

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.

¹⁷ Ch. 95-470, 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
- keep any other records as may be necessary for the proper administration of the act.

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.

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. 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 or administering the act which applies to all classified deputy sheriffs and employees of the Lee county Sheriff's Office.

The bill provides that the five members of the 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 that the election of the three members and their alternates is held at the first staff meeting on the second Tuesday of September and the newly elected members take office on the first day of October. Civilian employees not assigned a rank may vote for either the position elected by those with the rank of lieutenant or above or the position elected by the employees below the rank of lieutenant. All alternate members serve is, for any reason, a member of the board cannot serve. Elected board members serve a term of 2 years.

The bill states that no board member shall be subject to any adverse action in retaliation for his or her service on the board, decisions of the board, or performance of his or her official duties in transacting business of the board.

The bill provides that members of the board must be 18 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 bill provides that the civil service act encompasses all classified employees of the Lee County Sheriff's Office which includes all members under the rank of chief deputy. "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.

The bill provides that the board elects one member as chairperson and one member as secretary upon its organization. They 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 regards 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 states that 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 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 those serving in a rank or grade immediately below the chief deputy. The persons who comprise the Sheriff's executive and administrative staff and who command a major component, subdivision, or bureau of the Sheriff's 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. The salary of all demoted persons may be reduced to no less than the top of the grade to which they are demoted. If transferred, the transfer shall be to a position equal in terms of rank, pay, and benefits to those in which other person of the same rank serve. The elimination of the new Sheriff of a position or grade under a previous administration constitutes a demotion.

The bill provides that 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 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. All classified 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 bill provides the minimum standards and qualifications for employment or reemployment as a classified employee in the Sheriff's Office are as follows:

- They must submit a complete, written application for employment.
- They must be graduates of a duly accredited high school or possess the equivalent of a high school diploma from a school recognized by the state.
- They must be physically capable of performing all functions and duties of the position that they are seeking and must submit to a physical exam conducted by a physician licensed in this state.
- They are required to submit to a background investigation, drug screen, polygraph, or CVSA examination and oral interview.
- They may not have been convicted of a felony of any kind, a crime involving moral turpitude, or a misdemeanor for which the penalty is more than a \$300 fine and/or 90 days confinement.
- If they have military service they must submit a DD 214 indicating that their military service and discharge were under honorable conditions. If they were discharged for medical reasons they must be able to perform all functions of the position in which they seek.
- They must comply with the requirements of the Florida Department of Law Enforcement and be eligible for state certification.

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 Sheriff will make all promotions. Open positions are to be publicly posted throughout the Sheriff's Office and on the website for seven days to allow for application by qualified employees who are entitled to a preference for any position of higher grade or rank than an entry level position. The Sheriff has the authority to transfer any employee for the betterment of the service, provided the employee shall not be reduced in rank or compensation and the transfer shall not be considered disciplinary in nature.

The bill states that employment or reemployment to any position in the office shall not be deemed complete until after the expiration of a period of 1 year's probationary service, during which time the Sheriff can terminate employment without cause. No promotion shall be deemed complete until after the expiration of a period of 6 months of service during which time the Sheriff may return the promoted person to his or her former rank and pay for failure or inability to perform the duties of the position to which he or she had been promoted. Employment and reemployment take effect upon the date the appointee is scheduled to report for duty. The Sheriff is authorized to reject a person offered employment by the Sheriff that does not report for duty and does not explain their failure, in writing, within five days.

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 orally or in writing, receive any money or things of value from any Sheriff's Office employee, political party or private individual 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 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, which includes loss of pay, accrued time, benefits, rank or position; disciplinary transfer;

suspension; or termination, may, within 15 days of the discipline, suspension, termination or withdrawal of appointment, 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 and a continuation of a hearing may be granted by the board upon a showing of good cause. 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, suspension, termination, or withdrawal of appointment and, if the board finds that the Sheriff did not have just cause, the board has the authority to:

- Vacate the discipline, restore the employee's pay and benefits and in the event the suspension is not completed, void the remaining suspension time and restore the employee to duty; or
- Reinstatement the employee's employment and pay without loss of rank or seniority.

The bill prohibits back pay from exceeding 30 days. If the board determines the action taken was with just cause it shall uphold the disciplinary decision of the Sheriff. The board is not permitted to substitute judgment regarding the severity of the action imposed. Each party may make a timely appeal to the circuit court upon receipt of the board's written order. The decision of the board is final and absolute. The bill states that classified employees are free from retaliatory action based on the exercise of their rights in the act.

The bill provides that the meetings of the board must be public and must allow for the reasonable use of public buildings and rooms. The term "public building" shall include any buildings under the lawful control of the Lee County government or Lee County Sheriff's Office which provides for free public access under minimal restrictions, as necessary, to provide for the safety and security of its occupants.

The bill states that 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 full-time service. The costs include premiums for major medical and hospitalization, but do not include premiums for dental or vision insurance. When a retiree becomes eligible for Medicare, his health coverage will convert to the Medicare supplement health insurance. The benefits are available only to full-time employees who retire from the Lee County Sheriff's Office after having participated in one or more retirement programs of the Florida Retirement System (FRS). The retiree may claim up to 5 years of creditable service earned while in the employ of another member agency within the FRS provided the last 10 years of full-time service have been with the Lee County Sheriff's Office. All prior service is subject to verification from the Division of Retirement of the Department of Administration.

The bill states that an employee is considered retired from the FRS at such time as he or she takes any form of distribution from his or her FRS defined contribution, hybrid option, or investment plan retirement account. The bill defines "retirement distribution" as receiving a monthly pension check, taking a lump-sum payment, or rolling over any or all of the value of the retiree's account into a personal or other annuity account.

The bill provides that if an employee retires after at least 15 years of full-time service the Sheriff's Office will pay 75 percent of the retiree's health insurance premium costs. For each additional year of full-time service beyond the 15-year mark, the Sheriff's Office will pay an additional 5 percent of the premium costs until the maximum of 100 percent is paid at 20 years of service. Fractional years will be paid at the rate of .416 percent per month. 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 is eligible to receive either an immediate or future health insurance subsidy from the FRS, then the Sheriff's Office will reduce the amount of any health insurance premium it pays on behalf of the retiree by an amount equal to the value of the subsidy. For retired employees having at least 15 years of service but less than 20 years, the Sheriff's Office shall pay for a percentage of health insurance for the retiree. At that time, a retiree may purchase health insurance for their spouse or qualified dependents at the prevailing Lee County Sheriff's Office group rate. 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 spouse or qualified dependent's health insurance coverage. Upon a retiree's death, his spouse may continue the health insurance

coverage previously provided by the retiree and qualified spouses are entitled to a reduced premium rate but all premiums must be paid to the Lee County Sheriff's Office.

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 retiree does not have the option of receiving the benefit at a later date. Benefits must be applied for within 60 days of the last physical day of work and it is the responsibility of the retiree to notify the Sheriff's Office if he or she continued insurance benefits and later filed to receive a pension disbursement from the FRS. This applies to all classified and unclassified employees.

The bill provides that 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 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.

The bill states that 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 bill authorizes the board as a whole 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