

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 935 Chiefs of Police

SPONSOR(S): Judiciary Committee, Constitutional Rights, Rule of Law & Government Operations Subcommittee, Jacques and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	12 Y, 0 N, As CS	Wagoner	Miller
2) Judiciary Committee	23 Y, 0 N, As CS	Padgett	Kramer
3) State Affairs Committee			

SUMMARY ANALYSIS

Municipalities are constitutionally granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law. Municipalities may create law enforcement agencies, which are generally known as police departments, and may determine the employment and personnel policies for such agencies. Such employment and personnel policies include the hiring and termination of law enforcement officers and a chief of police.

CS/CS/HB 935 creates s. 166.0494, F.S., to prohibit a municipality from terminating a chief of police without providing the chief of police written notice of his or her termination. Under the bill, after the chief of police receives written notice of his or her termination, a municipality must allow the chief of police to appear at the next regularly scheduled public meeting of the governing body of the municipality and allow the chief of police an opportunity to provide a full and complete response to his or her termination.

The bill prohibits an employment contract between a municipality and a chief of police from:

- Waiving or modifying any requirements of the bill; or
- Including a nondisclosure clause that prohibits a chief of police from responding to his or her termination at a public meeting.

The bill may have an indeterminate fiscal impact on municipalities that terminate a chief of police by requiring such a municipality to provide written notice to a chief of police who is terminated and an opportunity to respond at a public meeting.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Municipal Law Enforcement Agencies

Municipalities are constitutionally granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.¹ Municipalities may create law enforcement agencies, which are generally known as police departments, and may determine the employment and personnel policies for such agencies.² Such employment and personnel policies include the hiring and termination of law enforcement officers³ and a chief of police.

A chief of police has specified duties and obligations prescribed by statute, including:

- Scheduling at least two law enforcement officers to be on duty at all times and ensuring each officer has the ability to communicate directly with each other and respond to the other officer's request for assistance.
- Establishing a means for a municipal law enforcement officer to communicate with a county sheriff's office and to request assistance from the sheriff.
- Establishing a mutual aid agreement with other municipalities to allow a municipal law enforcement officer to communicate with law enforcement agencies in other jurisdictions and to request assistance from those agencies.⁴

Some municipalities authorize a city manager to employ or appoint a chief of police but reserve final authority to dismiss the chief to the governing body.⁵ Other municipalities vest executive authority in the mayor, with full authority to appoint or remove the chief of police.⁶

Law Enforcement Officers' Bill of Rights

Current law provides law enforcement officers and correctional officers with specified rights when they are being investigated for misconduct by their own agencies. Chapter 112, part VI, F.S., commonly known as the Law Enforcement Officers' Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer or correctional officer is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. A chief of police is *excluded* from the definition of a "law enforcement officer" in ch. 112, F.S. Thus, a chief of police is not eligible for protections in the LEOBOR granted to other sworn law enforcement officers.

Effect of the Bill

CS/CS/HB 935 creates s. 166.0494, F.S., to prohibit a municipality from terminating a chief of police without providing the chief of police written notice of his or her termination. Under the bill, after the chief of police receives written notice of his or her termination, a municipality must allow the chief of police to

¹ Art. VIII, s. 2(b), Fla. Const. See s. 166.021, F.S.

² See ss. 166.049, 166.0493, 166.0495, F.S. See, e.g., Municipal Charter of the City of Tampa, art. V, s. 5.01(d).

³ A "law enforcement officer" is any person who is elected, appointed, or employed full time by any municipality or the state and vested with authority to bear arms and to make arrests, and whose primary responsibility is the prevention and detection of crime, or enforcement of the laws of the state. S. 943.10(1), F.S.

⁴ S. 166.049, F.S.

⁵ City of Miami, Code of Ordinances, ch. 42, s. 42-2, at https://library.municode.com/fl/miami/codes/code_of_ordinances?nodet=PTIITHCO_CH42PO_ARTIINGE_S42-2APDIPODE (last visited Apr. 11, 2023).

⁶ Municipal Charter for the City of Pensacola, art. I, s. 4.01(1)(a); Municipal Charter for the City of Tampa, art. VI, s. 6.03.

appear at the next regularly scheduled public meeting of the governing body of the municipality and allow the chief of police an opportunity to provide a full and complete response to his or her termination.

The bill prohibits an employment contract between a municipality and a chief of police from:

- Waiving or modifying any requirements of the bill; or
- Including a nondisclosure clause that prohibits a chief of police from responding to his or her termination at a public meeting.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 166.0494, F.S., relating to chief of police; termination.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on municipalities that terminate a chief of police by requiring such a municipality to provide written notice to a chief of police who is terminated and an opportunity to respond at a public meeting.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that a chief of police must receive written notice if the municipality terminates the chief's employment. If a chief of police is employed by an elected governing body, the chief must be placed on the agenda of the next regularly scheduled meeting and be allowed to make a full response to the termination. The bill also provides that these protections are not superseded by written employment or non-disclosure agreements.

On April 11, 2023, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Moved the bill language from s. 112.5321, F.S., relating to the LEOBOR, to a newly created section in ch. 166, F.S., which relates to municipalities.
- Narrowed the scope of the bill to apply only to a chief of police employed by a municipality.
- Made technical changes to improve the clarity of the bill.

This analysis is drafted to the committee substitute adopted by the Judiciary Committee.