

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

Florida's Sheriffs/Civil Service

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,¹ and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

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." Section 30.53, F.S., provides, in pertinent part, that "[t]he independence of the sheriffs shall be preserved concerning the...selection of personnel, and the hiring, firing, and setting of salaries of such personnel...."

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua,² Baker,³ Bay,⁴ Brevard,⁵ Broward,⁶ Charlotte,⁷ Citrus,⁸ Clay,⁹ Columbia,¹⁰ Escambia,¹¹ Flagler,¹² Glades,¹³ Hernando,¹⁴ Indian River,¹⁵ Lake,¹⁶ Lee,¹⁷ Leon,¹⁸ Levy,¹⁹ Madison,²⁰ Manatee,²¹ Marion,²² Martin,²³ Monroe,²⁴ Okaloosa,²⁵ Okeechobee,²⁶ Orange,²⁷ Osceola,²⁸ Palm

¹ Section 1(d), Art. VIII of the State Constitution.

² Chs. 84-388 and 86-342, L.O.F.

³ Ch. 2006-318, L.O.F.

⁴ Ch. 84-309, L.O.F.

⁵ Ch. 83-373, L.O.F.

⁶ Ch. 93-370, L.O.F.

⁷ Chs. 79-436, 86-349, and 89-508, L.O.F.

⁸ Ch. 2001-296, L.O.F.

⁹ Chs. 89-522 and 93-397, L.O.F.

¹⁰ Ch. 2004-413, L.O.F.

¹¹ Ch. 89-492, L.O.F.

¹² Chs. 90-450 and 2000-482, L.O.F.

¹³ Ch. 2003-311, L.O.F.

¹⁴ Ch. 2000-414, L.O.F.

¹⁵ Ch. 2002-355, L.O.F.

¹⁶ Chs. 90-386, 93-358 and 2005-349, L.O.F.

¹⁷ Chs. 74-522, 87-547, 95-514, and 2007-320, L.O.F.

¹⁸ Ch. 83-456, L.O.F.

¹⁹ Ch. 2007-290, L.O.F.

²⁰ Ch. 95-470, L.O.F.

²¹ Ch. 89-472, L.O.F.

Beach,²⁹ Pasco,³⁰ Pinellas,³¹ Polk,³² St. Lucie,³³ Santa Rosa,³⁴ Sarasota,³⁵ Seminole,³⁶ and Walton³⁷ counties.

Lee County Sheriff's Office/Civil Service

The civil service system for the Lee County Sheriff's Office was established by the Florida Legislature in 1974 pursuant to ch. 74-522, L.O.F. This special act was subsequently amended in 1987, 1995 and 2007.

Section 15 of the act provides for retirement health insurance benefits for employees of the sheriff's office. Currently, when a retiree receiving health insurance benefits becomes eligible for Medicare, his or her health coverage converts to Medicare Supplement health insurance.

In order to receive the retirement health insurance benefit, a retiree must have served with the sheriff's office for the 10 years immediately preceding retirement. The retiree may claim up to five years of creditable service earned while employed by another member agency within the Florida Retirement System (FRS). The sheriff's office is required to verify all years of creditable service claimed through the Department of Management Services' Division of Retirement.

If an employee retires from the sheriff's office after at least 10 years of service with the agency, but before reaching retirement age, and has participated in the FRS for at least 15 years, he or she may pay his and her or his and her dependents' health insurance costs until he or she begins to receive retirement benefits under the FRS. The sheriff's office pays a percentage of the employee's health insurance costs when he or she begins to receive retirement benefits. The retiree is required to give the sheriff's office written notice of the date of payment of the initial retirement benefit, and the sheriff's office is required to verify this date through the Division of Retirement.

The sheriff's office bases the percentage of a retiree's health insurance costs it pays upon the number of years of creditable service that the retiree has accumulated in the FRS. Fifteen years of creditable service entitles the retiree to have 75 percent of his or her health insurance premiums paid by the sheriff's office. The sheriff's office pays an additional five percent of the insurance premiums for each year of service in excess of 15 years until reaching a maximum of 100 percent of the premium at 20 years of service. The sheriff's office pays an additional 1/12 of one percent of the premium for each month served until the full 100 percent is paid.

