

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 Rules

BILL: CS/SB 1588

INTRODUCER: Rules Committee and Senator Burgess

SUBJECT: Law Enforcement Operations

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Erickson</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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, unless otherwise authorized under state law.
- Imposes duties on each board of county commissioners to ensure the successful transfer of exclusive policing responsibility to the sheriff, including, but not limited to: developing and approving a budget; conducting an inventory and audit of all assets of any county department that performs any function the sheriff will perform or administer; providing funding for staff, office space, necessary insurance, bank and other accounts, and required surety bonds; and providing support services.
- Imposes duties on a sheriff-elect before taking office, including, but not limited to: staffing and hiring; establishing bank and other accounts; obtaining necessary insurance; evaluating the budget and transfer of equipment, and personnel services budget, and notifying the board of county commissioners of any funding deficiencies.
- Authorizes a sheriff-elect to appeal by petition to the Administration Commission unresolved funding deficiencies.
- Requires a sheriff, upon taking office, to take receipt or possession of specified items, property, records, and materials.

- Requires a sheriff to provide police services for a specified period to certain municipalities for which a county provided contracted police services, and specifies the means of providing those police services.
- Provides a severability clause relevant to aforementioned duties or requirements imposed on a board of county commissioners and sheriff.
- Authorizes the state attorney to petition the Division of Administrative Hearings to request a 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 final order.
- Provides a non-exclusive list of information the petitioner and affected municipality may present at the administrative hearing.
- Provides a list of findings the judge must make regarding a funding reduction.
- Specifies that the administrative final order is appealable pursuant to s. 120.68, F.S., and requires that any such judicial review be sought in the First District Court of Appeal.

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.

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.

- 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

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 prohibit the transfer of the sheriff's duties to another officer or office.

³ Section 30.15(1)(a)-(f), F.S.

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.

- Specify that a sheriff has exclusive policing jurisdiction in the unincorporated areas of each county, unless otherwise authorized under state law. The sheriff's jurisdiction and powers run 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 a 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.
- 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 exclusive policing responsibility to the sheriff, including, but not limited to:
 - Developing and approving a budget;¹⁰
 - Conducting an inventory and audit of all assets (and their associated liabilities) of any county department that performs any function the sheriff will perform or administer;¹¹
 - Providing funding for staff, office space, necessary insurance,¹² bank and other accounts, and required surety bonds; and
 - For a term commencing January 7, 2025, and ending no sooner than September 30, 2028, providing substantially and materially the same support services, facilities, office space, and information technology infrastructure¹³ that such county, during the 1-year period immediately preceding the sheriff taking office, provided to any of its offices or county departments that performed duties to be performed by the sheriff upon taking office.¹⁴
- Defines "support services" to include:
 - Property and facilities and the management and maintenance of such property and facilities;
 - Communications infrastructure, including telephone and Internet connectivity;
 - Risk management, to include processing, adjusting, and payment of all claims and demands, including those made under s. 768.28, F.S.;¹⁵

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

¹⁰ The budget for the fiscal year in which the sheriff-elect will take office must consider the sheriff's initial budget requirements as mitigated by the transfer of assets from existing county departments to the sheriff's office.

¹¹ The inventory and audit must be published on the county's website at least 60 days prior to the county adopting its budget for the fiscal year in which the sheriff will take office. The budget approved by the county for the fiscal year in which the sheriff will take office must provide funding to purchase all basic necessary operating equipment, including, but not limited to, furniture, fixtures and equipment, and information technology hardware and software, which is not specifically designated for transfer from the county to the office of the sheriff based on the inventory (as specified in the bill).

¹² This is necessary insurance not provided by the county through an interlocal agreement (as specified in the bill).

¹³ At a minimum this infrastructure must include all hardware, including computers; budget and fiscal software, including payroll and purchasing software; and computer-aided dispatch.

¹⁴ Under a cost allocation plan agreed to by the county and the sheriff, the sheriff must pay the county for such support services and information technology infrastructure from his or her general fund budget, except for any support services and information technology infrastructure costs that state law otherwise and expressly requires the county to fund outside the sheriff's budget.

¹⁵ The board of county commissioners must provide the sheriff with all required general liability, property, and other insurance coverage either through its self-insurance program, a self-insurance risk pool, or commercial insurance. If the

- Legal representation and advice through the county attorney's office for all claims, demands, and causes of action brought against the sheriff, his or her deputies, or other personnel in their official and individual capacities, while acting in their official capacities, including any required outside counsel due to representation conflicts;¹⁶
- Purchasing and procurement services using procedures under the laws and ordinances applicable to the county for purchases requiring competitive procurement;
- Budget and fiscal software and budget development services;
- Human resource services, including, but not limited to, employee applicant screening, applicant background checks, facilitation of the hiring process, and employee benefit administration;¹⁷ and
- Fleet management, including procurement of all vehicles and other mobile assets, such as boats and aircraft, and all vehicle repair and maintenance.
- Requires the county and the sheriff to execute an interlocal cooperation agreement addressing the aforementioned requirements and other expenditures, including an appropriate phase-in period for identification of sheriff's assets with sheriff's markings to minimize cost to taxpayers.¹⁸
- Imposes duties on a sheriff-elect after the election is certified and before taking office, including, but not limited to:
 - Staffing and hiring;¹⁹
 - Establishing bank and other accounts;
 - Obtaining necessary insurance;²⁰ and
 - Evaluating the budget and transfer of equipment, and personnel services budget, and notifying the board of county commissioners of any funding deficiencies.²¹
- Authorizes a sheriff-elect to appeal by petition to the Administration Commission unresolved funding deficiencies.²²

county provides insurance through a self-insurance program, it must also provide the sheriff with commercial stop-loss coverage at an amount and with a self-insured retention agreed upon by the sheriff and the county.

