

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 911 City of Delray Beach, Palm Beach County

**SPONSOR(S):** Hager

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	8 Y, 0 N	Darden	Miller
2) Government Operations Subcommittee	13 Y, 0 N	Toliver	Williamson
3) Local & Federal Affairs Committee	15 Y, 0 N	Darden	Kiner

### SUMMARY ANALYSIS

The civil service code for the City of Delray Beach was created by a special act of the Legislature in 1949. The civil service code currently applies to all regular employees of the city, except assistant city managers, department heads, and police majors. The code also does not apply to employees covered by a collective bargaining agreement or by an expired collective bargaining agreement subject to renegotiation, unless the collective bargaining agreement specifies the code shall apply.

The bill repeals ch. 49-25784, Laws of Fla., creating a civil service code for the City of Delray Beach, and subsequent special acts amending the civil service code. The current civil service code is included in the city's code of ordinances and repealing the act provides flexibility for the city to make changes pursuant to its home-rule authority.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides for a referendum to be held in conjunction with a general election in the City of Delray Beach. The bill takes effect only upon approval by a majority of qualified electors in the City of Delray Beach, except that the provision providing for the referendum shall take effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Delray Beach Civil Service Code

The civil service code for the City of Delray Beach was created by a special act of the Legislature in 1949.<sup>1</sup> The provisions cover all full-time permanent employees of the city, except assistant city managers, department heads, and police majors.<sup>2</sup> Employees covered by a collective bargaining agreement with the city, or covered by an expired collective bargaining agreement subject to renegotiation, are also excluded unless the agreement specifies the code applies.<sup>3</sup>

The Civil Service Board (CSB) implements the provisions of the code. The CSB consists of five members.<sup>4</sup> The city commission selects three members.<sup>5</sup> These members may not be employed by the city in any capacity and must come from different occupational fields.<sup>6</sup> Members selected by the city commission serve a two-year term.<sup>7</sup> City employees elect two members.<sup>8</sup> City employee members cannot work in the same department and are elected annually.<sup>9</sup> Each department is limited to a single candidate for the CSB, with a departmental primary-type election to be held in the event multiple candidates from a department declare their intention to run.<sup>10</sup> The CSB contains two alternate members, one selected by the city commission and one elected by city employees.<sup>11</sup> The alternate members must meet the same eligibility criteria as regular members of the CSB.<sup>12</sup>

The conditions of city employment are established by rules and regulations adopted by the city manager.<sup>13</sup> These rules include employee duties, hours of work, discipline, control, conduct, and direction.<sup>14</sup> The CSB may make recommendations concerning enforcement of the rules to the city manager.<sup>15</sup> If the rules and regulations adopted by the city manager require an examination for filling a position, the CSB is responsible for administering the examination and maintaining a list of candidates based on the results.<sup>16</sup>

The number of positions in each city department and the classification of those positions are controlled by the city commission.<sup>17</sup> In the event the number of positions or classifications is reduced, employees are retained according to seniority.<sup>18</sup> Employees in an eliminated position in a higher classification position may choose to be “bump[ed] back” to a lower classification position, receiving the pay for the lower position.<sup>19</sup> Employees may also be placed on inactive status for up to one year, during which they retain seniority in event of reemployment by the city.<sup>20</sup> If no position is available, the city manager may

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<sup>1</sup> Ch. 49-25784, Laws of Fla., as amended. Codified as Title 3, ch. 35, s. 35.001-35.014, Delray Beach Code of Ordinances.

<sup>2</sup> S. 35.002(A), Delray Beach Code of Ordinances.

<sup>3</sup> *Id.*

<sup>4</sup> Section 35.003(A)(1), Delray Beach Code of Ordinances.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 35.003(A)(2), Delray Beach Code of Ordinances.

<sup>11</sup> Section 35.003(A)(1), Delray Beach Code of Ordinances.

<sup>12</sup> *Id.*

<sup>13</sup> Section 35.004, Delray Beach Code of Ordinances.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 35.005, Delray Beach Code of Ordinances.

<sup>17</sup> Section 35.007(A), Delray Beach Code of Ordinances.

<sup>18</sup> Section 35.007(B), Delray Beach Code of Ordinances.

<sup>19</sup> *Id.*

<sup>20</sup> Section 35.007(C), Delray Beach Code of Ordinances.

appoint the employee to another position, if the employee meets the qualifications for that position and received a satisfactory performance review in the previous year.<sup>21</sup>

To terminate an employee, the city manager must serve a written statement or notice of discharge to the employee.<sup>22</sup> The notice must contain the reason the employee is being terminated, along with specific facts that would enable the employee to make an explanation.<sup>23</sup> The city manager must file the statement, along with any explanation provided by the employee, with the CSB before the discharge may take effect.<sup>24</sup>

If an employee has been discharged, demoted, or suspended without pay for more than seven days, the employee may file an appeal with the CSB.<sup>25</sup> The employee may not appeal non-disciplinary actions, as determined by the city manager.<sup>26</sup> The appeal must be filed within ten days of employee receiving notice and a hearing must be held:<sup>27</sup>

- For discharge: within 90 days, but no sooner than 60 days
- For demotion or suspension: within 30 days.

