

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1595 Law Enforcement Operations

SPONSOR(S): State Affairs Committee and Judiciary Committee and Local Administration, Federal Affairs & Special Districts Subcommittee, Yarkosky, Fernandez-Barquin, and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1588

FINAL HOUSE FLOOR ACTION: 99 Y's

7 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1595 passed the House on April 28, 2023, and subsequently passed the Senate on May 1, 2023.

The Florida Constitution provides that each county shall have a sheriff elected by the electors of the county to a four-year term. As of January 5, 2021, for all counties except Broward and Miami-Dade, a county charter may not abolish the office of sheriff or provide an alternative method for selecting the sheriff. This provision applies to all counties effective January 7, 2025. Sheriffs are given an extensive list of duties under s. 30.15, F.S., but currently the jurisdictional powers of the sheriff are not codified.

Current law provides a budget appeal process by which specified persons may 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, comprised of the Governor and Cabinet, within 30 days after the day the tentative budget is posted on the municipality's website. The Administration Commission conducts a hearing on the reduction and may approve the budget adopted by the governing body of the municipality, or may amend or modify each separate item within the operating budget of the municipal law enforcement agency.

The bill codifies the jurisdictional powers of the sheriff, to clarify that the sheriff has exclusive policing jurisdiction in the unincorporated areas of each county and concurrent jurisdiction with municipal or special district law enforcement agencies in the jurisdictions of those agencies.

The bill provides for the transfer of policing responsibility and authority to the sheriff in counties that do not currently have an elected sheriff.

The bill revises the budget appeal process to challenge funding reductions in a municipal law enforcement agency's budget to only allow a challenge if the reduction is more than 5 percent of the prior year's budget; transfers the appeals process from the Administration Commission to the Division of Administrative Hearings; requires a copy of the petition be given to the affected municipality; and provides time limitations for the filing of a petition, the petition hearing, and the issuance of a final order on the petition. The bill provides guidance for administrative law judges (ALJ) in considering petitions, and requires that the ALJ's final order be based on whether the proposed reduction in the law enforcement budget will impair a law enforcement agency's ability to ensure public safety. Under the bill, the ALJ's final order is appealable and such an appeal must be sought in the First District Court of Appeal.

The bill could have an indeterminate fiscal impact on state and local governments.

The bill was approved by the Governor on May 25, 2023, ch. 2023-156, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

County Constitutional Officers

The Florida Constitution requires the Legislature to divide the state into counties.¹ Statutes divide the state into 67 counties, establishing their boundaries by providing the exact legal description of each county.² The Florida Constitution recognizes two types of county governments: those operating under a county charter and those without a charter.³ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁴ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.⁵

The electors of each county elect county constitutional officers (the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court) to a four-year term.⁶ Before 2018, a county charter could provide an alternative method of selecting county constitutional officers or abolish those offices, as long as the duties of the office prescribed by general law were transferred to another office.⁷ During the 2018 general election, voters approved Amendment 10, requiring all county constitutional officers to be elected to a four-term year and prohibiting the transfer of those duties to another office.⁸ Most counties were required to comply with this requirement by January 5, 2021, while Broward and Miami-Dade Counties were given until January 7, 2025.⁹

Office of the Sheriff

There are currently 66 elected sheriffs in Florida's 67 counties.¹⁰ Section 30.15, F.S., provides the duties and powers of sheriffs, including:

- 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; and
- Suppressing tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.¹¹

Current law does not provide an explicit statement of the sheriff's jurisdictional powers.

¹ Art. VIII, s. 1(a), Fla. Const.

² See ch. 7, F.S.

³ Art. VIII, ss. 1(f), (g), Fla. Const.

⁴ Art. VIII, s. 1(f), Fla. Const.

⁵ Art. VIII, s. 1(g), Fla. Const.

⁶ Art. VIII, s. 1(d), Fla. Const.

⁷ Art. VIII, s. 1(d), Fla. Const. (2018).

⁸ See art. VIII, s. 1(d), Fla. Const.

⁹ Art. VIII, s. 6(g), Fla. Const.

¹⁰ The Miami-Dade County Charter abolishes the office of sheriff, transfers its duties and responsibilities to the mayor of Miami-Dade County, and authorizes the mayor to delegate the functions of the sheriff to a "suitable person or persons." Miami-Dade County Charter, s. 9.01. Currently, Miami-Dade Police Department Director Alfredo Ramirez III serves in the appointed position. 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 County, *Miami-Dade Police Department*, <https://www.miamidade.gov/global/police/home.page> (last visited Apr. 11, 2023).

¹¹ S. 30.15(1), F.S.

Municipal Law Enforcement Budget Appeal Procedure

A municipality is required to adopt a budget each fiscal year.¹² 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.¹³ 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.

