

STORAGE NAME: h1005.lgva.doc

DATE: January 26, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 1005

RELATING TO: Glades County Sheriff's Employees

SPONSOR(S): Representative Spratt

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill establishes a career service system for the Glades County Sheriff's Office.

The bill provides career service status to all certified and noncertified employees and appointees with the exception of certain high-ranking positions. Such status is attained after completion of a probationary or extended probationary period and grants certain personnel action appeals rights.

The bill provides for employment status upon the election or appointment of a new Sheriff; and provides for transitional status for specific high-ranking positions.

The bill provides for an ad hoc Career Appeals Board that will hear certain personnel action appeals and assist with other matters as assigned by the Sheriff.

The bill retains the Sheriff's employment related discretion as provided by law.

According to the Economic Impact Statement, this bill appears to have no impact on the State budget and a negligible impact on the local budget.

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"/> |

B. PRESENT SITUATION:

The Glades County Sheriff's Office currently has Policies and Procedures in place which provides many of the career service provisions addressed in this bill; however, those Policies and Procedures are not binding upon future elected or appointed Sheriffs.

Statutory Authority

Section 30.53, F.S., concerns the authority of a Sheriff regarding personnel matters and provides, in relevant part, as follows:

The independence of the sheriffs shall be preserved concerning...selection of personnel, and the hiring, firing, and setting of salaries of such personnel; provided that nothing herein contained shall restrict the establishment or operation of any civil service system or civil service board created pursuant to s. 14, Art. III, of the Constitution of Florida, provided, further that nothing contained in ss. 30.48-30.53 shall be construed to alter, modify or change in any manner any civil service system or board, state or local, now in existence or hereafter established.

C. EFFECT OF PROPOSED CHANGES:

This bill establishes a required career service system for the Glades County Sheriff's Office.

The bill provides career service status to all certified and noncertified employees and appointees of the Sheriff's Office with the exception of certain high-ranking positions.

The bill provides that employees and appointees attain career service status after completing a probationary or extended probationary period; and that once attained, such employee or appointee is granted certain personnel action appeal rights.

The bill provides that upon a change in the Sheriff, career service positions remain employed and that certain high-ranking positions may be filled with new personnel, but provides for the retained employment of the incumbents of those positions.

The bill provides for an ad hoc Career Appeals Board that will hear certain personnel action appeals and assist with other matters as assigned by the Sheriff.

The bill retains the Sheriff's employment-related discretion as provided for in s. 30.53, F.S.

The bill provides the Sheriff with authority to adopt rules and regulations for the implementation and administration of this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates provisions relating to the career service status of employees and appointees of the Glades County Sheriff (Sheriff) as follows:

Section 1(1) provides that this bill applies to all certified and noncertified employees and appointees of the Sheriff's Office, with the exception of: commanders or the highest-ranked law enforcement officers reporting directly to the Sheriff; special deputy sheriffs appointed pursuant to s. 30.09(4), Florida Statutes; members of a sheriff's posse or reserve unit; part-time appointees and employees working less than 24 hours per week; independent contractors, temporary, or contract employees; and appointees and employees employed pursuant to a grant whose continued existence is subject to the expiration or withdrawal of the grant provider.

Section 1(2) provides that the bill does not apply to an otherwise covered person who claims that a dismissal was for lawful off-duty political activity or discriminatory reasons.

Section 1(3) provides that the bill does not change the independence of the Sheriff pursuant to s. 30.53, F.S., which reserves the final authority and responsibility of dismissing employees and appointees solely to the Sheriff's discretion.

Section 1(4) provides that the bill does not grant collective bargaining rights to the Sheriff's employees who do not otherwise have that right pursuant to law.

Section 1(5) provides that the bill does not apply to the nondisciplinary dismissal of employees arising from workforce reduction, layoff, partial or total abolition or cessation of a program, service, operation, department, subdivision or grant-funded position, at the discretion of the Sheriff.

Section 1(6) provides definitions.

Section 1(7) creates provisions related to career status as follows:

Section 1(7)(a) provides that once an employee or appointee has completed the initial or extended probationary period, such individual will have attained career status; and that if such individual is reemployed at a later date, that employee will have to again complete the probationary period prior to being granted the appeal rights provided for in the bill.

Section 1(7)(b) provides that the Sheriff may at any time dismiss an appointee or employee who has not yet attained career status without granting the appeal rights of the bill.

Section 1(7)(c) provides that any person who has attained career status must be provided with written notice of the reasons for the proposed dismissal. However, if the Sheriff perceives a significant hazard where delay could result in damage or injury, the employee may be immediately dismissed with notice and reasons being provided within two days of dismissal, except where circumstances surrounding the situation make notice within two days impracticable.

Section 1(7)(d) provides that any employee or appointee who has attained career status is entitled to appeal a disciplinary dismissal to the Career Appeals Board.

Section 1(8) provides that when a newly elected or appointed Sheriff assumes office, all career status employees and appointees shall remain employees of the new administration including Bureau, Division, and Judicial Services Commanders. Additionally, this section provides that this right applies to employees who have achieved career service status and who hold the rank of Commander, Captain, Lieutenant, or the positions of Personnel/Budget Director or Sheriff's Secretary, when the new Sheriff assumes office.