¹⁶ This section does not prohibit the sheriff from employing or retaining his or her own legal representation as the sheriff deems necessary.

¹⁷ The sheriff is the employer of his or her employees and retains full and complete control over his or her employees' hiring and terms and conditions of employment, including employee discipline and termination of employment. The provision of human resource services by the county to the sheriff does not create a joint-employer relationship. The sheriff's employees remain members of the county's health insurance and workers' compensation plans (as specified in the bill).

¹⁸ This interlocal agreement must have a term that ends no earlier than September 30, 2028, and may be amended, renewed, extended, or adopted at any time following the expiration or termination thereof for any additional time periods that a county and the sheriff agree upon. After the initial period ending no sooner than September 30, 2028, any new or continuing voluntary interlocal cooperation agreement between the county and the sheriff may provide for the same or different requirements than the aforementioned requirements.

¹⁹ All personnel hired by the sheriff are employees of the sheriff and not the county. The sheriff retains all control over the terms and conditions of all his or her employees, including procedures regarding employment, setting of salaries, and termination of such personnel. However, the sheriff must use county human resource services for the period of time established in the interlocal agreement (as specified in the bill).

²⁰ This is necessary insurance not provided by interlocal agreement (as specified in the bill).

²¹ The sheriff provides written notice to the board of county commissioners, which must respond and reach an agreement with the sheriff-elect on funding requirements within 30 days after such notice. If, after expiration of the 30-day period, an agreement has not been reached, the sheriff-elect may file an appeal by petition to the Administration Commission which must expedite its review and determination of such petition and render a decision within 90 days after it is filed.

²² *Id.*

- Requires a sheriff, upon taking office, to take receipt or possession of unexecuted writs and court processes, forfeited contraband property, and other specified property, records, and materials.
- Requires a sheriff to provide police services for 3 years from the time he or she takes office to certain municipalities for which a county provided contracted police services, and specifies the following means of providing those police services:
 - Assume the contract in place between the county and the municipality at the time the sheriff takes office;
 - Negotiate a new contract with the municipality; or
 - Otherwise provide policing services to the municipality at the same level that the municipality received policing services from the county during the 1-year period prior to the sheriff taking office.
- Provides a severability clause relevant to aforementioned duties or requirements imposed on a board of county commissioners and sheriff.

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 file a petition with the Division of Administrative Hearings (DOAH)²³ to request a 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.
- Specifies procedures for the administrative hearing and issuance of a final order.
- Provides the following non-exclusive list of information the petitioner and affected municipality may present at the administrative hearing:
 - The proposed operating budget approved by the municipality;
 - The municipality's grounds for proposing a reduction in funding to the current fiscal year's law enforcement operating budget;
 - The petitioner's grounds for challenging the proposed reduction in funding to the law enforcement operating budget;
 - The operating budgets of other public entities in the municipality;
 - The operating budgets of other law enforcement agencies in municipalities that are of comparable size;
 - The municipal law enforcement agency's staffing needs and budgetary requirements for the current fiscal year and the 2 previous fiscal years;
 - The draft municipal law enforcement agency operating budget, budget amendments, and budget meeting minutes from the current fiscal year and the 2 previous fiscal years;

²³ 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.*

- The revenue and projected revenue available to the municipality and any change in the amount of revenue collected over the previous 3 fiscal years; and
- Any other information relevant to the municipal law enforcement agency's operating budget.
- Provides that within 15 days after the hearing, the administrative law judge must issue a final order either approving or rejecting the proposed operating budget for the municipal law enforcement agency by determining whether the proposed reduction will impair the law enforcement agency's overall ability to ensure public safety.
- Provides that in determining whether the proposed reduction will impair the law enforcement agency's overall ability to ensure public safety, the administrative law judge must make findings regarding whether the funding reduction in the proposed operating budget of the municipal law enforcement agency will result in:
 - A reduction of the number of law enforcement officers employed by the municipality;
 - A reduction or an elimination of public safety programs or initiatives provided by the agency; or
 - A lack of appropriate equipment necessary to ensure officer safety.
- Specifies that the administrative final order is appealable pursuant to s. 120.68, F.S., and requires that any such judicial review be sought in the First District Court of Appeal.

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.

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.²⁴ “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.”²⁵

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.

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.

²⁴ *Fla. Dep’t of Bus. & Prof’l Regulation v. Gulfstream Park Racing Ass’n, Inc.*, 967 So. 2d 802, 808–09 (Fla.2007).

²⁵ *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).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on April 19, 2023:

The committee substitute:

- Provides that a sheriff shall have exclusive policing jurisdiction in unincorporated areas of each county, unless otherwise authorized under state law.
- Revises duties of a board of county commissioners before election of a sheriff, including, but not limited to, developing a budget, providing an inventory of assets and liabilities, and providing specified support services.
- Requires a sheriff to provide police services for a specified period to certain municipalities for which a county provided contracted police services, and specifies the means of providing those police services.
- Revises time requirements for filing a petition with the DOAH, service of the answer, assignment of the administrative law judge, and issuance of the final order.
- Revises the non-exclusive list of information the petitioner and affected municipality may present at the hearing.
- Provides a list of findings the judge must make regarding a funding reduction.
- Specifies that the administrative final order is appealable pursuant to s. 120.69, F.S., and requires that any such judicial review be sought in the First District Court of Appeal.

- B. **Amendments:**

None.