



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government**—This bill creates career service appeals boards to hear employee disciplinary cases. These boards have subpoena power as part of the disciplinary hearing process. Also, the sheriff is granted rulemaking authority to implement the legislation.

#### 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,<sup>1</sup> 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,<sup>2</sup> Baker,<sup>3</sup> Bay,<sup>4</sup> Brevard,<sup>5</sup> Broward,<sup>6</sup> Charlotte,<sup>7</sup> Citrus,<sup>8</sup> Clay,<sup>9</sup> Columbia,<sup>10</sup> Escambia,<sup>11</sup> Flagler,<sup>12</sup> Glades,<sup>13</sup> Hernando,<sup>14</sup> Indian River,<sup>15</sup> Lake,<sup>16</sup> Lee,<sup>17</sup> Leon,<sup>18</sup> Levy,<sup>19</sup> Madison,<sup>20</sup> Manatee,<sup>21</sup>

<sup>1</sup> Section 1(d), Art. VIII of the State Constitution.

<sup>2</sup> Chs. 84-388 and 86-342, L.O.F.

<sup>3</sup> Ch. 2006-318, L.O.F.

<sup>4</sup> Ch. 84-309, L.O.F.

<sup>5</sup> Ch. 83-373, L.O.F.

<sup>6</sup> Ch. 93-370, L.O.F.

<sup>7</sup> Chs. 79-436, 86-349 and 89-508, L.O.F.

<sup>8</sup> Ch. 2001-296, L.O.F.

<sup>9</sup> Chs. 89-522 and 93-397, L.O.F.

<sup>10</sup> Ch. 2004-413, L.O.F.

<sup>11</sup> Ch. 89-492, L.O.F.

<sup>12</sup> Chs. 90-450 and 2000-482, L.O.F.

<sup>13</sup> Ch. 2003-311, L.O.F.

<sup>14</sup> Ch. 2000-414, L.O.F.

<sup>15</sup> Ch. 2002-355, L.O.F.

<sup>16</sup> Chs. 90-386, 93-358 and 2005-349, L.O.F.

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

<sup>18</sup> Ch. 83-456, L.O.F.

<sup>19</sup> Ch. 2007-290, L.O.F.

<sup>20</sup> Ch. 95-470, L.O.F.

Marion,<sup>22</sup> Martin,<sup>23</sup> Monroe,<sup>24</sup> Okaloosa,<sup>25</sup> Okeechobee,<sup>26</sup> Orange,<sup>27</sup> Osceola,<sup>28</sup> Palm Beach,<sup>29</sup> Pasco,<sup>30</sup> Pinellas,<sup>31</sup> Polk,<sup>32</sup> St. Lucie,<sup>33</sup> Santa Rosa,<sup>34</sup> Sarasota,<sup>35</sup> Seminole,<sup>36</sup> and Walton<sup>37</sup> counties.

## Effect of Proposed Changes

HB 1547 provides a civil service system for employees of the Wakulla County Sheriff.

### Applicability

The act applies to all sworn and nonsworn persons employed by the sheriff, including deputy sheriffs. Specifically excluded from the provisions of the act are:

- the sheriff;
- special deputy sheriffs appointed pursuant to s. 30.09(4), F.S.;<sup>38</sup>
- members of the sheriff's posse or reserve unit; and
- individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless they also are employed full-time by the sheriff.

The bill provides that it is not the intent of the act to grant collective bargaining rights to persons employed by the Wakulla County Sheriff who do not otherwise have that right pursuant to law.<sup>39</sup>

### Immunities

The bill attempts to provide immunity from all civil liability to members of career service boards and their alternates, the sheriff's witnesses while giving truthful testimony, and the sheriff's representatives, individually and collectively, with regard to actions taken pursuant to the act.

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<sup>21</sup> Ch. 89-472, L.O.F.

<sup>22</sup> Ch. 87-457, L.O.F.

<sup>23</sup> Ch. 93-388, L.O.F.

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

<sup>25</sup> Chs. 81-442, 85-472, and 90-492, L.O.F.

<sup>26</sup> Ch. 2006-338, L.O.F.

<sup>27</sup> Ch. 89-507, L.O.F.

<sup>28</sup> Chs. 89-516 and 2000-388, L.O.F.

<sup>29</sup> Chs. 93-367, 99-437 and 2004-404, L.O.F.

<sup>30</sup> Ch. 90-491, L.O.F.

<sup>31</sup> Chs. 89-404 and 90-395, L.O.F.

<sup>32</sup> Chs. 88-443, 98-516 and 2006-320, L.O.F.

<sup>33</sup> Ch. 89-475, L.O.F.

