

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 647 City of Jacksonville, Duval County

SPONSOR(S): Ray

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Zaborske	Miller
2) Government Operations Subcommittee	11 Y, 0 N	Toliver	Williamson
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

HB 647 is a local bill amending provisions of the Charter of the City of Jacksonville relating to the civil service board. Because City of Jacksonville's Civil Service and Personnel Rules and Regulations (Rules and Regulations) have been updated periodically, HB 647 makes changes to the Charter for the purpose of reconciling contradictions between the Charter and the Rules and Regulations. HB 647 amends provisions relating to the duties of the City of Jacksonville's civil service board (CSB) by:

- Providing that the CSB hears appeals initiated by *permanent* employees covered by the Rules and Regulations and charged with violations of the personnel provisions of the Rules and Regulations.
- Clarifying that the CSB hears and determines appeals concerning disciplinary action that *violates* the Rules and Regulations, rather than disciplinary action that is *inconsistent* with them.
- Providing that the CSB hears and determines complaints *initiated by any person covered by* the Rules and Regulations, rather than complaints by employees and prospective employees.
- Clarifying that the CSB hears complaints concerning alleged violations of *grievable* rules or regulations, rather than alleged violations of Rules and Regulations relating to hiring and promotion.
- Providing that if the CSB determines a violation of any *grievable* Rules and Regulations exists, then it is to order compliance with those Rules and Regulations.
- Providing that the CSB hears and determines grievances initiated by a person covered by the Rules and Regulations, rather than any person who simply may be entitled to be covered by them.
- Clarifying that grievances initiated by a person covered by the Rules and Regulations regarding action taken in the administration of *grievable* Rules and Regulations which pertain to employment or employment rights, *including hiring and promotions*, and that if the CSB determines the action is inconsistent with *grievable* Rules and Regulations then its order provides that the action be modified to comply with the *grievable* Rules and Regulations.

The bill will have an insignificant fiscal impact on the City of Jacksonville.

The act shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Charter of the City of Jacksonville – Civil Service Board Duties

The Legislature created the Charter of the City of Jacksonville in 1967.¹ The Charter was amended in 1978,² and in 1992 it was codified.³ Article 17 of the Charter, as codified, establishes a civil service system for the employees of the “consolidated” government.⁴ The Charter provides that a civil service board will be comprised of seven elected members, serving 4-year terms,⁵ and sets forth the duties of the civil service board (CSB). The Charter sets forth the following CSB member duties:

- Periodically reviewing the operation and effect of the Charter’s personnel provisions, the classification plan, and the pay plan, and reporting its findings to the council and the mayor.
- Hearing and determining appeals initiated by employees charged with violations of the personnel provisions of the Charter and the civil service regulations authorized by ordinance or adopted civil service rules. If after review the CSB determines that the disciplinary action is inconsistent with such provisions, rules, or regulations, or concludes it is manifestly unjust under the circumstances, it must order that the disciplinary action be increased or decreased, or provide such other action as it deems appropriate, and set forth in its final order the specific reasons for its action.
- Hearing and determining complaints by employees and prospective employees concerning alleged violations of civil service rules or regulations with respect to hiring and promotion. If after review the CSB determines that a violation exists, it must order such action as it deems appropriate to ensure compliance with the rules or regulations pertaining to hiring and promotion.
- Hearing and determining the grievance of any person covered by the civil service rules or regulations or the grievance of any person who may be entitled to be covered by such civil service rules or regulations concerning any action taken in the administration of the rules and regulations pertaining to employment or employment rights. If after review the CSB determines the action taken is inconsistent with the rules or regulations, it must order that the action be modified by the appropriate office, department, board, or independent agency in order to ensure consistency and compliance with the rules and regulations.
- Performing other duties and responsibilities as prescribed by ordinance.

City of Jacksonville’s Civil Service and Personnel Rules and Regulations

The Charter requires the personnel department to establish the personnel policy by civil service and personnel rules and regulations adopted by the personnel department in accordance with the charter and the ordinances of the city.⁶ Before a proposed rule or regulation can take effect, the personnel department must forward the rule or regulation to the CSB and City Council for approval.⁷ Pursuant to this authority, the City of Jacksonville’s Civil Service and Personnel Rules and Regulations (Rules and Regulations) have been promulgated.⁸ The Rules and Regulations, which have been amended

¹ Ch. 67-1320, Laws of Fla.

² Ch. 78-536, Laws of Fla.

³ Ch. 92-341, Laws of Fla.

⁴ Ch. 92-341, s. 1, at Art. 17, Laws of Fla.

⁵ Ch. 92-341, s. 1, at s. 17.02, Laws of Fla.

⁶ Ch. 92-341, s. 1, at s. 17.05(d), Laws of Fla.

