

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1133
SPONSOR(S): Kendrick
TIED BILLS:

Levy County

IDEN./SIM. BILLS: SB 2926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u>8 Y, 0 N</u>	<u>Ligas</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>10 Y, 0 N</u>	<u>Ligas</u>	<u>Cooper</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill provides a career service system for employees of the Levy County Sheriff's Office. The bill applies to all full-time sworn and civilian persons employed by the sheriff with specified exemptions. The bill also provides for probationary periods, a process for suspension or dismissal, the creation and duties of ad hoc career service appeal boards, and the transition of employees during a new administration.

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

The bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government –This bill authorizes the sheriff to adopt such rules as are necessary for the implementation and administration of the act. The bill also creates career service appeals boards to hear employee disciplinary cases.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sixty-six of Florida's 67 counties have elected sheriffs as their chief law-enforcement officers. Miami-Dade County has an appointed chief law-enforcement officer whose title is Director of the Miami-Dade Police Department. Sheriffs serve four-year terms, and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

Pursuant to s. 14, Art. III of the State Constitution, s. 125.01(1)(u), F.S., and s. 30.53, F.S., a civil service system for sheriff's employees may be created by local governments via local ordinance. Section 14 of Art. III of the State Constitution provides:

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.

The powers of the governing body of a county are set forth in s. 125.01, F.S. This power includes the authority, as provided in paragraph (u) of subsection (1) of s.125.01, F.S., to "[c]reate civil service systems and boards." While the independence of a sheriff is preserved in s. 30.53, F.S., that section contains a further provision that it not be construed to "restrict the establishment or operation of any civil service system" or board created pursuant to s. 14, Art. III of the State Constitution. See also, City of Casselberry v. Orange County Police Benevolent Association, 482 So.2d 336 (Fla. 1986) (providing that local governments are vested with the authority to establish civil service systems via local ordinance).

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua,¹ Bay,² Brevard,³ Broward,⁴ Charlotte,⁵ Citrus,⁶ Clay,⁷ Columbia,⁸ Escambia,⁹ Flagler,¹⁰ Glades,¹¹ Hernando,¹² Indian River,¹³ Lake,¹⁴ Lee,¹⁵ Leon,¹⁶ Madison,¹⁷ Manatee,¹⁸ Marion,¹⁹

¹ Chs. 84-388 and 86-342, L.O.F.

² Ch. 84-309, L.O.F.

³ Ch. 83-373, L.O.F.

⁴ Ch. 93-370, L.O.F.

⁵ Chs. 79-436, 86-349, and 89-508, L.O.F.

⁶ Ch. 2001-296, L.O.F.

⁷ Chs. 89-522 and 93-397, L.O.F.

⁸ Ch. 2004-413, L.O.F.

⁹ Ch. 89-492, L.O.F.

¹⁰ Chs. 90-450 and 2000-482, L.O.F.

¹¹ Ch. 2003-311, L.O.F.

¹² Ch. 2000-414, L.O.F.

¹³ Ch. 2002-355, L.O.F.

¹⁴ Chs. 90-386, 93-358 and 2005-349, L.O.F.

Martin,²⁰ Monroe,²¹ Okaloosa,²² Okeechobee, Orange,²³ Osceola,²⁴ Palm Beach,²⁵ Pasco,²⁶ Pinellas,²⁷ Polk,²⁸ St. Lucie,²⁹ Santa Rosa,³⁰ Sarasota,³¹ and Seminole³² counties.

Effect of Proposed Changes

The bill creates a career service system for employees of the Levy County Sheriff's Office. The bill provides for the application of the act to all full-time certified and noncertified persons employed by the Sheriff's office.

The bill states that it is not the intent of the act to grant collective bargaining rights to persons employed by the Levy County Sheriff's Office who do not otherwise have that right pursuant to law.³³ When a covered employee has successfully completed one calendar year of service and a probationary training program,³⁴ the employee attains permanent status in the Sheriff's Office;³⁵ however, if an employee is terminated and rehired at a later date, the employee is required to complete one calendar year of service.

Once an employee has achieved career service status within the Sheriff's Office, he or she may only be terminated with just cause. Prior to any such action, the employee must be furnished with written notice and offered an opportunity to respond. In extraordinary situations, an employee may be terminated immediately with notice provided within 24 hours.