If an employee has health insurance coverage through a previous employer, the sheriff's office acts as the secondary payor. If an employee receives a retiree health insurance subsidy from the state, the sheriff's office reduces the amount of health insurance premiums it pays by the amount of the subsidy.

The sheriff's office pays for the health insurance coverage of the retiree and 50 percent of his or her dependents' health insurance coverage only if the retiree's health insurance is paid at 100 percent of the premium at 20 years of service. A retiree who obtains benefits without attaining 20 years of service

²² Ch. 87-457, L.O.F.

²³ Ch. 93-388, L.O.F.

²⁴ Chs. 78-567, 89-410, 89-461, 97-345, and 98-507, L.O.F.

²⁵ Chs. 81-442, 85-472, and 90-492, L.O.F.

²⁶ Ch. 2006-338, L.O.F.

²⁷ Ch. 89-507, L.O.F.

²⁸ Chs. 89-516 and 2000-388, L.O.F.

²⁹ Chs. 93-367, 99-437 and 2004-404, L.O.F.

³⁰ Ch. 90-491, L.O.F.

³¹ Chs. 89-404 and 90-395, L.O.F.

³² Chs. 88-443, 98-516 and 2006-320, L.O.F.

³³ Ch. 89-475, L.O.F.

³⁴ Ch. 2002-385, L.O.F.

³⁵ Ch. 86-344, L.O.F.

³⁶ Ch. 77-653, 80-612, 88-451, and 97-376, L.O.F.

³⁷ Ch. 2007-319, L.O.F.

may pay for the health insurance of dependents. Upon a retiree's death, his or her spouse may continue the health insurance coverage previously provided by the retiree. Premiums must be paid to the sheriff's office.

This retiree health insurance benefit only is available to an employee when he or she retires. If the employee does not elect to receive the insurance benefit upon retiring, he or she does not have the option of receiving the benefit at a later date.

Group Insurance for Retired Employees

Section 112.0801, F.S., requires that any state agency, county, municipality, special district, community college, or district school board which provides life, health, accident, hospitalization or annuity insurance, or all of any kinds of such insurance, for its officers and employees and their dependents upon a group insurance plan or self-insurance plan, must allow all former personnel who have retired, and their eligible dependents, the option of continuing to participate in such group insurance plan or self-insurance plan. Retirees and their eligible dependents must be offered the same health and hospitalization insurance coverage that is provided to active employees at a premium cost of no more than the premium cost applicable to active employees. For the retired employees and their eligible dependents, the cost of any such continued participation in any type of plan or any of the cost thereof may be paid by the employer or by the retired employees.

To determine health and hospitalization plan costs, the employer is required to commingle the claims experience of the retiree group with the claims experience of the active employees. For other types of coverage, the employer may commingle the claims experience of the retiree group with the claims experience of active employees. Retirees covered under Medicare may be experience-rated separately from the retirees not covered by Medicare and from active employees, provided that the total premium does not exceed that of the active group, and coverage is basically the same as for the active group.

For purposes of these provisions, "retiree" means any officer or employee who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement and who begins receiving retirement benefits immediately after retirement from employment. In addition to these requirements, any officer or employee who retires under the Public Employee Optional Retirement Program is considered a "retired officer or employee" or "retiree" if he or she: meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29),³⁸ or has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has six years of creditable service.

Law Enforcement Death Benefits

³⁸ "Normal retirement date" means the first day of any month following the date a member attains one of the following statuses:

(a) If a Regular Class member, the member:

1. Completes six or more years of creditable service and attains age 62; or
2. Completes 30 years of creditable service, regardless of age, which may include a maximum of four years of military service credit as long as such credit is not claimed under any other system.

