

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1588

INTRODUCER: Senator Burgess

SUBJECT: Law Enforcement Operations

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1588 revises powers, duties, and obligations of a sheriff and also revises the process of appealing a funding reduction to the operating budget of a municipal law enforcement agency.

The bill does all of the following:

- Requires that there be an elected sheriff in each Florida county and prohibits the transfer of the sheriff’s duties to another officer or office.
- Specifies that a sheriff has exclusive policing jurisdiction in the unincorporated areas of each county and the sheriff’s jurisdiction and powers runs through the entire county regardless of incorporated cities or other independent districts or governmental entities in the county. The sheriff’s jurisdiction is concurrent with any city, district, or other law enforcement agency that has jurisdiction in a city or district.
- Imposes duties on each board of county commissioners to ensure the successful transfer of a sheriff’s exclusive jurisdiction in the unincorporated areas of the county, including but not limited to, developing and approving a budget, conducting an inventory and audit of all assets of any county police department and any other law enforcement agency that the sheriff will administer, providing for operations and insurance, and preparing and delivering to the sheriff documents, property and other items (as specified).
- Imposes duties on the sheriff-elect, including but not limited to, staffing, evaluating the budget and transfer of equipment, and notifying the board of county commissioners of any funding deficiencies.
- Authorizes the sheriff-elect to appeal by petition to the Administration Commission funding deficiencies that have not been timely addressed by the board of county commissioners (as specified).
- Authorizes the state attorney to petition the Division of Administrative Hearings to request a formal administrative hearing to challenge a reduction in a municipal law enforcement agency operating budget that is more than 5 percent compared to the current fiscal year’s approved budget.

- Specifies procedures for the administrative hearing and issuance of a recommended and final order, certain information that may be presented at the hearing, and certain matters the administrative law judge may consider.
- Provides that the administrative law judge’s recommended order is subject to appeal in accordance with ch. 120, F.S.

A county may incur costs in the transfer of a sheriff’s exclusive jurisdiction in the unincorporated areas of the county but these costs are indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Office of the Sheriff and Powers, Duties and Obligations of Sheriffs and Deputies

Art. VIII, s. 1(d), of the Florida Constitution, provides that each county must have an elected sheriff. There are currently 66 elected sheriffs in Florida’s 67 counties.^{1,2} There is currently no statutory framework to guide a county without a sheriff, or a newly created county, to establish an Office of Sheriff. The Florida Constitution also forbids a county charter from abolishing an Office of Sheriff or transferring the office’s duties to another officer or office.

Section 30.15, F.S., provides an extensive list of duties of sheriffs and deputies. Examples of some of those duties include:

- Executing all process of the Supreme Court, circuit courts, county courts, and boards of county commissioners of this state, to be executed in their counties.
- Executing such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties.
- Attending all sessions of the circuit court and county court held in their counties.
- Executing all orders of the boards of county commissioners of their counties.
- Being conservators of the peace in their counties.
- Suppressing tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.³

¹ In 2018, Florida voters passed Amendment 10, which, in part, requires “that all 67 counties must elect their sheriff, tax collector, elections supervisor and clerk of courts.” Isadora Rangel and Rob Landers, *Florida amendments 2018 explained: What passed, what failed* (Nov. 6, 2018), Florida Today, available at <https://www.floridatoday.com/story/news/2018/11/02/florida-amendments-2018/1857180002/> (last visited on March 16, 2023). Prior to the passage of this amendment, “[s]everal Florida counties [had] ... at least one of these positions appointed based on home-rule charters, such as Miami-Dade County, whose top law enforcer[was] ... appointed, not elected.” *Id.* Currently, Miami-Dade Police Department Director Alfredo Ramirez III is serving in that appointed position. Additionally, the Miami-Dade Police Department currently “provides basic police services throughout the unincorporated area of Miami-Dade County, Miami Lakes, Palmetto Bay and Cutler Bay,” and its “specialized patrol teams include the airport, seaport, marine, motorcycle, bomb disposal and SWAT.” *Miami-Dade Police Department*, Miami-Dade County, available at <https://www.miamidade.gov/global/police/home.page> (last visited on March 15, 2023).

² Miami-Dade County does not presently have an elected sheriff, but will elect a sheriff in 2024.

³ Section 30.15(1)(a)-(f), F.S.