<sup>34</sup> Ch. 2002-385, L.O.F.

<sup>35</sup> Ch. 86-344, L.O.F.

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

<sup>37</sup> Ch. 2007-319, L.O.F.

<sup>38</sup> This section describes 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 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; and (g) to serve as parking enforcement specialists pursuant to s. 316.640(2), F.S.

<sup>39</sup> 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). Section 447.203(2), F.S., defines "public employee" as any person employed by a public employer but designates numerous exceptions such as persons who are elected, and managerial or confidential employees.

## Permanent Status; Cause for Suspension or Dismissal

A covered employee achieves permanent status after one calendar year of employment with the sheriff. However, employees placed on disciplinary probation for a period of six months or more, or terminated and rehired at a later date, are required to repeat the probationary period.

An employee is required to serve a probationary period of six months attendant to a promotion. The promoted employee retains permanent status, but may be demoted to his/her prior rank or position during this probationary period without the right of appeal.

An employee who has achieved permanent status in the sheriff's office may only be suspended or dismissed for cause. Prior to any such disciplinary action, the employee must be furnished with written notice and offered an opportunity to respond. In extraordinary situations, an employee may be suspended or dismissed for cause immediately and provided notice and reasons for the action within 24 hours.

Cause for suspension or dismissal includes, but is not limited to:

- negligence;
- inefficiency;
- inability to perform assigned duties;
- insubordination;
- violation of law or office rules;
- conduct unbecoming a public employee;
- misconduct;
- habitual drug abuse;
- adjudication of guilt by a court of competent jurisdiction;
- a plea of guilty or nolo contendere; or
- a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation, with respect to any felony, misdemeanor or major traffic infraction.

The filing of felony, misdemeanor or major traffic infraction charges against an employee constitutes cause for suspension.

## Transition of Employees

When a newly elected or appointed sheriff assumes office, he or she is required to continue the employment of all permanent personnel unless cause for dismissal exists. However, the incoming sheriff has the option of replacing the personnel assigned to the positions of Sheriff's Executive Secretary, Chief Deputy, and Major. If the sheriff fills the Chief Deputy or Major positions with new personnel, the current occupants of those positions may be relegated to no lower than the rank of Captain, and their salaries reduced accordingly. This new rank is permanent unless later reduced by disciplinary demotion. If the sheriff fills the Sheriff's Executive Secretary position with a new employee, the current occupant of the position must be transferred to another position for which he or she is qualified. These actions are not appealable.

## Administration

The sheriff has the authority to adopt such rules and regulations as are necessary for the implementation and administration of the act. The bill specifies that nothing in the act is to be construed as affecting the budget-making powers of the Board of Commissioners of Wakulla County.

## Career Service Appeals Boards

Ad hoc career service appeals boards are appointed to hear appeals of permanent status employees arising from personnel actions which result in dismissal, suspension for more than five working days, demotion or reduction in pay. Oral and written reprimands, and suspensions of five working days or less may not be appealed. These boards also may provide assistance and advice to the sheriff in disciplinary actions, and take any other action authorized by the sheriff.

A career service appeals board is appointed upon the call of the sheriff or the filing of an appeal. The membership of each board consists of five law enforcement officers or correctional officers, or a combination thereof, all of whom are employees of the sheriff. The sheriff selects two members, the employee filing the appeal selects two members, and the fifth member, who serves as chair of the board, is chosen by the other four members, with the concurrence of the sheriff and the employee requesting the hearing.

The five-member board selects an alternate board member who attends the appeal hearing proceedings. If the original five board members remain at the conclusion of the hearing, the alternate member is excused and has no authority to participate in deliberations or vote. However, if a board member is unable to continue to serve at any time during the hearing or prior to deliberations, he or she is replaced by the alternate member. The alternate member then participates in deliberations and is authorized to vote.

The ranking officer in charge of personnel, or his or her designee, serves as an ex officio member of the board, but has no vote. All employees have the right to decline to serve on a career service appeals board. An employee selected to serve on a board does not receive additional compensation or overtime compensation. Once selected, board members serve until final action is taken by the board, at which time the board is dissolved.

## Procedures for Career Service Appeals

An appeal must be presented in writing, and received by the sheriff no later than three working days after the notice of an appealable disciplinary action. A career service appeals board is selected and must meet to hear the appeal no later than 20 working days of the sheriff's receipt of the appeal, unless the employee waives the time period in writing.

During any hearing, the employee has the right to be heard publicly, to be represented, and to present evidence. The rules of evidence are not applied to the hearing. The board has the power to administer oaths, issue subpoenas, compel the attendance of witnesses, and require the production of books, records, accounts, papers, documents and testimony.

