

STORAGE NAME: h1441.ca

DATE: April 18, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1441

RELATING TO: Sheriff's Office/Career-service

SPONSOR(S): Representative Russell

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS (PRC) YEAS 4 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a career services act for the employees of the Hernando County Sheriff's Office.

The bill specifies applicability of the act, defines "members" of the Sheriff's Office, and provides requirements for probationary, and career service status.

This bill creates a Career Service Appeals Board and provides for its authority, functions, and appeals process.

The bill provides for exemptions from coverage under the act, and severability of any provisions found to be invalid.

The fiscal impact of the bill depends on the number and complexity of appeals made pursuant to the act.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Sheriff's Office is an independent entity in the county, and has its own set of directives and policies which are not codified by special act. Traditionally, each Sheriff establishes his or her own policies when they take office.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a career services act for the employees of the Hernando County Sheriff's Office.

The bill provides for the applicability of the act with certain exceptions, provides exceptions for certain dismissals, provides that the act does not grant the right of collective bargaining to members of the Hernando County Sheriff's Office who do not otherwise have that right pursuant to law; defines "members" and describes the necessary service to achieve "career service" status; defines "cause."

The bill grants rulemaking authority to the Sheriff to administer this act, but specifies that the act does not affect the Board of County Commissioners with regard to their work adopting a budget.

The bill creates an ad hoc Career Service Appeals Board primarily to hear appeals arising from disciplinary dismissal, and provides for membership composition, membership qualifications, membership terms, and limitations on membership; provides duties, processes, and procedures for the Career Service Appeals Board; specifically reserves to the Sheriff the right of final determination of an appeal, and provides that no reinstatement may be made without the Sheriff's concurrence.

Specifies that this act does not apply to any appeal by a deputy sheriff claiming such dismissal was due to lawful off-duty political activity, or for discriminatory reasons.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides for the applicability of the act.

Subsection (1) establishes applicability of the act to all members except: those serving in full-time positions during their initial probationary period, part-time members, reserve and auxiliary deputy sheriffs, members holding the position of Chief Deputy or Undersheriff, and members holding the position of Captain, or above.

Subsection (2) provides that the act does not apply to the dismissal of members arising from: layoffs, partial or total abolition or cessation of programs, services, operations, departments, or grant-funded positions; provides that the Sheriff, however, has discretion with regard to determining applicability of this bill in the dismissals enumerated in this paragraph.

Subsection (3) provides that the act does not grant the right of collective bargaining to members of the Hernando County Sheriff's Office who do not otherwise have that right pursuant to law.

Subsection (4) defines "members" as all persons, whether employed or appointed, certified or noncertified, in the Hernando County Sheriff's Office.

Paragraph (a) of subsection (5) provides that a member attains the status as a "career service" member if: the member serves for one calendar year, the member is not placed on extended probation during that one year period; provides that if a member is placed on extended probation, that member attains status after the one year probation period, upon successful completion of the extended probation. This language creates confusion as it is unclear when a probationary period, or extended probationary period is actually terminated. An amendment was offered to clarify this issue.

Paragraph (b) of subsection (5) continues to provide that time spent attending the police academy, or other comparable training for certification as a sworn officer or deputy sheriff, does not count toward the one calendar year of minimum service required to qualify as a career service member.

Paragraph (c) of subsection (5) provides that all nonprobationary members who hold the rank of lieutenant or below, through a competitive promotional process, shall be granted career service status at such rank or level, effective July 1, 2000.

Paragraph (d) of subsection (5) provides that any member who is required to serve a probationary period attendant to a promotion shall retain his or her status as a career-service member of the Sheriff's Office, but may be demoted to his or her prior position during the probationary period.

Paragraph (e) of subsection (5) provides that any member who leaves the employ of the Sheriff's Office and returns, upon returning that person must complete a calendar year of service before being qualified, or requalified as a career service member.

Subsection (5) provides that the Sheriff shall implement this act on July 1, 2000 and that any career-service member of the Sheriff's Office who holds the rank of lieutenant or below, through a competitive promotion process, on July 1, 2000, shall retain his or

her career-service rank, unless cause exists for demotion; cause is defined as misfeasance, nonfeasance, malfeasance in office, or for any just cause for which the certification of a law enforcement officer may be revoked under chapter 943, Florida Statutes.

Section 2: Grants rulemaking authority to the Sheriff to administer this act, but specifies that the act does not affect the Board of County Commissioners with regard to their work adopting a budget.

Section 3: Creates an ad hoc Career Service Appeals Board primarily to hear appeals arising from disciplinary dismissal, and provides for membership composition, membership qualifications, membership terms, and limitations on membership; provides that the Career Service Appeals Board is charged with making determinations and nonbinding recommendations to the Sheriff relative to the reasons for dismissal, and types of violations of members; provides specifics relative to the process and procedures of appeals, including subpoenas and testimony, witness compensation, representation of persons filing appeals, and disposal of appeals by the Career Service Appeals Board; specifically reserves to the Sheriff the right of final determination of an appeal, and provides that no reinstatement may be made without the Sheriff's concurrence.

NOTE: The final determination provision is supported by *Payne v. Wille*, 657 So.2d 964 (July 1995). In this case an employee of a Florida Sheriff's Department petitioned for judicial review of a demotion. The Circuit Court dismissed the petition on the ground that the demotion was executive, rather than judicial, or quasi-judicial. Upon appeal, the Court held that the demotion was an executive action not subject to review, because, while statute permitted the employee to request a hearing, statute also provided that the Sheriff could approve or disapprove the review board's recommendation, and had sole discretion to overrule the board's findings. See also *De Groot v. Sheffield*, 95 So.2d 912, 914-15 (Fla. 1957).

Section 4: Specifies that this act does not apply to any appeal by a deputy sheriff claiming such dismissal was due to lawful off-duty political activity, or for discriminatory reasons. These situations warrant appeal pursuant to chapter 30, Florida Statutes.

Section 5: Provides severability for any provisions of the bill which may be found to be invalid.

Section 6: Provides an effective date of July 1, 2000.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 3, 1999.

WHERE? Hernando Times edition of the Saint Petersburg Times, Brooksville, Florida.

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B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill has a provision for rule making authority.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Operations adopted a technical amendment on April 12, 2000. The amendment clarifies the language related to extended probation.

VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Russell J. Cyphers, Jr.

Staff Director:

Russell J. Cyphers, Jr.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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