Just cause for initiating an internal investigation includes, but is not limited to:

- violation of the provisions of law or office rules;
- direct violation of published Sheriff's Office policy;
- with respect to any felony or misdemeanor, adjudication of guilt or nolo contendere or adjudication withheld and the accused placed on probation; and
- the filing of felony or misdemeanor charges by the state attorney against an employee.

¹⁵ Chs. 74-522, 87-547 and 95-514, L.O.F.

¹⁶ Ch. 83-456, L.O.F.

¹⁷ Ch. 95-470, L.O.F.

¹⁸ Ch. 89-472, L.O.F.

¹⁹ Ch. 87-457, L.O.F.

²⁰ Ch. 93-388, L.O.F.

²¹ Chs. 78-567, 89-410, 89-461, 97-345, and 98-507, L.O.F.

²² Chs. 81-442, 85-472, and 90-492, L.O.F.

²³ Ch. 89-507, L.O.F.

²⁴ Chs. 89-526 and 2000-388, L.O.F.

²⁵ Chs. 93-367, 99-437 and 2004-404, L.O.F.

²⁶ Ch. 90-491, L.O.F.

²⁷ Chs. 89-404 and 90-395, L.O.F.

²⁸ Chs. 88-443 and 98-516, L.O.F.

²⁹ Ch. 89-475, L.O.F.

³⁰ Ch. 2002-385, L.O.F.

³¹ Ch. 86-344, L.O.F.

³² Ch. 77-653, 80-612, 88-451, and 97-376, L.O.F.

³³ Section 6, Art. I of the State Constitution grants public employees the right to collectively bargain. In 2003, the Florida Supreme Court held that deputy sheriffs were "employees" for purposes of this constitutional right. See, Coastal Florida Police Benevolent Association, Inc, v. Williams, 838 So.2d 543 (Fla. 2003).

³⁴ All time of employment while in a Criminal Justice Standards and Training Commission-approved academy or other comparable training for certification as a sworn officer or deputy sheriff is not counted in determining whether an employee has attained one calendar year of minimum service.

³⁵ All sworn and civilian persons in the employ of the sheriff on the effective date of the act who have served for a period of one calendar year or more are considered career service employees. All other employees achieve this status subject to the provisions of the act upon reaching their one-calendar-year service anniversary.

When a newly elected or appointed sheriff assumes office, he or she is required to continue the employment of all career service personnel unless cause for termination exists. The sheriff has the option to maintain personnel assigned to the positions of Lieutenant and above, Executive Assistants, Executive Office Managers, and Administrative Positions of Trust, including the Comptroller, the Director of Property Management, and Special Investigations assigned and involved in conducting internal investigations.

If the incoming Sheriff fills the aforementioned positions with personnel of his or her choosing, 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 be subject to a salary decrease of up to 10 percent. If no downward position is available, the occupant may be transferred to another assignment within the Sheriff's Office with a pay reduction of up to 10 percent. The new rank of such individuals shall be permanent for a period of up to 6 months and may be changed thereafter by independent disciplinary action. Initial actions taken under this subsection which affect Lieutenants and above and other Executive Positions of Trust and within the guidelines provided shall not be subject to appeal under the next section.

The Sheriff is authorized to adopt such rules, regulations and procedures necessary for the administration and implementation of the act, although it is specified that nothing in the act may be construed as affecting the budget-making powers of the Levy County Board of Commissioners.

A complaint procedure reflecting the provisions in s. 112.532, F.S., shall be established to provide for the prompt receipt, investigation, and disposition of complaints against members of the Levy County Sheriff's Office. After written receipt of the disposition of the complaint, if an employee is dissatisfied with the decision of the Sheriff regarding disciplinary action resulting in termination of employment, the employee may appeal the action to the Career Service Appeal Board.

An appeal of disciplinary action resulting in termination of employment shall result in the opportunity for a hearing before a Career Service Appeal Board (the Board) as specified in that procedure. The Board shall report to the Sheriff via the director of human resources or other designee immediately following the hearing. An ad hoc Career Service Appeal Board shall be appointed for the purpose of hearing appeals from career employees brought under provisions of this act or the Sheriff's Office rule or policies that result in termination of employment.