Section 1(8)(a) provides that the new Sheriff may only reduce a Commander, Captain, and Lieutenant one rank below the rank held on the day before the new Sheriff assumes office.

Section 1(8)(b) provides that the new Sheriff may assign the Personnel/Budget Director and the Sheriff's Secretary to the next highest position classification within the pay and classification system.

Section 1(8)(c) provides that reductions in rank and reassignments provided for in ss. 1(8)(a) and (b) shall remain in effect for no more than six months and that thereafter those positions and reassignment shall be at the Sheriff's discretion.

Section 1(8)(d) provides that the salary of any displaced officer or person shall not be reduced below the lesser of the maximum of the new grade applicable to that employee's position as set forth in the existing pay and classification guide or six percent of the employee's former rate of pay.

Section 1(8)(e) provides that Commanders, Directors, and other employees and appointees addressed in ss. 1(8)(a) and (b) retain career service appeal rights applicable to their reduced rank or reassigned position.

Section 1(9) provides that the Sheriff has the authority to adopt rules and regulations that are necessary for the implementation and administration of this bill; however nothing in the bill shall be construed as affecting the budget-making powers of the Board of County Commissioners.

Section 2. Creates a Career Appeals Board as follows:

Section 2(1) provides that an ad hoc Career Appeals Board shall be appointed to hear disciplinary dismissal appeals of career status employees, and to take any other actions authorized by the Sheriff as follows:

Section 2(1)(a) provides that the Career Appeals Board shall be utilized to make nonbinding recommendations to the Sheriff as to whether the dismissal was for a violation of Sheriff's Office policy, rule, regulation, procedure, or practice.

Section 2(1)(b) provides that no appeal right is granted to an employee or appointee who is charge with a crime, enters a plea of nolo contendere, or is adjudicated guilty or where adjudication of guilt is withheld and the accused is placed on probation or a pretrial intervention plan with respect to any felony, misdemeanor, or major traffic infraction.

Section 2(2) provides for the Ad Hoc Career Appeals Board membership.

Section 2(2)(a) provides that the Chair of the Board has the authority to decide all motions or pre hearing preliminary matters. Any decision of the Chair may be renewed before the Board.

Section 2(2)(b) provides that the hearing will be conducted during office hours; that employees servicing on the Board will not receive additional compensation; and that the members shall serve until the Board issues its recommendation to the Sheriff and shall then be dissolved.

Section 2(2)(c) provides that the Director or designee in charge of personnel matters serves as an ex officio member of the Board for the purpose of providing procedural guidance concerning the application of this bill and any rules and regulations adopted by the Sheriff; but the ex officio member shall not have a vote.

Section 2(3) provides the procedural aspects of the Ad Hoc Career Appeals Board hearing.

Section 3. Provides for severability.

Section 4. Provides an effective date of upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

December 20, 2001

WHERE?

Glades County Democrat

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:

Section 3 of the bill raises the issue of whether or not deputy sheriffs are "public employees" entitled to collective bargaining rights pursuant to s. 6, Article I, State Constitution and ch. 447, F.S. This issue was orally argued before the Florida Supreme Court on April 4, 2001. The Court has not yet issued its opinion in that matter: *Coastal Florida Police Benevolent Association v. Williams*, Case No. SC00-1860.

State Constitution

Article I, s. 6, State Constitution provides:

The rights of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Statutory Authority

Chapter 30, F.S., provides legislative authority regarding the service of sheriffs. More particularly, s. 30.07, F.S., provides that:

Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.

Section 30.09(1)(a), F.S., provides, in part, that:

Each deputy sheriff who is appointed shall give bond as required by the board of county commissioners...A deputy sheriff may not perform any services as deputy until he or she subscribes to the oath prescribed for sheriffs.

Therefore, some have argued that pursuant to the State Constitution deputy sheriffs are employees authorized to collectively bargain. Others however, have argued that deputy sheriffs are not employees with a collective bargaining right, but rather appointees pursuant to statutory authority which: grants deputies the same power as sheriffs; holds sheriffs liable for deputies; authorizes the county to impose bonds on deputy sheriffs; and requires deputies to take oaths. This issue as it applies to Florida has been tried and decided numerous times in both state and federal courts. Because of the uncertainty of seemingly disparate decisions, the issue is once again before the Florida Supreme Court in the *Coastal* case.

B. RULE-MAKING AUTHORITY:

Section 1(9) of this bill authorizes the Sheriff to adopt rules and regulations as necessary for the implementation and administration of this bill

C. OTHER COMMENTS:

According to Sheriff Rider, Glades County Sheriff, the Policies and Procedures that he has established to implement a career service system as described in this bill are not binding on future elected or appointed Sheriffs. Sheriff Rider indicated further that this bill follows similar legislation enacted for Citrus County; that he supports this bill; and that his employees support it.

This bill does not appear to be an exemption from general law as it does not restrict the ability of the Sheriff to carry out the functions and responsibilities regarding personnel matters under s. 30.53, F.S.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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