(b) If a Special Risk Class member, the member:

1. Completes six or more years of creditable service in the Special Risk Class and attains age 55;
2. Completes 25 years of creditable service in the Special Risk Class, regardless of age; or
3. Completes 25 years of creditable service and attains age 52, which service may include a maximum of four years of military service credit as long as such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

(c) If a Senior Management Service Class member, the member:

1. Completes six years of creditable service in the Senior Management Service Class and attains age 62; or
2. Completes 30 years of any creditable service, regardless of age, which may include a maximum of four years of military service credit as long as such credit is not claimed under any other system.

(d) If an Elected Officers' Class member, the member:

1. Completes six years of creditable service in the Elected Officers' Class and attains age 62; or
2. Completes 30 years of any creditable service, regardless of age, which may include a maximum of four years of military service credit as long as such credit is not claimed under any other system.

"Normal retirement age" is attained on the "normal retirement date."

Section 112.19, F.S., provides for death benefits for law enforcement, correctional and correctional probation officers. A sum of \$50,000, as adjusted, is paid when an officer, while engaged in the performance of his or her duties, is accidentally killed or receives accidental bodily injury which results in the loss of the officer's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. An additional sum of \$50,000 is payable if the accidental death occurs under certain circumstances. If an officer is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act, the sum of \$150,000, as adjusted, is paid. If the officer is killed in the line of duty as a result of an act of violence inflicted by another person while engaged in his duties or as a result of an assault against the officer under riot conditions, the sum of \$1,000 is paid toward the officer's funeral and burial expenses.

Any political subdivision of the state that employs a full-time law enforcement officer who is killed in the line of duty on or after July 1, 1993, as a result of an act of violence inflicted by another person while the officer is engaged in the performance of law enforcement duties or as a result of an assault against the officer under riot conditions is required to pay the entire premium of the political subdivision's health insurance plan for the employee's surviving spouse until remarried, and for each dependent child of the employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if at the time of the employee's death, the child is dependent upon the employee for support; and the surviving child continues to be dependent for support, or the surviving child is a full-time or part-time student and is dependent for support.

Any employer who employs a full-time law enforcement officer who, on or after January 1, 1995, suffers a catastrophic injury in the line of duty is required to pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support, or the child is a full-time or part-time student and is dependent for support. If the injured employee subsequently dies, the employer is required to continue to pay the entire health insurance premium for the surviving spouse until remarried, and for the dependent children. Health insurance benefits payable from any other source reduce these benefits.

Effect of Proposed Changes

HB 1031 amends Sections 9 and 15 of the Lee County Sheriff's Office Civil Service Act. Section 9 regards qualifications for employment. The bill rewords the minimum standards and qualifications for employment or reemployment as a classified employee with military service, clarifying that applicants must have received no less than an honorable discharge, and that those discharged for medical conditions or reasons must be able to perform all essential tasks of the position for which they have applied.

The bill also clarifies provisions relating to retirement health insurance benefits such as funding of benefits, qualifications for participation by retirees and their dependents, employer and employee premium payments, the effect of Medicare eligibility, and disability and death benefits, and notification requirements.

The bill also provides a new deadline for employees to be able to claim previous service with another Florida Retirement System employer to meet a 15-year requirement for the sheriff to pay a portion of retirement health insurance benefits, a precise deadline for applying for benefits, and expressly refers to the purchase of dental and/or vision insurance.

Specifically, the bill:

- addresses funding of retirement health insurance benefits, noting that pursuant to s.112.0801, F.S., the sheriff is required to offer all retirees the option of continuing to participate in the agency's group health and hospitalization insurance plan with the premium for such continued insurance to be paid by the retiree or the employer.