Current law provides a budget appeal process by which specified persons may challenge funding reductions in a municipal law enforcement agency's budget.¹⁴ 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.¹⁵

The petition is filed with the Executive Office of the Governor (EOG), with copies served upon the governing body of the municipality or to the clerk of the circuit court of the county in which the municipality is located.¹⁶ Upon receipt of a copy of the petition, the governing body of the municipality has five working days to file a reply with EOG and serve the petitioner with a copy.

The EOG conducts a budget hearing upon receipt of the petition and submits a report of its findings and recommendations to the Administration Commission.¹⁷ Within 30 days of receipt of the report, the Administration Commission may approve the budget adopted by the governing body of the municipality, or may amend or modify each separate item within the operating budget of the municipal law enforcement agency. The budget, as approved, amended, or modified by the Administration Commission is final.

Administrative Law Judges

Administrative law judges (ALJs) preside over disputes arising under the Administrative Procedure Act¹⁸ and other state laws in which the substantial interests of a person are determined by an agency¹⁹ which involve a disputed issue of material fact.²⁰ When a state agency proposes to take some action

¹² S. 166.241(1) and (2), F.S.

¹³ S. 166.241(3), F.S.

¹⁴ S. 166.241(4), F.S.

¹⁵ S. 166.241(4)(a), F.S. The Administration Commission consists of the Governor and Cabinet. S. 14.202, F.S.

¹⁶ S. 166.241(4)(a), F.S.

¹⁷ S. 166.241(5), F.S.

¹⁸ Ch. 120, F.S.

¹⁹ The term "agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

- The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.
- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

The definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S., or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. S. 120.52(1), F.S.

²⁰ S. 120.65(4), F.S.

that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.²¹

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding five years.²² DOAH is administratively housed under the Department of Management Services (DMS); however, DOAH is not subject to the control, supervision, or direction of DMS.

Effect of the Bill

Duties of the Sheriff

The bill amends s. 30.15, F.S., to revise the statutory duties of a sheriff by:

- Clarifying that each county must have an elected sheriff and prohibiting the transfer of the sheriff's duties to another officer or office.
- Specifying that the sheriff has exclusive policing jurisdiction in the unincorporated areas of each county and concurrent jurisdiction with municipal or special district law enforcement agencies in the jurisdictions of those agencies.
- Prohibiting a county board of county commissioners, or other county legislative body, from maintaining or establishing a police department or other policing entity in unincorporated areas of the county.
- Providing that, unless otherwise authorized by state law, only the duly elected sheriff may provide such policing and police functions in the unincorporated areas of any county; and
- Prohibiting a county from contracting with or engaging in any manner with a municipal or special district law enforcement agency to provide any services provided by the sheriff, including policing or police functions, in the unincorporated areas of any county.

The bill provides that these duties do not inhibit the jurisdiction of any state or federal law enforcement agency and do not prohibit a sheriff from entering into mutual aid agreements with other law enforcement agencies.

Elected Sheriff

The bill creates s. 125.01015, F.S., codifying the constitutional requirement that each county have an elected sheriff and providing for the one-time transition from an appointed sheriff to an elected sheriff for a county as defined in s. 125.011(1), F.S.²³ The bill requires the board of county commissioners (Board) to ensure the transfer of policing responsibility and authority to the sheriff in areas of the county in which the sheriff has jurisdictional responsibility. In order to ensure the transfer of exclusive policing responsibility and authority to the sheriff, the Board must:

- Prior to the election of the sheriff:
 - Develop and approve a budget for the sheriff for the fiscal year in which the election of the sheriff will be held and the sheriff will take office.
 - Conduct an inventory and audit of all assets, and any associated liabilities, of county departments that perform any function performed or administered by the elected sheriff, and determine which of those assets and liabilities will be transferred to the office of the sheriff. The inventory and audit must be completed before the county adopts its budget for the fiscal year in which the sheriff will take office.

²¹ DOAH, *Representing Yourself Before the Division of Administrative Hearings*, <https://www.doah.state.fl.us/ALJ/RepresentYourself.asp> (last visited Apr. 11, 2023).

²² S. 120.65(4), F.S.

²³ Section 125.011(1), F.S., defines "county" to mean any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. The term does not include board of county commissioners of such county.

