

STORAGE NAME: h0963a.lgva.doc

DATE: February 7, 2002

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

BILL #: HB 963

RELATING TO: Indian River Co. Sheriff's Office

SPONSOR(S): Representative Mayfield

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

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 creates a career service status for specified sworn and civilian employees of the Indian River County Sheriff's Office who have served at least one calendar year. Additionally, the bill provides for the continuing career service status of those employees upon a newly elected or appointed Sheriff taking office. Further, the bill provides for the disposition of employees occupying the position of Captain up through the Undersheriff and the Executive Secretary upon a newly elected or appointed Sheriff taking office.

The bill specifically does not intend to grant collective bargaining rights on any employee who does not otherwise have such rights pursuant to law. **(See "IV.A. CONSTITUTIONAL ISSUE" for further discussion).**

The bill requires and creates a procedure for receiving and processing complaints against employees.

The bill creates a career service appeals board; provides for its function; membership; appeals procedures; and appeals disposition.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. (See section II.C. "EFFECT OF PROPOSED CHANGES:".)

According to the Economic Impact Statement, this bill does not appear to impact either State or local budgets.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

1. This bill provides an additional governmental process.

B. PRESENT SITUATION:

Currently, deputy sheriffs within the Indian River County Sheriff's Office (Sheriff's Office), after being employed, appointed, and commissioned, continue to serve with full power and authority at the pleasure of the sheriff or his successor in office without the necessity of reemployment, reappointment, or decommissioning, until such is terminated by death, resignation, or by affirmative action of removal by the sheriff or his successor in office, pursuant to Chapter 70-740, Laws of Florida.

C. EFFECT OF PROPOSED CHANGES:

This bill creates the career service status of sworn employees below the rank of Captain and of civilian employees of the Sheriff's Office after one calendar year of service. The bill provides for the filling of the positions of Captain up through Sheriff and that of the Executive Secretary upon the election or appointment of a new Sheriff; and for the disposition of the occupants of those offices.

The bill establishes, and sets out procedures for, the receipt and processing of complaints against employees.

The bill establishes a disciplinary procedure and a disciplinary appeals procedure.

The bill establishes a career service appeals board, providing for the membership thereof; an appeals procedure; and appeals disposition.

The bill appears to be an exemption from s. 30.53, F.S., which in relevant part provides 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.

Subsection 1(2)(b) of the bill provides that once an employee covered by this bill attains career service status, that employee may only be suspended or dismissed for cause. Therefore, this provision appears to provide an exemption from general.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates provisions regarding the status, suspension and dismissal of employees of the Indian River County Sheriff's Office as follows:

Section 1(1) provides that the act applies to all full-time sworn and civilian persons in the employ of the Sheriff's Office. The act does not apply to: the Sheriff; special deputy sheriffs appointed pursuant to s. 30.09(4), F.S.; members of the Sheriff's Possee or Reserve Unit; and individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless such person is also a full-time employee of the Sheriff's Office. The act specifically is not intended to grant collective bargaining rights to persons in the employ of the Sheriff's Office who do not otherwise have that right pursuant to law.

Section 1(2)(a) provides permanent status to an employee who has served for a period of one calendar year. However, if a permanent status employee is terminated and rehired at a later date, then that employee is required to again serve one calendar year before being granted the right of appeal provided for in s. 4.

Section 1(2)(b) provides that an employee who has achieved permanent status may only be suspended or dismissed for cause, with a requirement of prior written notice of the proposed action and an opportunity to respond to the reasons for the suspension or dismissal. However, when delay could result in damage or injury, an employee may be suspended or dismissed for cause immediately and provided notice thereof and reasons therefore within 24 hours. Cause for suspension or dismissal includes, but is not limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or office rules, conduct unbecoming a public employee, misconduct, or habitual drug abuse. Cause for dismissal also includes adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, or a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation, with respect to any felony, misdemeanor, or major traffic infraction. The filing of felony, misdemeanor, or major traffic infraction charges against an employee shall constitute cause for suspension.

Section 1(3) provides that when a newly elected or appointed Sheriff assumes office, permanent personnel shall continue their employment unless cause for dismissal exists. The bill provides that the Sheriff has discretion to maintain current personnel assigned to the positions of Captain up through Undersheriff. If the new Sheriff fills those positions with new personnel, the former occupant of the position shall be reduced to the next lower, then existing, rank at the current maximum pay step. Such pay shall remain permanent unless later reduced by disciplinary demotion. Similar provisions apply to the Executive Secretary who shall be reduced to the position of Administrative Assistant at the current maximum pay step. Additionally, actions taken pursuant to this subsection affecting Captain through Undersheriff and Executive Secretary are not appealable under s. 4 of the bill.

Section 1(4) provides the Sheriff with authority to adopt rules and regulations necessary for the implementation and administration of this bill; however, they shall affect the budget making powers of the Board of County Commissioners.

Section 2. Concerns complaints against employees as follows:

Section 2(1) requires the establishment of a complaint receipt and processing procedure to provide the prompt receipt, investigation and disposition of complaints against Sheriff's Office employees.

Section 2(2) provides that any employee is authorized to receive a complaint against any other employee; that all complaints shall be reduced to writing; and, in ss. 2(2)(a) through (f), provides the complaint processing procedure to be followed.

Section 3. Creates the disciplinary procedure and the disciplinary appeals procedure.

Section 4. Creates a career service appeals board; provides for its function; membership; appeals procedures; and appeals disposition.

Section 5. Provides that the bill applies to all sworn and civilian employees of the Sheriff's Office who upon the effective date have served one calendar year or more, and to other employees when they become permanent employees pursuant to the provisions of the bill. Provides for the severability of the provisions of the bill. Provides the invalidity of promotions, demotions or the creation of rank to circumvent the intent of the bill; and that all such actions shall not affect the career service status of employees. The bill also provides a prohibition of adverse actions taken against an employee by reason of the exercise of rights granted by the bill.

Section 6. Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN?

December 14, 2001

WHERE? *Press Journal*

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 1(1) 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:

The bill does provide in s. 1(4) the authority of the Sheriff to adopt rules and regulations for the implementation and administration of this bill.

C. OTHER COMMENTS:

According to Undersheriff Scott Taylor, Indian River County Sheriff's Office, the current administration has been in office for one year and desires to establish a process that provides for due process in employee personnel matters. Undersheriff Taylor also represented that the Sheriff supports this bill and that the employees were appreciative of the Sheriff's efforts to establish this career service status.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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