The Board may also provide assistance and advice to the Sheriff in matters concerning disciplinary actions and may take other actions as authorized by the Sheriff. An ad hoc Career Service Appeal Board shall be appointed as needed by the Sheriff or for the filing of an appeal of termination of employment. Membership of the Board shall include:

- two members selected by the Sheriff from among any eligible full-time employees from within the Sheriff's Office;
- two members selected by the employee filing the appeal from among any eligible full-time employees from within the Sheriff's Office; and
- one member who is a full-time eligible member of the Levy County Sheriff's Office, selected by the other members of the Board, who shall serve as chairperson.

If a noncertified member requests an appeal, the two members selected by him or her may be among full-time eligible employees from any division of the Sheriff's Office.

The appealing member shall have 7 days from the date that the request for hearing was delivered directly to the Sheriff or his or her administrative assistants to select and deliver to Human Resources the names of two qualified members willing to serve on the board. If the appealing member fails to do so within the 7 day period, his or her option to be heard by a Career Service Appeal Board is procedurally waived and ceases to exist.

The Sheriff shall have the same 7 day period to select and deliver to Human Resources the names of two qualified members willing to serve on the Board. If the Sheriff fails to do so within the 7 day period, the action against the employee is procedurally waived and ceases to exist. The four members shall then have 5 calendar days to select the fifth member from the list of remaining qualified members. If an impartial chairperson cannot be agreed upon within those 5 days, a judge from the Third District shall, within 5 days, appoint a chairperson who is an eligible member of the Levy County Sheriff's Office.

The ranking officer or his or her designee in charge of personnel matters shall serve as an ex officio member of the board to provide procedural guidance concerning the application of this act and any rules or regulations of this act or any rules or regulations adopted by the Sheriff relating thereto, but the ex officio member shall have no vote.

The Sheriff may appoint a Career Service Appeal Board for the purposes of receiving, considering, and making a recommendation on matters related to the formation or streamlining of rules related to this act, or to consider any other matter deemed appropriate by the Sheriff, excluding disciplinary termination of employment. If the issue to be considered involves a specific member of the Sheriff's Office and may result in some disciplinary recommendation by the Board, the Sheriff shall notify the individual and offer the opportunity for the individual to provide two members to the Board to consider the specific question at issue. If no specific member is involved, the Sheriff shall appoint two members from the Civil Division and two members from the Criminal Division, and the Captain of the Administrative Division shall serve as the chairperson. A board appointed by initiative may only make recommendations.

Dates and times of meetings shall be provided by rule and occur during normal administrative office business hours. Members selected to serve on the board shall serve without additional compensation during their normal work hours. For non-work hours, the member shall be awarded compensatory time at the rate of 150 percent of the actual hours in session.

Once selected for the Board, members shall serve until final action is taken in the matter for which the board was selected, upon which time the Board is dissolved.

A new Career Service Appeal Board shall be selected for each separate occurrence, though multiple parties filing appeals on the same incident may request to be heard by a single board.

A person may not serve on the Career Service Appeal Board who:

- was involved in the original incident that resulted in disciplinary process that is the subject of the appeal;
- is related to the appellant;
- is currently under investigation or suspension;
- has any ongoing litigation against the Levy County Sheriff's Office; or
- is on probation or has received sustained discipline within the last year.

An appeal shall be made to the Sheriff in writing and must be received by the Sheriff no later than 5 calendar days after the employee is notified of the action being appealed.

Once the Board has been selected for appeal, the Sheriff shall provide notice to the appealing person of the date, location, and time of the hearing. The date shall be within 15 calendar days, excluding weekends and holidays, after notification of selection of the fifth member. The date of the hearing may be extended if both parties agree.

During the hearing, the employee filing the appeal shall have the right to be heard, represented by the person of his or her choice, and to present any relevant evidence on his or her behalf. During the hearing, the technical rules of evidence shall not apply.

During the hearing, the Board shall have 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 that are in the possession of or have been delivered to Human Resources a minimum of 5 business days prior to the beginning of the hearing. In case of disobedience of any person to comply with an order of the Board or a subpoena issued by the Board, or upon the refusal of a witness to testify on any matter regarding which he or she may be lawfully interrogated, a County Judge of the county in which a person resides, upon application of a member of the Board, shall compel obedience by proceeding as for contempt. Each witness who appears in obedience to a subpoena before the Board shall receive compensation for attendance fees and mileage as provided for witnesses in civil cases in the courts of this state. Such payments shall be made by the party calling the witness, except that with respect to any witnesses called by the Board, payments shall be made by the Sheriff upon presentation of proper vouchers and approval by three members of the Board. In any case, the board shall restrict its considerations and deliberations to the evidence presented at the hearing.

