

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1617
SPONSOR(S): Williams
TIED BILLS:

Lee County

IDEN./SIM. BILLS: SB 2978

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>11 Y, 0 N</u>	<u>Ligas</u>	<u>Cooper</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill amends the civil service system for employees of the Lee County Sheriff's Office. The bill revises the qualifications for civil service board membership, removes limitations for civil service members, and revises the retirement health insurance benefits. The bill also clarifies the political activity restriction.

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:

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

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.

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

¹⁶ Ch. 83-456, 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.

Lee County Civil Service

Currently, Lee County has a civil service board for the employees of the Lee County Sheriff's Department. The board is comprised of five members who are responsible for administering the act which applies to all classified deputy sheriffs and employees of the Lee County Sheriff's Office.

The five members of the board are either elected or appointed as follows:

- One member of the board is the Sheriff or his designee.
- One member of the board is elected by a majority of the employees with the rank of lieutenant or above.
- One member of the board is elected by a majority of the employees with the rank of deputy or sergeant.
- One member is an upstanding resident of Lee County and elected by the board.
- One member is the department chaplain.

Election of the three members is held at the first staff meeting in September and the members take office on the first day of October. If a member cannot serve, an alternate member will be elected in the same manner as provided in this section.

Members of the board must be 21 years of age or over, of good moral character, a citizen of the United States, a permanent resident of Florida, and must have resided in Lee County for at least one year prior to appointment.

The civil service act encompasses all classified members of the Lee County Sheriff's Office which includes all members under the rank of chief deputy.

The board elects one member as chairman and one member as secretary upon its organization. These officers are to perform their duties in accordance with the rules adopted by the board. As a body, the board has the power to:

- conduct investigations concerning the enforcement and effect of the act, and to require observance of its provision and the rules and regulations;
- hear and determine appeals of complaints respecting the administration of the act;
- establish and maintain a roster of all employees in the classified service of the Sheriff's Office showing their position, rank, compensation, benefits and place of residence;
- ascertain and record the duties and responsibilities appertaining to all positions in the classified service and classify such positions provided herein; and

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.

- keep any other records as may be necessary for the proper administration of the act.

All classified persons employed by the Sheriff's Office who have served for a period longer than one year in a position and rank shall be retained without preliminary or performance tests but shall be subject to the provisions of the act thereafter. In the event a new sheriff is elected all classified employees shall remain in the same position with the exception of personnel who are ranked at captain or above, who may be subject to a one grade demotion in rank to lieutenant or above in order to allow the Sheriff to establish his administration.

The Sheriff formulates reasonable rules governing the granting of leaves of absence to members of the Sheriff's Office in good standing. No leave of absence is given for more than one year, however when good cause is shown, the Sheriff is authorized to extend the leave. All employees who are inducted in the United States Armed Forces or who voluntarily enlist in times of war or national emergency receive a military leave of absence for the duration of their required service. During their service they are entitled to all the benefits and privileges of the act and retain seniority rights. They are also entitled to reemployment at the position they held at the time they entered military service, provided application for reinstatement is made within three months after termination of military service.

The minimum standards and qualifications for employment in the Sheriff's Office are as follows:

- A candidate must have graduated from a duly accredited high school or have the equivalent of a high school diploma.
- A candidate must be physically capable of performing all functions and duties of a deputy sheriff as established by the board, and this physical capacity is certified by a physician licensed in Florida.
- A candidate must be ineligible to receive public funds as a salary for services rendered as a deputy sheriff until they have submitted a written application for employment to the Sheriff and have passed an oral exam.
- A candidate must not have been convicted of a felony or a misdemeanor for which the penalty is more than a \$300 fine and/or 90 days confinement.
- If a candidate has military service, the candidate must have been honorably discharged.

Promotions are made by the Sheriff on a merit basis such as work performance, knowledge of job and other qualifications. Whenever there is an opening in any division, the position is to be publicly posted throughout the Sheriff's Office for a period of five days to allow all eligible person to apply for transfer from their division. The Sheriff has the right to transfer any employee for the betterment of the service, provided the employee will not be reduced in rank. No appointment or promotion in any position shall be deemed complete until after the expiration period of one year's probationary service, during which time the Sheriff can terminate employment.

Appointments take effect upon the date the appointee reports for duty. The Sheriff is authorized to reject an appointee that does not report for duty and does not explain their failure, in writing, within five days.