If a person refuses to obey a board order or subpoena, or a witness refuses to testify, the board may request a county judge to compel that individual to comply.

Each witness who appears in response to a subpoena receives compensation for attendance fees and mileage as provided for witnesses in civil cases.<sup>40</sup> Payments are made by the party calling the witness,

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<sup>40</sup> Section 92.142, F.S., provides, in relevant part, that witnesses in all cases, civil and criminal, in all courts, and witnesses summoned before any arbitrator or general or special magistrate appointed by the court shall receive \$5 for each day's actual attendance, and six cents per mile for actual distance traveled to and from the courts. An employee of the state who is required, as a direct result of employment, to appear as an official witness to testify in the course of any action in any court of the state, or before an administrative law judge, a hearing officer, hearing examiner, or any board

except that witnesses called by the board are paid by the sheriff upon presentation of proper vouchers, and the approval of three board members.

Employees may be represented by an attorney or other qualified representative, or proceed pro se. The standard required to prove misconduct is a preponderance of the evidence. If the employee offers no evidence, the sheriff presents the first closing argument. The employee is allowed to present the first closing argument if he or she offers testimony, or any other evidence.

The board, by majority vote, disposes of an appeal by making findings of fact and issuing a written decision. The decision either sustains or does not sustain the finding of cause. If the board does not sustain a finding of cause, it orders such remedial action as is appropriate, which may include reinstatement with back pay, and may modify any personnel action which was the subject of the appeal. If the board sustains the finding by the sheriff, it also determines the appropriateness of the discipline imposed. No board has the authority to impose more severe discipline on an employee. Also, the board does not have the authority to circumvent, modify, alter or otherwise change the rules or policy of the sheriff.

The decision of a board is final and binding on the employee and the sheriff, unless a state court's jurisdiction is invoked to review the board's action. If a court accepts jurisdiction, the board's order is stayed pending completion of court proceedings.

### Complaints Against Employees

The office of the sheriff is required to establish a complaint receipt and processing procedure in order to provide for the prompt receipt, investigation and disposition of complaints against its employees. Any supervisor is authorized to receive a complaint against any other employee. All complaints must be reduced to writing.

If a complaint is received by a supervisor during normal working hours, it is referred to the employee's supervisor. The supervisor may conduct an investigation to determine if immediate action is required, or the supervisor may refer the complaint to Internal Affairs or the appropriate investigating unit within the sheriff's office.

A complaint received after normal working hours is referred to the shift supervisor. The shift supervisor may conduct an investigation to determine if immediate action is needed. If immediate action is not required, the complaint may be referred to Internal Affairs or the appropriate investigating unit at the beginning of the next working day.

Upon completion of the investigation, the complaint is reviewed by the sheriff or by his or her designee. If the sheriff finds that a complaint is well founded and that a violation has occurred, he determines appropriate disciplinary action, and notifies the employee.

If a nonsworn employee is dissatisfied with the sheriff's decision, he or she may appeal the action to a career service appeals board.

If an employee who is subject to the provisions of s.112.532, F.S.,<sup>41</sup> is dissatisfied with the decision of the sheriff, he or she may appeal the action to a career service appeals board.

All sworn and nonsworn persons employed by the sheriff who have served for a period of one calendar year or more as of the effective date of the act will be considered permanent status employees subject to

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or commission of the state or of its agencies, instrumentalities, or political subdivisions, is considered to be on duty during such appearance and entitled to per diem and travel expenses as provided in s. 112.061, F.S.

<sup>41</sup> Section 112.532, F.S., applies to all law enforcement officers and correctional officers employed by or appointed to a law enforcement or correctional agency.

the provisions of the act. All other employees will become permanent employees subject to reaching their one calendar year service anniversary date.

The act provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Provides a civil service system for employees of the Wakulla County Sheriff; provides for applicability of act, immunities, permanent status of employees, transition of employees and administration.

Section 2: Provides for career service appeals boards, their creation, membership and duties.

Section 3: Provides for complaints against employees.

Section 4: Provides for permanent status.

Section 5: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? February 21, 2008

WHERE? *The Wakulla News*, a weekly newspaper of general circulation published in Wakulla 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

According to the Economic Impact Statement, this bill will have no fiscal effect.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, DRAFTING ISSUES OR OTHER COMMENTS, below.

B. RULE-MAKING AUTHORITY:

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 Board of Commissioners of Wakulla County.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1(2) of the bill attempts to extend "all civil liability" to certain persons while taking actions pursuant to the provisions of the act. This provision may be unconstitutional under s.1, Art. 21 of the State Constitution, relating to access to courts, and should be removed.

D. STATEMENT OF THE SPONSOR

No Sponsor Statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**