- provides definitions for “eligible employee,” “employee premium,” “employer premium,” “Florida Retirement System,” “health insurance subsidy,” “Lee County Sheriff’s Office retirement health and hospitalization insurance plan,” “premium,” “qualified dependent,” “retirement,” and “vested” or “vesting.” These definitions are intended to update language initially drafted more than 30 years ago in order to make the terminology current, and avoid ambiguities which could lead to confusion in interpretation and application.
- provides the parameters for continuing health insurance coverage for retirees with less than 15 years of service, noting that retirees, as defined in ss. 121.021(60)³⁹ or 121.4501(2)(j), F.S.,⁴⁰ who terminate from the sheriff’s office with fewer than 15 years of service, and their qualified dependents, have the option, pursuant to s. 112.0801, F.S., to obtain the same health and hospitalization insurance coverage as active employees at a cost of no more than the premium applicable to active employees. All premiums are payable by the retiree or dependent. Retirees also may purchase, at their own expense, individual or family group dental insurance or vision insurance, or both, through the agency’s group policies. Premiums may be adjusted annually based on actual qualified group costs to the sheriff’s office.
- clarifies language relating to retirement health insurance benefits for employees with 15 or more years of service, restating that the sheriff’s office will budget a sufficient sum of money to pay a portion of such benefits, and that retirees may purchase individual or family group dental insurance and/or vision insurance at their own expense. The bill additionally specifies that these benefits only are available to employees who retire from the Florida Retirement System and terminate employment after 15 or more years of service with the sheriff’s office. A member of the FRS employed prior to October 1, 2009, who has been a full-time member of the sheriff’s office for the 10 years immediately preceding his or her retirement may claim up to five years of previous service with another FRS system employer subject to verification by the Department of Management Services’ Division of Retirement to meet the 15-year requirement. Persons hired by the sheriff’s office on or after October 1, 2009, are not eligible to claim additional years of service from previous FRS employers.⁴¹
- provides that if an employee terminates from the sheriff’s office after accumulating 15 years or more of full-time service but prior to receiving an FRS retirement benefit, he or she may continue participating in the agency’s group health and hospitalization insurance plan by paying the full current group premium rate for individual or family coverage. Upon receiving written notification and documentation from the FRS that the former employee has become a retiree, the sheriff’s office will begin to pay a portion of the retiree’s and qualified dependents’ health and hospitalization insurance premium from the effective date of retirement. It is the retiree’s responsibility to ensure that notification from the FRS is made to the sheriff’s office, and no retroactive payments will be made due to the retiree’s failure to timely notify the sheriff’s office of his or her retirement.
- provides that if a retiree is entitled to retirement health insurance benefits paid for by any previous or subsequent employer, the sheriff’s office will be a secondary payor to that coverage.

³⁹ Section 121.021(60), F.S., defines “retiree” as a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member. This term also includes a person who retired and is receiving benefits under s. 112.05, F.S.

⁴⁰ Section 121.4501(2)(j), F.S., defines “retiree” as a former participant of the Florida Retirement System Public Employee Optional Retirement Program who has terminated employment and has taken a distribution as provided in s. 121.591, F.S., except for a mandatory distribution of a de minimis account authorized by the state board.

⁴¹ According to March 14, 2008, correspondence received from Robert C. Shearman, an attorney representing the sheriff’s office, “[t]his is in keeping with practices implemented by other governmental entities, including (based upon information and belief) Lee County, which have reportedly eliminated entirely the ability of employees to claim service with a previous FRS employer in order to qualify for subsidized health and hospitalization insurance benefits.”

- provides that the employer premium, the portion of a qualified retiree's health and hospitalization insurance premium payable by the sheriff's office, is based on the following schedule:

-at 15 years of service the sheriff's office will pay up to 75 percent of the portion of the retiree's insurance premium that exceeds the amount of any health insurance subsidy paid to a retiree. For each full month of employment with the sheriff's office beyond 15 years, the sheriff pays an additional 0.416 percent per month through 19 years and 11 months of service. The insured retiree may purchase, at his or her own expense, group coverage for a qualified spouse or dependents. Employee premium payments and payments for insurance coverage of dependents of the retiree are payable by the retiree.

-at 20 years of service and beyond, the sheriff's office will pay up to 100 percent of the portion of the retiree's insurance premium that exceeds the first \$100 of any health insurance subsidy received by a retiree and additionally pays 50 percent of the insurance premium for any qualified spouse or dependents. Any employee premium payments and the balance of payments for dependents of the retiree are payable by the retiree or qualified dependent. Any change to the health insurance subsidy by the state is factored into these payments.

