

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1249
SPONSOR(S): Williams, T.

Lee County Sheriff's Office

TIED BILLS:

IDEN./SIM. BILLS: SB 2512

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	11 Y, 0 N	Fudge	Hoagland
2)	Economic Development & Community Affairs Policy Council		Fudge	Tinker
3)				
4)				
5)				

SUMMARY ANALYSIS

HB 1249 revises the civil service act for the Lee County Sheriff's Office. In response to a recent court decision, the bill shifts the burden of proof, from the employee to the sheriff, to show just cause for the disciplinary action under appeal.

The bill also provides that the retirement health insurance benefits currently provided by the Sheriff's Office are not payable to employees hired after October 1, 2010.

The bill provides an effective date of upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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

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.

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 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, 2007 and 2008.

Burden of Proof

In Faulk v. Scott,³⁸ Kimberly Falk appealed her termination from the Lee County Sheriff's Office. The Lee County Sheriff's Office Civil Service Board (Board) affirmed Falk's termination because she had the burden of proof, as the appellant, to establish that her termination was without just cause. The Board based its decision on section 13 of ch. 99-434, L.O.F., which provides that "[t]he sheriff may suspend or dismiss an employee only for just cause. The employee so dismissed or suspended will have fifteen (15) days to file an appeal with the board." The "Board reasoned that, because Falk was appealing her termination, she had the burden of proof as the appellant to establish that her termination was without just cause."³⁹

The Second District Court of Appeal held that the Sheriff had the burden of proof at the hearing before the Board. "Where an agency terminates an employee for certain stated grounds, reason, logic and the law would require that the agency affirmatively carry the burden of proving the essence of its allegations."⁴⁰

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.

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.

³⁸ 19 So.3d 1103 (Fla. 2d DCA 2009).

³⁹ Id.

⁴⁰ 19 So.3d at 1104, citing Fla. Dep't of Health & Rehabilitative Serv., Div. of Health v. Career Serv. Comm'n of Dep't of Admin., 289

So.2d 412, 414 (Fla. 4th DCA 1974).

Retirement Health Insurance Benefits

Section 15 of the act provides for retirement health insurance benefits for employees of the sheriff's office who have accumulated 15 or more years of services. The Lee County Sheriff's Office currently pays a portion of the cost of the health and hospitalization insurance premiums for retired employees who have accumulated 15 or more years of service.

Effect of Proposed Changes

The bill amends the act to conform with Falk v. Scott, by placing the burden of proof on the sheriff to prove just cause for the disciplinary action under appeal. The bill also amends the retirement health insurance benefits section so that the health insurance benefit for retirees is not available to employees hired after October 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends ss. 13 and 15 of ch. 74-522, L.O.F., as amended by chs. 2007-320 and 2008-276, L.O.F., relating to the Lee County Sheriff's Office Civil Service System.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 7, 2010.

WHERE? In the *News-Press*, a daily 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES