

STORAGE NAME: h1441.go

DATE: March 27, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1441

RELATING TO: Sheriff's Office/Career-service (Hernando Co.)

SPONSOR(S): Representative Russell

TIED BILL(S):

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

- (1) GOVERNMENTAL OPERATIONS
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill establishes elements of a career service system, and a disciplinary appeals process.

It 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, along with basic provisions for the Career Service Appeals Board's authority, functions, and the appeal process, itself.

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

This bill provides an effective date of July 1, 2000.

The fiscal impact of the bill will depend mostly on the number, and complexity of appeals made.

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. Traditionally, each Sheriff establishes his or her own policies when they take office.

C. EFFECT OF PROPOSED CHANGES:

This bill has the general effect of providing employment stability, and enhanced employment security for most of the employees of the Sheriff's Office. It establishes elements of a career service system, and a disciplinary appeals process.

Section 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.

This bill does not apply to the dismissal of members arising from:

- Layoffs; or
- Partial or total abolition or cessation of programs, services, operations, departments, or grant-funded positions.

The Sheriff, however, has discretion with regard to determining applicability of this bill in the dismissals enumerated in this paragraph.

This bill defines "members" as all persons, whether employed or appointed, certified or noncertified, in the Hernando County Sheriff's Office, and discusses applicability of the act.

This bill provides that a member attains the status as a "career service" member if:

- The member serves for one calendar year; and
- The member is not placed on extended probation during that one year period.

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 seems confusing, making it unclear when a probationary period, or extended probationary period is actually terminated. An amendment is expected to be offered to clarify this issue.

This bill does, however, make it clear 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.

Also, if a member 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.

Effective July 1, 2000, all members who are not in probationary status, and who hold the rank of lieutenant or below (through a competitive promotional process), are granted career service status at such rank or level, and in all cases will retain such rank or level unless cause exists for demotion. Cause for demotion includes:

- Mifeasance,
- Nonfeasance, or
- Malfeasance in office; or
- Just cause for certification revocation pursuant to ch. 943, F.S.

This bill specifies that it does not grant the right of collective bargaining to any members who do not otherwise have that right pursuant to law.

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.

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.

This bill also 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.

This bill 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.

This 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.

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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. (also see De Groot v. Sheffield, 95 So.2d 912m 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 ch. 30, F.S.

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.

D. SECTION-BY-SECTION ANALYSIS:

See II. C. EFFECT OF PROPOSED CHANGES.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 3, 1999.

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

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill has a provision for rule making authority, but none is needed.

C. OTHER COMMENTS:

None.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None. A technical amendment may be offered to language on page 2, line 27.

VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Russell J. Cyphers, Jr.

Jimmy O. Helms