⁷ *Id.*

⁸ City of Jacksonville’s Civil Service and Personnel Rules and Regulations, <http://www.coj.net/departments/employee-services/civil-service-and-personnel-rules-and-regulations.aspx> (last visited 03/03/2015).

numerous times over the year, set forth comprehensive policies and procedures for the Board relating to civil service positions and employees within the City of Jacksonville, as authorized by the Charter and the Jacksonville Ordinance Code.⁹ The Rules and Regulations govern unless a contrary provision is negotiated as part of a collective bargaining agreement.¹⁰

Pursuant to the Rules and Regulations, upon any appointment to a classified position under Civil Service, an employee is classified as probationary, provisional, or permanent.¹¹ For permanent employees all of the Rules and Regulations generally apply, but for any other class of employee or a prospective employee only those Rules and Regulations specifically designated as applicable to those employees apply. An employee attains permanent status in a class upon satisfactory completion of the required probationary period. Once an employee has attained permanent status in any class, the employee has permanent status throughout the period of his or her continuous employment in the Civil Service.¹² The Rules and Regulations as applied to permanent status employees specifically designate instances as not grievable¹³ or instances as not subject to review.¹⁴ In contrast, for probationary employees, the Rules and Regulations specifically designate instances as “grievable.” For example, a probationary employee who is separated from a class under rule nine of the Rules and Regulations only has a “grievable” cause of action with the CSB if the separation is undocumented.¹⁵

CSB Confusion Because of Conflicts between Charter and Rules and Regulations

The judgments and findings of the CSB are subject to review by the circuit court of the State of Florida having jurisdiction within Duval County.¹⁶ The Circuit Court of the Fourth Judicial Circuit, Duval County, has held that the City of Jacksonville’s CSB violated individuals’ due process rights where the CSB, relying on provisions in the Rules and Regulations which were narrower than those set forth in the Charter, refused to review the grievances.¹⁷ The court determined that the Rules and Regulations cannot remove the jurisdiction of the CSB that the Charter does not grant.¹⁸ In another case, the CSB dismissed a grievance seeking review of a promotional examination because the grieving employee, as part of the timed examination, had to complete a section that another individual was not required to complete because the section was eliminated.¹⁹ The CSB dismissed the grievance for lack of jurisdiction because the Rules and Regulations gave the head of personnel discretion in voiding or declaring an examination invalid, thereby giving the head of personnel final authority to decide the validity of examinations.²⁰ However, the court held that because the Charter provided that the CSB “shall . . . [h]ear and determine complaints by employees and prospective employees concerning alleged violations of civil services rules or regulations with respect to hiring and promotion,” the individual was entitled to file a grievance.²¹

Effect of Proposed Changes

⁹ *Id.* at s. .01.

¹⁰ *Id.*

¹¹ *Id.* at 6.01.

¹² *Id.* at 6.03.

¹³ *Id.* at s. 4.03(4)(a)2.

¹⁴ *Id.* at s. 7.02(4)(f).

¹⁵ *Id.* at s. 6.03(1)(f).

¹⁶ Ch. 92-341, s. 1, at s. 17.08, Laws of Fla

¹⁷ *Toliver v. Jacksonville Sheriff's Office*, Case No. 2014-CA-005550 (Fla 4th Cir. Ct. Nov. 10, 2014)(“To the extent that Rule 7.02(4)(f) of the Civil Service Rules divests the CSB of jurisdiction, it conflicts with §17.04(d) of the Charter.”); *James v. The City of Jacksonville*, Case No. 16-2007-6247 (Fla. 4th Cir. Ct. June 23, 2009).

¹⁸ *Id.*

¹⁹ *James v. The City of Jacksonville*, Case No. 16-2007-6247, at p. 3 (Fla. 4th Cir. Ct. June 23, 2009).

²⁰ *Id.*

²¹ *Id.*, citing Charter of the City of Jacksonville, Fla., s. 17.04(c) (2006) (internal quotation marks omitted).

HB 647 amends the provisions of the Charter of the City of Jacksonville relating to the duties of the CSB with the objective of reconciling contradictions between the Charter and the Rules and Regulations. Specifically, HB 647:

- Provides that the CSB hears appeals initiated by any *permanent* employee covered by the Rules and Regulations who is charged with violations of the personnel provisions of the Rules and Regulations.
- Clarifies that the CSB hears and determines appeals concerning a disciplinary action that *violates* the Rules and Regulations, rather than a disciplinary action that is *inconsistent* with the Rules and Regulations.
- Provides that the CSB hears and determines complaints *initiated by any person covered by* the Rules and Regulations, rather than complaints by employees and prospective employees.
- Clarifies that the CSB hears complaints concerning alleged violations of *grievable* Rules and Regulations authorized by ordinance or the Rules and Regulations adopted pursuant to s. 17.05 of the Charter, rather than alleged violations of those Rules and Regulations related to hiring and promotion.
- Clarifies that if the CSB determines a violation exists the order should ensure compliance with *grievable* Rules and Regulations, rather than ensuring compliance with Rules and Regulations pertaining to hiring and promotion.
- Provides that the CSB hears and determines the grievance authorized by ordinance or the Rules and Regulations adopted pursuant to s. 17.05 of the Charter and initiated by a person covered by the Rules and Regulations, rather than any person who simply may be entitled to be covered by the Rules and Regulations.
- Clarifies that such grievances concern an action taken in the administration of *grievable* Rules and Regulations which pertain to his or her employment or employment rights, *including hiring and promotions*, and that if the CSB determines the action is inconsistent with *grievable* Rules and Regulations then the CSB will order the action be modified to comply with the *grievable* Rules and Regulations.

B. SECTION DIRECTORY:

Section 1: Amends the Charter of the City of Jacksonville, s. 17.04, Ch. 92-341, Laws of Fla., relating to the duties of the civil service board.

Section 2: The act shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 18, 2014

WHERE? Daily Record, Jacksonville, 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:

The Charter provides that "[t]here shall be a civil service system for the employees of the consolidated government which shall promote the effective, efficient, and fair conduct of the public business."²² The Rules and Regulations allow prospective employees to appeal to the CSB. It is unclear whether the CSB, currently or with the amendments under HB 647, has the requisite authority to hear such appeals.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²² Ch. 92-341, s. 1, at Art. 17.01, Laws of Fla.
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DATE: 3/17/2015