employed career personnel unless just cause for termination of employment exists. The incoming sheriff, however, has the option of maintaining the current personnel assigned to the positions of lieutenant and above, executive assistants, executive office managers, and administrative positions of trust⁴. If such positions are filled with new personnel, then the current occupants of those positions may be reduced to the next lower existing rank or civilian designation and transferred to another assignment within the same division or receive up to a 10 percent reduction in salary, or both. If no lower position is available, the occupant may be transferred to another assignment within the sheriff's office with up to a 10 percent pay reduction. This bill provides that the new rank is permanent for a period of six months at which time it may be changed by independent disciplinary action.

This bill authorizes the sheriff to adopt necessary rules and regulations for the implementation and administration of this act. It also authorizes the sheriff, at his or her sole discretion, to promulgate rules and regulations.

This bill requires the establishment of a complaint receipt and processing procedure in order to provide adequately for the prompt receipt, investigation, and disposition of complaints against members of the Columbia County Sheriff's office. If an employee is dissatisfied with the sheriff's decision regarding disciplinary action resulting in termination of employment, then the employee may appeal the action to the Career Service Appeal Board created by this bill. An appeal of disciplinary action resulting in termination of employment must result in the opportunity for a hearing before the Career Service Appeal Board. The appeal must be made to the sheriff, in writing, within five calendar days of termination.

This bill creates a five member Career Service Appeal Board (board). The board consists of two members appointed by the sheriff; two members appointed by the employee filing the appeal; and one member, who serves as the chair, selected by the other appointed members. The four appointed members have five calendar days to select the fifth member. If a fifth person cannot be agreed upon then a judge from the Third Circuit will appoint the final member. Members serve without additional compensation for meetings occurring during their normal work hours. For meetings held during nonwork hours, compensatory time at the rate of 150 percent of the actual hours in session are credited to the member's leave time.

This bill provides that the appealing member has seven calendar days from the date the request for a hearing was delivered to select and deliver the names of two qualified members willing to serve on the board. If the appealing member fails to submit the names within seven days then the option to be heard by the board is waived and ceases to exist. The same applies with regards to the sheriff's appointments and the appealing member is reinstated.

The board, in conducting the hearing, has the power to administer oaths, issue subpoenas, compel the attendance of witnesses, and require the production of books, records, accounts, papers, documents, prior statements, testimony, and investigative files related to the issue. Any witness who appears in response to a subpoena must receive compensation for attendance fees and mileage as provided for witnesses in civil cases. Such payments are made by the appealing member; however, witnesses called by the board or the sheriff receive payment from the sheriff's budget upon presentation of proper vouchers and approval by three members of the board.

⁴ Positions of Trust include the Comptroller, the Director of Property Management, and Special Investigators assigned and involved in conducting internal inquiries or internal investigations.

The board's decision must be forwarded to the sheriff, and the board is dissolved once final action is taken. The sheriff must prepare an order and publish the final disposition of the appeal, at which time such disposition becomes a public record. The board hearing is open to the public; however, the deliberations are not.

This bill includes a prohibition against circumvention of the intent of the bill, and provides for severability.

C. SECTION DIRECTORY:

Section 1. Provides for the applicability of the act; for career status for various employees of the Columbia County Sheriff's Office; transition of career status employees; and for administration.

Section 2. Provides for procedures regarding complaints against employees.

Section 3. Provides for procedures relating to disciplinary appeals.

Section 4. Provides for the creation, membership and duties of a career service appeals board.

Section 5. Provides for inclusion of various employees upon enactment, and for prohibition of actions to circumvent the act.

Section 6. Provides for certain exclusions from the act.

Section 7. Provides for severability.

Section 8. Provides for an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

December 26, 2003

WHERE?

The Lake City Reporter, a newspaper published in Lake City, Columbia County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The economic impact statement provides that there is no fiscal impact to the state or the local government. This bill, however, requires compensation to be paid by the sheriff to witnesses called by the Career Service Appeal Board or the sheriff upon presentation of proper vouchers and approval by three members of the board. Therefore, it appears to have a minimal fiscal impact on the local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

This bill could raise constitutional concerns, because it creates a public records exemption for the disposition until finalized and creates a public meetings exemption for the board deliberations. Article I, s. 24(c) of the Florida Constitution, requires public records and public meetings exemptions to be created in a separate bill and must state with specificity the public necessity justifying the exemption. This bill does not create the public records and public meetings exemptions in a separate bill and does not provide a statement of public necessity.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Columbia County Sheriff to adopt rules and regulations necessary for implementing and administering this act. It also requires the establishment by rule of standardized dates and times of meetings of the Career Service Appeal Board.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Local Affairs at its March 11, 2004, meeting favorably recommended one amendment. The strike-all amendment makes language and other changes throughout the bill to address issues raised in two public hearings held since the bill was originally drafted.

On March 16, 2004, the Committee on Local Government & Veterans' Affairs adopted one strike-all amendment that makes language and other changes throughout the bill to address issues raised in two public hearings held since the bill was originally drafted.