

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 14, art. III of the State Constitution provides, in pertinent part, that:

By law ...there may be created civil service systems and boards for county... 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.

Under s. 125.01(1)(u), F.S., the legislative and governing body of a county has the power to “[c]reate civil service systems and boards.”

Section 30.07, F.S., gives a sheriff authority to appoint deputies, and s. 951.061, F.S., similarly provides a sheriff with the authority to appoint correctional officers. As a result of this statutory framework, deputy sheriffs in Florida have not been deemed to be employees of the sheriff, but rather, appointees who serve at the pleasure of the sheriff. Because deputy sheriffs are not considered to be employees, and both their selection and retention come under the absolute control of the sheriff, they have been determined to have no property interest in their positions for purposes of the 14th Amendment to the U.S. Constitution. The only exception to this principle is where a general or special act of the legislature establishes a career service system for employees of the sheriff pursuant to s. 30.53, F.S.¹ See, Mc Rae v. Douglas, 644 So. 2d 1368 (1994).

In 1990, the Legislature passed a local bill (ch. 90-386, L.O.F.) providing career service status for certain employees of the Lake County Sheriff, which required the Board of County Commissioners of Lake County to enact the provisions of the bill as a county ordinance pursuant to s.125.01 (l)(u), F.S. The Legislature specifically directed that once enacted as an ordinance, the provisions could only be revised by the county commission if requested by the sheriff, and pursuant to the sheriff's recommendations. This act indicated that it was not intended to grant collective bargaining rights to employees of the sheriff's office. To achieve career service status, an employee had to satisfactorily complete one year of continuous employment in one division of the sheriff's office and not be on extended probation. The act further provided for an extended probation, of an unspecified length, to ascertain an employee's fitness for employment. Employees who did not have career service status could be terminated at any time and without cause. Employees with career service status could be terminated only for cause.² A new sheriff could demote without cause any career service employee who held the rank of undersheriff, chief deputy, major, captain, administrative assistant or legal advisor, or any equivalent rank, at the time the newly elected or appointed sheriff

¹ The language of s.30.53, F.S., provides that employees of the office of a sheriff may be included in a civil service system created pursuant to the authority granted by s. 14, art. III, of the State Constitution.

² “Termination for cause” means termination for misfeasance, malfeasance or nonfeasance and included “any substantial shortcoming” which rendered the continuance of the employee in his position detrimental to the discipline or efficiency of the department.

took office. The sheriff was empowered to adopt rules and regulations for the administration and implementation of the act.

Nonetheless, the 1993 Legislature again considered legislation regarding career service employment with the Lake County Sheriff's Office and passed ch. 93-358, L.O.F. This bill provided additional provisions including the following: clarified the definition of "career service employee" to exclude those who were on extended probation, or a part-time, temporary or contractual employee; specified that an extended probation could not exceed six months; and, with regard to the "termination for cause" definition, deleted the "substantial shortcoming" language. The staff analysis for HB 109 noted that the weight of authority suggested that deputy sheriffs were not "employees" absent legislative action to classify them as such for civil service system purposes, and seemed to support a conclusion that until the issue was resolved legislatively or judicially clarified, that it was prudent that civil service systems concerning deputy sheriffs not be legislated locally.

While ch. 94-143, L.O.F., provided certain protections for deputy sheriffs with regard to probation, and terminations for discriminatory or off-duty political activity, it did not provide a comprehensive civil service protection system for these employees. No similar provisions exist which apply to correctional officers.

Effect of Bill

This bill amends ch. 93-358, L.O.F. It makes minor, stylistic changes to the definition of "career service employee." It also extends the definition of "division" to include all divisions of the Lake County Sheriff's Office, and deletes previous references to an Enforcement Division and a Support Division. The definition of "employee" is expanded to include a "detention deputy," i.e., a correctional officer.

The bill deletes a provision which would have allowed employees who voluntarily terminated employment with the sheriff's office to have regained their career service status if reemployed within 90 days. A provision which allows a new sheriff to demote employees without cause to the rank of lieutenant is specifically applied to employees who hold the titles of "chief" and "general counsel." Language also is added which states that members of the senior management service class may be demoted to a reduced civilian position.

C. SECTION DIRECTORY:

Section 1: Revises provisions of ch. 93-358, L.O.F., governing career service employment with the Lake County Sheriff's Office.

Section 2: Provides an effective date of July 1, 2005.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 9, 2005

WHERE? *The Daily Commercial*, a newspaper published in Lake County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

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

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

According to the Economic Impact Statement, the bill has no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, Drafting Issues or Other Comments, below.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language in the bill which provides that members of the Senior Management Service class may be demoted raises two issues: First of all, senior management service positions are exempt positions; that is, such positions are not part of a career service system. This bill relates to career service employment with the Lake County Sheriff's Office, and constitutional notice was provided as such. Secondly, because senior management service positions are not included in the career service system, they are accorded no career service protections. To articulate that such positions may be demoted could be interpreted to afford those positions unintended rights.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.