The Board is not governed by the Administrative Procedure Act, as codified in chapter 120, Florida Statutes. The Board shall, by majority vote, dispose of the appeal by making a determination of just cause and issuing a written decision based upon the determination of a preponderance of evidence (51 percent). In the instance of an appeal to overturn a termination, a majority is required to overturn the Sheriff's decision to terminate. All Board members must be present to conduct official business.

If the Board does not sustain the Sheriff's action, back pay and benefits shall be reinstated. The Board may not impose a different penalty on an employee than the one being appealed. If the action is sustained, the Board may make a recommendation to the Sheriff to reconsider mitigating circumstances and reconsider the termination-of-employment action. The Sheriff shall review the determination of the Board and consider its recommendation prior to imposition of the final action. The paper ballot decision of the Board shall be forwarded to the Sheriff. The final decision of the Board is binding on the employee and Sheriff. The Sheriff shall prepare an order and publish the final disposition of the appeal, which shall be binding on the employee.

The Board hearing and deliberations shall be open to the public, recorded, and preserved for the public record.

The chairperson of the Board shall have the authority to receive and consider written prehearing motions presented to the Board at the hearing. He or she shall preside over the hearing, enforce the decorum of the hearing, receive requests for breaks, convene the deliberations, and cause the removal of anyone attempting to disrupt the proceedings.

All full-time certified and noncertified persons who are employees of the Levy County Sheriff's Office on the effective date of this section who have served for one calendar year and have completed their probationary period shall be career employees subject to the provisions of this act. All other full-time employees shall become career employees subject to the provisions of this act upon reaching their one year of service date and successfully completing the probationary period.

An employee shall not be discharged or discriminated against, or threatened with such treatment, as a result of his or her exercise of the rights granted.

Specifically excluded from the provisions of the act are:

- the Sheriff;
- Special Duty Sheriffs appointed pursuant to s. 30.09(4), F. S.;³⁶

³⁶ This section designates special deputy sheriffs appointed by the sheriff: (a) to attend elections on election days; (b) to perform undercover investigative work; (c) for specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only; (d) for special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners; (e) to aid in preserving law and

- members employed pursuant to a grant whose continued existence or funding is subject to expiration or withdrawal of the grant;
- nondisciplinary termination of employment arising from a reduction of force, layoff, or partial or total cessation of a program, service, operation, or department at the discretion of the Sheriff;
- members of the Sheriff's Reserve Unit; or
- persons appointed as part-time deputy sheriffs as defined by the Criminal Justice Standards and Training Commission, unless such persons are also employed full-time by the Levy County Sheriff's Office.

This does not apply to an otherwise covered person who claims that termination of employment was for lawful off-duty political activity, as such claims are covered under Chapter 30, Florida Statutes. This act does not apply to an otherwise covered person who claims that termination of employment was for discriminatory purposes, as such claims are covered under state and federal statutes. The bill provides that the provisions of the act are severable, and if any portions are found to be unconstitutional, the decision of the court will not affect the validity of the remaining provisions. The intent of the Legislature is that the act would have been adopted had such unconstitutional provision been included.

The bill provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Provides for career service to members of the Levy County Sheriff's Office; provides for applicability, career status of the members, and administration.

Section 2: Provides for complaints about employees and procedure.

Section 3: Provides for a disciplinary appeal procedure.

Section 4: Provides for creation of a Career Service Appeal Board; membership; and duties.

Section 5: Provides for included individuals; circumvention.

Section 6: Provides exclusions.

Section 7: Provides for severability.

Section 8: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 18, 2007

WHERE?

Levy County Journal, published in Bronson, Levy County, Florida.

order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck, or a similar accident; (f) to raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy; (g) to serve as a parking enforcement specialist, pursuant to s. 316.640(2), F.S.

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

The bill does not appear to have an economic impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Sheriff to adopt such rules as are necessary for the implementation and administration of the act, although it is specified that nothing in the act may be construed as affecting the budget making powers of the Board of County Commissioners of Levy County.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.