Appeal of a Funding Reduction to the Operating Budget of a Municipal Law Enforcement Agency

A municipality is required to adopt a budget each fiscal year.⁴ As part of the budget process, a municipality is required to post a tentative budget to the municipality's official website prior to a formal hearing adopting the final budget.⁵ Typically, the municipal police chief is appointed or hired by a city official or officials (mayor, city manager, city commission) and law enforcement funding is determined by the municipal governing body.

Section 166.241, F.S., provides a budget appeal process to challenge funding reductions in a municipal law enforcement agency's budget. If a municipality's tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency, the state attorney for the judicial circuit in which the municipality is located or a member of the governing body of the municipality who objects to the funding reduction may appeal by petition to the Administration Commission within 30 days after the day the tentative budget is posted on the municipality's website.⁶

The petition is filed with the Executive Office of the Governor (EOG), which provides for a budget hearing.⁷ The EOG submits a report of its findings and recommendations to the Administrative Commission which, within 30 days, approves the action of the governing body or amends or modifies the budget as to each separate item within the operating budget of the municipal law enforcement agency. The budget, as approved, amended, or modified by the Administrative Commission is final.⁸

III. Effect of Proposed Changes:

The bill revises the powers, duties, and obligations of a sheriff and also revises the process of appealing a funding reduction to the operating budget of a municipal law enforcement agency.

The bill amends s. 30.15, F.S., to:

- Require that there be an elected sheriff in each Florida county and prohibits the transfer of the sheriff's duties to another officer or office.
- Specify that a sheriff has exclusive policing jurisdiction in the unincorporated areas of each county and the sheriff's jurisdiction and powers runs through the entire county regardless of incorporated cities or other independent districts or governmental entities in the county. The sheriff's jurisdiction is concurrent with any city, district, or other law enforcement agency that has jurisdiction in a city or district.
- Prohibit the county's board of county commissioners, or any other county legislative body from maintaining or establishing a police department or other policing entity in the unincorporated areas of any county.

⁴ The fiscal year for a municipality is October 1 of each year through September 30 of the following year. Section 166.241(1) and (2), F.S.

⁵ Section 166.241(3), F.S.

⁶ Section 166.241(4)(a), F.S.

⁷ Section 166.241(4) and (5), F.S.

⁸ Section 166.241(5), F.S.

- Provide that only the duly elected sheriff may provide such policing and police functions in the unincorporated areas of any county.
- Prohibit a county from contracting with or engaging in any manner with an incorporated city's or district's police department to provide any services provided by the sheriff, including policing or police functions in the unincorporated areas of any county.⁹

The bill also creates s. 125.01015, F.S., to:

- Impose duties on each board of county commissioners to ensure the successful transfer of a sheriff's exclusive jurisdiction in the unincorporated areas of the county, including but not limited to, developing and approving a budget, conducting an inventory and audit of all assets of any county police department and any other law enforcement agency that the sheriff will administer, providing for operations and insurance, and preparing and delivering to the sheriff documents, property and other items (as specified).
- Require the board of county commissioners to provide a written certification to the Governor, the President of the Senate, and the Speaker of the House of Representatives that the previously-described requirements have been met. If a written certification is not provided, the Governor may remove or suspend county commissioners as provided in Art. IV, s. 7, of the Florida Constitution.
- Impose duties on the sheriff-elect, including but not limited to, staffing, evaluating the budget and transfer of equipment, and notifying the board of county commissioners of any funding deficiencies and authorizing the sheriff-elect to appeal those funding deficiencies as specified.
- Authorize the sheriff-elect to appeal by petition to the Administration Commission funding deficiencies that have not been timely addressed by the board of county commissioners (as specified).

The bill also amends s. 166.241, F.S., to revise the process of appealing a funding reduction to the operating budget of a municipal law enforcement agency. The bill:

- Authorizes the state attorney for the jurisdiction in which the municipality is located or a member of the governing body to petition the Division of Administrative Hearings (DOAH)¹⁰ to request a formal administrative hearing (rather than the current process of appealing to the Executive Office of the Governor) to challenge a reduction in a municipal law enforcement agency operating budget that is more than 5 percent compared to the current fiscal year's approved budget.

⁹ The bill provides that the jurisdiction or powers of any agency of the State of Florida or the United States are unaffected and mutual aid agreements between the sheriff and any other police department are not prohibited.