- Provide funding in the budget approved by the county for the fiscal year in which the sheriff will take office to purchase all basic necessary operating equipment.
- After the election of the sheriff is certified:
 - Provide funding for all necessary staff and office space for the sheriff-elect.
 - Provide funding for the sheriff-elect to select any necessary insurance not provided by the county.
 - Provide funding for the establishment of bank and other accounts.
 - Provide funding for and facilitate procurement of required surety bonds for deputy sheriffs pursuant to s. 30.09, F.S.²⁴
 - Prepare and deliver to the office of the sheriff all documents, property, and items that the sheriff must take receipt or possession of as required by law.
 - Provide the sheriff-elect taking office with, and require the sheriff-elect taking office to use, not less than the substantially and materially same support services, facilities, office space, and information technology infrastructure provided to county offices or departments performing the duties to be performed by the sheriff-elect upon taking office in the one-year period before the sheriff-elect takes office.
 - The bill provides that under a cost allocation plan agreed to by the county and the sheriff-elect, and in the absence of any general law that expressly requires the county to fund the sheriff's budget, the sheriff, upon taking office, will pay the county for support services and information technology infrastructure.
 - The bill directs the county and the sheriff to execute an interlocal agreement in order to ensure the sheriff will have and use support services, facilities, office space, and information technology infrastructure. Such interlocal agreements may not end earlier than September 30, 2028, but may be amended, renewed, extended, or newly adopted at any time following the expiration or termination of the agreement.

After the election of the sheriff is certified but before the sheriff takes office, the bill requires the sheriff-elect to:²⁵

- Hire personnel to assist the sheriff-elect in establishing an independent office of the sheriff.
- Establish bank and other accounts in the sheriff's official capacity.
- Obtain all necessary insurance or establish self-insurance unless the county provides such insurance under the interlocal agreement.
- Evaluate the budget and transfer of equipment to determine whether the operating, capital, and personnel services budget is sufficient for the sheriff-elect to operate and fulfill his or her constitutional and statutory responsibilities.
- Provide written notice of any funding deficiencies to the Board. The Board and the sheriff-elect must reach an agreement on funding within 30 days. If an agreement is not reached, the sheriff-elect may file an appeal by petition to the Administration Commission using the same process as the appeal of a sheriff's budget.

Upon taking office, the bill requires the sheriff to take receipt or possession of any unexecuted writs and court processes; property confiscated under the Florida Contraband Forfeiture Act; records, papers, documents, or other writings necessary for the sheriff to perform the sheriff's required duties; and property held in evidence by any county department relating to a case that is under the jurisdiction of the sheriff.

The bill provides in situations in which a county that is required to elect a sheriff and provides contracted police services to a municipality within the county before the sheriff-elect takes office, the sheriff must assume the contract upon taking office, but that the assumption of this contract does not

²⁴ Section 30.09, F.S., provides for the qualification of deputies.

²⁵ Current law generally does not recognize the position of a constitutional officer-elect before the constitutional officer takes office. *But* see s. 119.035, F.S. (county officers elected are required to maintain certain transition related documents as public records).

prevent a municipality from establishing its own police department or provide authorized police services.

The bill provides for severability for the provisions in this section.

Municipal Law Enforcement Budget Appeal Procedure

The bill also amends s. 166.241, F.S., to revise the process for appealing a reduction in a municipal law enforcement budget by:

- Limiting appeals to reductions of more than 5 percent compared to the prior fiscal year's approved operating budget;
- Replacing the role of the Administration Commission in the appeal process with DOAH;
- Requiring a petition challenging the reduction to be filed within 10 days after the day a municipality posts a tentative budget to its official website;
- Requiring the petitioner to serve a copy of the petition on the affected municipality; and
- Requiring the governing body of the municipality to file an answer to the petition with DOAH within five days of receipt of service of such petition.

The bill requires an ALJ to hold a hearing on the petition no later than 20 days from the date a petition is filed. Under the bill, the parties may present the following information to an ALJ for consideration:

- 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 within 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 from the current fiscal year and the two previous fiscal years;
- The draft municipal law enforcement agency operating budget, budget amendments, or budget meeting minutes from the current fiscal year and the two previous fiscal years;
- The revenue and projected revenue available to the municipality and any change in the amount of the revenue collected over the last three fiscal years; and
- Any other information relevant to the municipal law enforcement agency's operating budget.

The bill requires an ALJ to issue, within 15 days of the hearing, 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. In making such a determination, the ALJ 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;
- Result in the reduction or elimination of public safety programs or initiatives provided by the agency; and
- Result in a lack of appropriate equipment that is necessary to ensure officer safety.

Under the bill, the ALJ's final order is appealable pursuant to s. 120.68, F.S., and such an appeal must be sought in the First District Court of Appeal.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will result in an increased workload to DOAH due to the cases that will require adjudication by the division; however, the anticipated increase in cases can be absorbed within existing resources.²⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There could be an indeterminate fiscal impact to municipal government budgets based on the appeal process for law enforcement funding.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁶ Letter to the Senate Appropriations Committee from Cindy Ardoin, Budget Director for DOAH, regarding SB 1588, which is the companion to this bill (March 10, 2023) (on file with the State Affairs Committee).