

FINAL BILL ANALYSIS

BILL #: HB 4197

FINAL HOUSE FLOOR ACTION:

117 Y's 0 N's

SPONSOR: Rep. Gaetz

GOVERNOR'S ACTION: Approved

COMPANION BILLS: N/A

SUMMARY ANALYSIS

HB 4197 passed the House on April 27, 2011, and was subsequently passed by the Senate on May 2, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-267, Laws of Florida, and took effect on June 21, 2011. This bill repeals special acts relating to the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department. Repeal of these chapters would require the Okaloosa County Sheriff's Department to use the provisions outlined by general law when hearing appeals of terminations of deputy sheriffs covered by the act. Elimination of the requirement of a standing review board for the Okaloosa County Sheriff's Department would allow the department to use a similar, yet likely less expensive process for hearing termination appeals.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF CHANGES:

Current Situation

Personnel Standards and Review Board for the Okaloosa County Sheriff's Department

The Personnel Standards and Review Board for the Okaloosa County Sheriff's Department was established by ch. 81-442, L.O.F.¹ As stated by the act, the purpose of the board is to "apply principles of fairness and equity to the employees of the Okaloosa County Sheriff's Department in matters of employee dismissal."² The act protects employees' political activity, as well as outlining anti-discrimination policy of the Sheriff's Department.³

Specifics regarding the composition of and qualifications requirements for serving on the board are also detailed by the act.⁴ The board must consist of five members; two members to be elected by department employees, two chosen by the sheriff, and the fifth selected by agreement of the other four members.⁵ Current employees of the department, as well as their immediate family members, are excluded from serving on the board.⁶

Additionally, the act details the board's duties, including:

- making investigations concerning enforcement and violations of the act,
- hearing appeals to terminations,
- keeping records, and
- reporting annually to the sheriff and legislative delegation.⁷

Furthermore, the act provides policies and procedures regarding suspension and dismissal of employees as well as subpoenas (upon approval of a county judge) and witness fees.⁸ The sheriff must supply at least one part-time person to serve as clerical/secretarial staff for the board.⁹ The sheriff must also include funds for operating expenses of the board in his budget.¹⁰ Members of the board do not receive salary or reimbursement for their service.¹¹ The board is authorized to retain legal counsel, the cost of which the sheriff must account for in his annual budget.¹²

¹ The act was subsequently amended by chs 85-472 and 90-492, L.O.F. Ch. 85-472 repealed the sunset provision that was originally part of the enabling act. Ch. 90-492 changed the scope of the act's application from employees at the rank of sergeant or below, to those at the rank of captain or below.

² S. 1, ch. 81-442, L.O.F.

³ Ss. 1, 11, ch. 81-442, L.O.F.

⁴ S. 1, ch. 81-442, L.O.F.

⁵ *Id.*

⁶ *Id.*

⁷ S. 8, ch. 81-442, L.O.F.

⁸ S. 12, ch. 81-442, L.O.F.

⁹ S. 2, ch. 81-442, L.O.F.

¹⁰ S. 4, ch. 81-442, L.O.F.

¹¹ S. 3, ch. 81-442, L.O.F.

¹² S. 9, ch. 81-442, L.O.F.

Public records for the board are available for fourteen meetings between 1982 and 1987.¹³ Contrary to the requirements of the act, no board members were elected; then Sheriff Larry Gilbert appointed four of the five members.¹⁴ Annual reports were submitted by the board in 1982, 1983, 1984, and 1985.¹⁵ The board eventually fell dormant in 1987.¹⁶

Statewide Provisions Relating to Sheriff Review Boards

In 1994, the Legislature enacted provisions relating to the appointment, promotion, and termination of sheriffs.¹⁷ According to statute, review boards must be established to review “terminations taken by the sheriff against regularly appointed deputy sheriffs for lawful off-duty political activity or for discriminatory reasons.”¹⁸ The act applies to all deputy sheriffs, except:

- Deputy sheriffs in a county that, by special act of the Legislature, local charter, ordinance, or otherwise, has established rights and procedures for deputy sheriffs which are equivalent to or greater than those prescribed by statute.
- Deputy sheriffs in a county that, by special act of the Legislature, local charter, ordinance, or otherwise, has established a civil or career service system which grants collective bargaining rights for deputy sheriffs, including, but not limited to, deputy sheriffs in the following counties: Broward, Miami-Dade, Duval, Escambia, and Volusia.
- Special deputy sheriffs appointed under s. 30.09(4), F.S.
- Members of a sheriff’s posse or reserve unit.
- Part-time deputy sheriffs.¹⁹

For agencies having 150 or more deputy sheriffs, two members of the board are selected by the sheriff, two members are selected by the deputy sheriff who is appealing the termination action, and one member is selected by the other members of the board to act as chairperson.²⁰ Agencies with fewer than 150 deputy sheriffs have one member chosen by the sheriff, one selected by the appealing deputy sheriff, and one selected by the other board members.²¹ The members selected by the sheriff and appealing deputy sheriff must be certified law enforcement officers within the sheriff’s jurisdiction.²²

Under s. 30.075(6), F.S., the scope of review boards is limited to terminations. In terms of their duties, the boards are to be utilized in determining “whether or not the termination of a deputy sheriff was politically or discriminatorily motivated.”²³ The boards lack investigative powers and function as fact finders.²⁴ Specific requirements relevant to the termination appeal process are outlined by statute and boards are required to record all proceedings.²⁵

¹³ Email from Larry Ashley, Sheriff, Okaloosa County, to Community and Military Affairs Staff (Mar. 25, 2011).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Ch. 94-143, L.O.F., (codified at ss. 30.071-079, F.S.).

¹⁸ S. 30.075, F.S.

¹⁹ S. 30.071, F.S.

²⁰ S. 30.075, F.S.

²¹ *Id.*

²² *Id.*

²³ S. 30.076, F.S.

²⁴ S. 30.075, F.S.

²⁵ S. 30.076, F.S.

The act makes no provision for board staff, legal counsel, operating expenses of the boards, or inclusion of any items in a sheriff's department budget. Those serving on boards under the act do not receive compensation.²⁶

Effect of the Bill:

This bill repeals chs. 81-441, 85-472, and 90-492, L.O.F., relating to the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department. Repeal of these chapters would require the Okaloosa County Sheriff's Department to use the provisions outlined in ss. 30.071-.079, F.S., when hearing appeals of terminations of deputy sheriffs covered by the act.

Both ch. 30, F.S., and the enabling act for the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department appear to contemplate utilization of review boards for similar purposes and under similar circumstances: hearing appeals of terminations alleged to have been discriminatorily or politically motivated. The Okaloosa County board is required to exist as a standing board, while ch. 30 review boards are ad hoc. Additionally, Okaloosa County board members must be elected, while member elections are not required under ch. 30. It is likely that this bill would allow Okaloosa County to use a process under ch. 30 that would be similar to that outlined by ch. 81-442, L.O.F., yet would eliminate the expense of a standing board, elections of board members, staff, and retained legal counsel.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 2, 2011

WHERE?

The *Northwest Florida Daily News*, a daily newspaper of general circulation, published in Okaloosa County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes No

D. ECONOMIC IMPACT STATEMENT FILED? Yes No

²⁶ S. 30.075(2), F.S.