¹⁰ DOAH provides "a uniform and impartial forum for the trial and resolution of disputes between private citizens and organizations and agencies of the state in an efficient and timely manner." *See* discussion of DOAH by the Office of Program Policy Analysis and Government Accountability, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4129> (last visited on March 23, 2024). "An administrative proceeding is initiated when an agency action or inaction adversely affects a private party's substantial interests. The agency is almost always a party to the proceedings. Cases often come to administrative law judges after an administrative hearing before agency staff or an agency head." *Id.* Ch. 120, F.S., governs administrative hearings. Cases that administrative judges hear include agency rule challenges and "resolv[ing] disputes between an agency and a person whose substantial interests will be affected by an agency decision (other than a rule)." *Id.*

- Specifies procedures for the administrative hearing and issuance of a recommended and final order, some of the information that may be presented at the hearing, and some of the matters the administrative law judge may consider;

The bill provides for the following process after the administrative hearing:

- The administrative law judge, within 30 days after the hearing on the petition, issues a recommended order to approve or reject the proposed operating budget for the municipal law enforcement agency.
- The recommended order must list the administrative law judge's findings and explains its decision and is subject to appeal in accordance with ch. 120, F.S.
- The recommended order becomes a final order 90 days after its issuance unless the petitioner and municipality voluntarily enter into an agreement resolving the issues raised in the hearing. Before the execution of the agreement, the municipality must approve the agreement at a public hearing. Upon the filing of an executed agreement, the DOAH must close the case.
- If the final order approves the tentative budget of a municipality which contains a funding reduction to the operating budget of the municipal law enforcement agency, that portion of the operating budget is valid.
- If the final order rejects the tentative budget of a municipality which contains a funding reduction, the municipality must approve a budget that does not reduce funding to the municipal law enforcement agency as prescribed in the bill.¹¹

The bill take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ There is a different process for reductions in a sheriff's budget by a board of commissioners or budget commission.. The sheriff, within 30 days after receiving written notice of a reduction in its budget may file an appeal by petition to the Administration Commission. The petition must set forth the budget proposed by the sheriff, in the form and manner prescribed by the Executive Office of the Governor (EOG) and approved by the Administration Commission, and the budget as approved by the board of county commissioners or the budget commission and contain the reasons or grounds for the appeal. This petition and reply to the petition are filed with the EOG. The EOG conducts a budget hearing and submits its findings and recommendations to the Administration Commission, which, within 30 days, either approves the action of the board or commission as to each separate item, or approves the budget as proposed by the sheriff as to each separate item, or amends or modifies the budget as to each separate item within the limits of the proposed board of expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget as approved, amended, or modified by the Administration Commission is final. *See* s. 30.49(4) and (5), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 2 of the bill may raise an issue related to its nature as a special law, or a bill filed as a general law which applies to less than the entire state based on an invalid classification. A general law which applies evenly across the state or to a valid class of people or localities is valid, while a law applying only to a select group requires the treatment of a local bill.

The measure of a valid classification used in a general law is whether there is a reasonable possibility that others in the future may meet the criteria of the classification.¹² “Ultimately, the criterion that determines if a reasonable relationship exists between the classification adopted and the purpose of the statute is whether the classification is potentially open to additional parties.”¹³

Section 2 applies a set of procedures and obligations to any county which does not have an elected sheriff and is transferring policing jurisdiction from another body to a newly established sheriff. Maintaining an elected Office of Sheriff is required by Article VIII, s. 1(d), of the State Constitution, and 66 counties currently maintain such an office. Thus, the procedures and obligations laid out by the section only apply to Miami-Dade County.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A county may incur costs in the transfer of exclusive policing jurisdiction in the unincorporated areas of the county but these costs are indeterminate. If the transfer is constitutionally required, these costs presumably would be incurred by the county, regardless of the provisions of the bill.

VI. Technical Deficiencies:

None.

¹² *Fla. Dep’t of Bus. & Prof’l Regulation v. Gulfstream Park Racing Ass’n, Inc.*, 967 So. 2d 802, 808–09 (Fla.2007).

¹³ *License Acquisitions, LLC*, *supra* at 1142-1143, citing *Dept. of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155, 1158-1159 (Fla. 1989) (quoting *Dep’t of Legal Affairs v. Sanford–Orlando Kennel Club, Inc.*, 434 So. 2d 879, 882 (Fla.1983)), *Ocala Breeders’ Sales Co., Inc. v. Fla. Gaming Ctrs., Inc.*, 731 So. 2d 21, 25 (Fla. 1st DCA 1999).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 30.15 and 166.241.

This bill creates section 125.01015 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.