A hearing may be postponed by mutual consent of the city, the CSB, and the employee.<sup>28</sup> In a discharge hearing, the CSB functions like a jury with counsel selected by the CSB as the judge.<sup>29</sup> This method may also be used for a demotion or suspension hearing if the city commission consents and either the CSB acting alone, or the CSB and the employee jointly, request it.<sup>30</sup> If this method is not used, the CSB may request the city commission to appoint and retain a qualified attorney to provide legal advice to the CSB.<sup>31</sup> The attorney is selected by a drawing consisting of four candidates, two selected by the city manager and two selected by the CSB.<sup>32</sup> If either party fails to submit two names, the drawing is held from the remaining entries submitted.<sup>33</sup> The code does not specify who serves as judge for demotion or suspension hearings, but grants many of the powers of a judge to the chairperson of the CSB during such a hearing.<sup>34</sup> If the CSB disapproves of the discharge, demotion, or suspension and reinstates the employee, the CSB may also grant the employee any pay lost due to the discharge, demotion, or suspension.<sup>35</sup>

The city manager may discipline an employee by suspending the employee for up to 30 days without pay.<sup>36</sup> The city manager may not circumvent this requirement by successive suspensions.<sup>37</sup> If an employee has been charged with a crime, the city manager may suspend the employee until the case is resolved, even if the suspension is for longer than 30 days.<sup>38</sup> If the employee is found guilty, the city manager may dismiss the employee, but if the employee is acquitted or cleared of the charges, the city manager is required to restore the employee's previous position with full compensation for the suspension period.<sup>39</sup>

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<sup>21</sup> Section 35.013, Delray Beach Code of Ordinances.

<sup>22</sup> Section 35.008, Delray Beach Code of Ordinances.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Section 35.009(A), Delray Beach Code of Ordinances.

<sup>26</sup> Section 35.009 (B), Delray Beach Code of Ordinances. The code gives termination for failure to have or maintain job qualifications and requirements as an example of a non-disciplinary action.

<sup>27</sup> Section 35.009(A), Delray Beach Code of Ordinances.

<sup>28</sup> *Id.*

<sup>29</sup> Section 35.009(B)(7), Delray Beach Code of Ordinances.

<sup>30</sup> Section 35.009(B)(2), Delray Beach Code of Ordinances.

<sup>31</sup> Section 35.009(B)(3), Delray Beach Code of Ordinances.

<sup>32</sup> *Id.*

<sup>33</sup> Section 35.009(B)(5), Delray Beach Code of Ordinances.

<sup>34</sup> *See s.* 35.009(B)(11), Delray Beach Code of Ordinances (chairperson may swear witnesses and issue subpoenas).

<sup>35</sup> Section 35.012(B), Delray Beach Code of Ordinances.

<sup>36</sup> Section 35.012(A), Delray Beach Code of Ordinances.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

## Civil Service Codes

The Florida Constitution requires a civil service system for state employees and authorizes the creation of civil service systems and boards for employees of counties, municipalities, and districts.<sup>40</sup> While this language appears to limit the creation of a civil service code for municipal employees to the Legislature, the Florida Supreme Court has upheld municipal ordinances creating a civil service system as a valid exercise of municipal home-rule authority under art. VIII, s. 2(b) of the Florida Constitution<sup>41</sup> and the Legislature has implicitly adopted this interpretation.<sup>42</sup>

While municipalities are granted broad home-rule powers by the Florida Constitution, subject to general law, changes to any special act or municipal charter that would affect any rights of municipal employees are subject to approval by referendum.<sup>43</sup>

## **Effect of Proposed Changes**

The bill repeals ch. 49-25784, Laws of Fla., and subsequent special acts creating and amending the civil service code for the City of Delray Beach. The current civil service code has been incorporated into the city charter by reference<sup>44</sup> and codified in the city's code of ordinances.<sup>45</sup> The city possesses the power, pursuant to its charter, to adopt a civil service code to the extent the code does not conflict with general law.

### B. SECTION DIRECTORY:

Section 1: Repeals ch. 97-324, 86-428, 83-397, 80-496, 79-447, 67-1284, and 25784 (1949), Laws of Fla.

Section 2: Provides that the bill shall take effect upon approval by a majority of qualified electors in the City of Delray Beach voting in a referendum held in conjunction with a general election, except that this section takes effect upon the bill becoming a law.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? In conjunction with a general election held in the City of Delray Beach.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## **III. COMMENTS**

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<sup>40</sup> Art. III, s. 14, Fla. Const.

<sup>41</sup> *City of Casselberry v. Orange County Police Benev. Ass'n*, 482 So. 2d 336, 339 (Fla. 1986).

<sup>42</sup> See s. 447.601, F.S. (stating public employee provisions of ch. 447 are not intended to repeal, amend, or modify any ordinance creating a civil service system for public employees, except where those ordinances are in conflict).

<sup>43</sup> Section 166.021(4), F.S.

<sup>44</sup> See Art. I, s. 1.03, Delray Beach Charter (stating special acts pertaining to the jurisdiction and exercise of municipal powers of the city are considered amendments to the charter and shall be incorporated as such).

<sup>45</sup> Title 3, ch. 35, Delray Beach Code of Ordinances.

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides for a referendum to be held in conjunction with a “general election” in the City of Delray Beach. Section 97.021(15), F.S., defines the term “general election” to mean an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

A letter from the city attorney suggested that the city intended to hold the referendum on March 15, 2016, during the Presidential Preference Primary.<sup>46</sup>

Section 166.031, F.S., requires a charter amendment referendum to be held during a general election held within the municipality or at a special election called for the purpose of approving the amendment.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>46</sup> Letter from Noel Pfeffer, City Attorney for the City of Delray Beach, to Rep. Magar, dated Sept. 29, 2015, available at [http://www.pbcgov.com/legislativeaffairs/pdf/2015/LB\\_City\\_of\\_Delray\\_Beach\\_Local\\_Bill\\_Package.pdf](http://www.pbcgov.com/legislativeaffairs/pdf/2015/LB_City_of_Delray_Beach_Local_Bill_Package.pdf).