The practice and procedure of the board is in accordance with the rules and regulations adopted by the board. Board members are not authorized to orally or by letter, receive any money or things of value from any Sheriff's Office employee for any purpose. They may not use or promise to use their influence of authority to secure an appointment to any position classified in the act. Public officers and employees may not threaten or use coercion to induce a person holding a position in the Sheriff's Office to resign his position.

The Sheriff may suspend or dismiss an employee only for just cause. The suspended or dismissed employee has fifteen days to file an appeal with the board. Officers with rank of lieutenant or above will have the authority to take immediate disciplinary action including relieving an employee of duty. The Sheriff may suspend an employee for a reasonable period not exceeding thirty days. Every suspension is without pay; however, if it is found that the Sheriff acted in bad faith, the board has the power to

restore pay to the employee. Every removed or discharged employee of the Sheriff's Office has the opportunity to be heard by the board by filing a written request within fifteen days following the action. The appeal shall be investigated, heard and determined within thirty days after the filing. The decision of the board is final and absolute.

The meetings of the board must be public and must allow for the reasonable use of public buildings and rooms.

It is the duty of the Sheriff to provide a sufficient sum of money in his annual budget to enable the board to properly carry out the act. It is also the duty of the Sheriff to provide for a sufficient sum of money to pay a percentage of the cost of health insurance for Sheriff's Office employees who retire from active service after at least 15 years of creditable service. The costs include premiums for major medical and hospitalization, but do not include premiums for dental insurance. When a retiree becomes eligible for Medicare, his health coverage will convert to the Medicare supplement health insurance. In order to receive this benefit the retiree must have served with the Lee County Sheriff's Office for the 10 years immediately preceding his retirement. The retiree may claim up to 5 years of creditable service earned while in the employ of another member agency within the Florida Retirement System (FRS).

The Sheriff's Office bases the percentage of a retiree's health insurance costs it will pay upon the number of years of creditable service that the retiree has accumulated in the FRS. Fifteen years of credible service entitles the retiree to have 75 percent of his health insurance premiums paid by the Sheriff's Office. The Sheriff's Office pays an additional 5 percent of the insurance premiums for each year of service in excess of 15 years until reaching 100 percent.

If an employee retires after at least 10 years of service with the department but before reaching retirement age and has participated in FRS for at least 15 years, he may pay his dependant's health insurance costs until he begins to receive retirement benefits under the FRS. If an employee has health insurance coverage through a previous employer, the Lee County Sheriff's Office will be the secondary payor. If a retiree's health insurance is paid at 100 percent of the premium at 20 years of service, the Sheriff's Office will pay 50 percent of the dependent's health insurance coverage. Upon a retiree's death, his spouse may continue the health insurance coverage previously provided by the retiree but premiums must be paid to the Lee County Sheriff's Office. The retirement benefit is only available to an employee when he retires. The retiree does not have the option of receiving the benefit at a later date.

No person holding a classified position in the sheriff's office shall take an active part in any political campaign while on duty however employees are permitted to exercise political rights while off duty.

Effect of Proposed Changes

The bill amends the laws governing the civil service board for employees of the Lee County Sheriff's Department. The bill redesignates the department as the Lee County Sheriff's Office.

The bill provides that the five members of the Lee County Civil Service Board are either elected by a majority of persons voting or appointed as follows:

- One member of the board will be the Sheriff or his designee.
- One member of the board will be elected by a majority of the employees with the rank of lieutenant or above. An alternate member shall be elected at the same time and in the same manner for this position.
- One member of the board is elected by a majority of the employees below the rank of lieutenant. An alternate member shall be elected at the same time and in the same manner for this position.
- One member is an upstanding resident of Lee County to be selected and appointed by the board at the first organizational meeting held on the first business day of October after taking office.

- One member is the lead department chaplain or his or her designee, as determined by the Sheriff.

The bill provides for the election of the board members. The bill also outlines the criteria for membership of the board and states that members shall not be subject to adverse action for his service on the board.

The bill states that the board members are to perform their duties in accordance with the rules adopted by the board. As a body, the board has the power to:

- Investigate and enforce compliance by the Sheriff and any and all classified and unclassified employees of the Sheriff's office with regard to the terms and conditions of the act and implement investigations and determinations;
- hear and determine appeals of complaints respecting the administration of the act;
- establish and maintain a roster of all employees in the classified service of the Sheriff's Office showing their position, rank, compensation, benefits and place of residence;
- ascertain and record the duties and responsibilities of the Sheriff's office in manner approved by the board all positions in the classified service and classify such positions provided herein;
- keep any other records as may be necessary for the proper administration of the act; and
- issue subpoenas for the appearance of witnesses and production of documents and things in connection with investigations and hearings conducted pursuant to the act.