Premiums may be adjusted annually based on actual qualified group costs to the sheriff's office.

- provides that when a retiree or qualified dependent becomes eligible for Medicare health insurance, it is his or her responsibility to enroll in and utilize his or her Medicare benefits to pay primary, secondary or last payments to the extent stated under federal law. The sheriff's office will treat an eligible retiree or qualified dependent as enrolled in Medicare parts A and B, regardless of actual enrollment, and base its payments accordingly.
- provides that any employee premium payments or portions of such payments due from the retiree be made directly to the sheriff's office either by the retiree or authorized deduction from FRS benefit payments.
- provides that all benefits must be applied for within 60 days of the employee's last physical day of employment. If an employee chooses not to receive any or all retirement benefits or fails to make a selection of benefits during this time period, he or she does not have the option to do so at a later date. Retirees receiving benefits may add dependents at a later date if a qualifying event has occurred.
- provides that upon the death of an insured retiree, his or her spouse or qualified dependents may continue to participate in any group health and hospitalization plan that was in force on the time of such death. The death of a retiree is not considered a qualifying event to add additional persons or modify existing insurance coverage. Premiums will not be increased unless there is an overall increase in premiums for active employees.
- provides that in the event that a current classified employee of the sheriff's office dies or becomes totally and permanently disabled while carrying out his duties but does not qualify for benefits under s. 112.19, F.S., the employee will be considered retired from the sheriff's office at the date of such death or disability. This retirement qualifies the employee and his or her surviving qualified dependents to be insured provided that the employee meets all requirements as to length of service and selection of benefits.
- provides that the section applies to all classified and unclassified members of the sheriff's office, provided that they meet all eligibility requirements.

The act has an effective date of upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Amends ss. (6) of s. 9 and s. 15 of ch. 74-522, L.O.F., as amended by ch. 2007-320, L.O.F., relating to the Lee County Sheriff's Office Civil Service System.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 22, 2008.

WHERE? The *News-Press*, a daily newspaper of general circulation published in Lee County.

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 Economic Impact Statement indicates that it is not anticipated that the bill will create any significant economic effect.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Division of Retirement has noted that the bill creates a definition at lines 92-94 for "vested" or "vesting" based upon the vesting requirements defined for the FRS Pension Plan, but does not reference these terms elsewhere.

Other Comments

Language at Lines 192-196 of the bill is confusing and problematic:

"At 20 years of service and beyond, the Lee County Sheriff's Office shall pay up to 100 percent of the portion of the retiree's health and hospitalization insurance premium that exceeds the first \$100 of any health insurance subsidy received by the retiree...."

This language appears to tie the payment of retiree health insurance by the sheriff's office upon receipt of the FRS health insurance subsidy.

The FRS health insurance subsidy is paid pursuant to a trust fund in the state treasury entitled the "Retiree Health Insurance Subsidy Trust Fund." Should funding for the retiree health insurance subsidy

program fail to provide full benefits for all participants, the benefits may be reduced or canceled at any time. Payments under this program range from \$30 to \$150.⁴²

The language raises questions as to what will happen if this subsidy is cancelled, or a retiree receives less than \$100 or more than \$100 in subsidy. The Sponsor may want to consider amending the bill and using specific amounts which will be paid by the sheriff's office, rather than focusing on the health insurance subsidy as a calculation.

STATEMENT OF THE SPONSOR

The Lee County Sheriff's Office Civil Service Board in cooperation with the Lee County Sheriff's Office proposed significant amendments last year to the Lee County Sheriff's Office Civil Service Act in order to promote the just and efficient administration of the Act and clarify ambiguities which had become apparent based upon legal and organizational developments. The changes approved by the Legislature last year did not address Section 15 of the Act providing retirement health insurance benefits for employees.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁴² Section 112.363, F.S.