The bill provides that the civil service act encompasses all classified employees³³ of the Lee County Sheriff's Office which includes all members under the rank of chief deputy. All classified employees of the Sheriff's Office who have served for a period longer than one year in a position and rank shall be retained in the same capacity without preliminary or performance tests but are subject to the provisions of the act thereafter. If a new sheriff is elected, all classified employees shall remain in the same position with the exception of those serving in a rank or grade immediately below the chief deputy. The Sheriff's executive and administrative staff office may be subject to a one grade demotion in rank to lieutenant or above in order to allow the Sheriff to establish his administration. Employees may be to a position equal in terms of rank, pay, and benefits to those in which other persons of the same rank serve.

The bill provides that no leave of absence is approved for more than one year, however when good cause is shown, the Sheriff is authorized to extend the leave, so long as the leave period does not exceed the Sheriff's current term of office

The bill provides the minimum standards and qualifications for employment or reemployment as a classified employee in the Sheriff's Office. Employment or reemployment to any position in the office is deemed complete after the expiration of a period of 1 year's probationary service, during which time the Sheriff can terminate employment without cause. Employment and reemployment take effect upon the date the appointee is scheduled to report for duty.

The bill provides that the promotional procedures with respect to all classified employees must conform with the Sheriff's office policies based on CALEA standards as adopted by the Sheriff's Office for so long as the Sheriff's Office remains an accredited agency. In the event that the Sheriff's Office is no longer an accredited agency, promotions will be made on a merit basis considering work performance, knowledge of job, and other similar qualifications.

The bill provides that the practice and procedure of the board is in accordance with the rules and regulations adopted by the board. Board members are not authorized to receive any thing of value from

³³ "Classified employees" include all full-time deputy sheriffs, correctional officers, and civilian employees who have completed their original or reemployment probationary period, but do not include any contractual employees, appointees, volunteers, or other persons who do not serve in a regularly budgeted position in the Sheriff's office on a full-time basis and the Sheriff or his or her second in command.

any Sheriff's Office employee, political party or private individual for any purpose, nor may they use or promise to use their influence of authority to secure an appointment to any position classified in the act. Public officers and employees of the Sheriff's Office may not threaten or use coercion to induce a person holding a position in the Sheriff's Office to resign his position.

The bill states that the Sheriff may discipline, suspend for up to 30 days without pay, terminate, or withdraw the appointment of an employee only for just cause. An employee subject to substantial discipline may, within 15 days of the discipline file a notice of appeal with the board's secretary. The board must schedule a hearing within 30 days of receipt of the notice of appeal. At the hearing the employee has the burden of proving, with substantial evidence, that the Sheriff lacked just cause. The board has the authority to investigate any discipline and if the board finds that the Sheriff did not have just cause, the board has the authority to either vacate the discipline or reinstate the employee's employment and pay. The bill prohibits the board from substituting judgment regarding the severity of the action imposed.

The bill states that it is the duty of the Sheriff to provide for a sufficient sum of money to pay a percentage of the cost of health insurance for full-time Sheriff's Office employees who retire from active service after at least 15 years of service. The bill also outlines various provisions that regulate the health insurance benefits.

The bill states that the retirement benefit is only available to an employee at the time he or she retires, has accumulated the minimum number of full-time service years and has filed to receive a pension disbursement from the FRS.

The bill permits classified employees in the sheriff's office to take part in any political campaign while off duty as long as they are not in uniform.

The bill also 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. All requests for changes or amendments to the act proposed by a board member or alternate board member shall come before the board in a public meeting and be approved by a majority vote of the board. The board as a whole is authorized to request the Legislature to amend the act on behalf of the classified employees of the Sheriff's Office.

The bill provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Provides for the composition and purpose of the career service board; provides for the qualifications of board members; provides the definition of affected employees; provides for creation board positions; provides for certification of the act; provides the powers of the board; provides for positions after adoption of the act and election of a new Sheriff; provides for leaves of absence and military service; provides qualifications for employment; provides for appointments, promotions and transfers; provides the practices and procedures of the board; provides for misconduct and misuse of professional influence; provides for discipline, suspensions, dismissals and appeals; provides for public meetings; provides for retirement health insurance benefits; provides for political activity; provides for legal construction and amendment of the act; and provides that all laws and parts of laws inconsistent with this act are repealed.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 16, 2007

WHERE?

News Press, a newspaper published in Lee County, Florida.

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

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.