

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 757    Polk County  
**SPONSOR(S):** Stargel  
**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<hr/>	<u>Nelson</u>	<u>Hamby</u>
2) <u>Governmental Operations Committee</u>	<hr/>	<hr/>	<hr/>
3) <hr/>	<hr/>	<hr/>	<hr/>
4) <hr/>	<hr/>	<hr/>	<hr/>
5) <hr/>	<hr/>	<hr/>	<hr/>

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**SUMMARY ANALYSIS**

HB 757 amends ch. 88-443, L.O.F., as amended, which created a personnel system for the Polk County Sheriff's Office. The bill changes references to positions excluded from this system to reflect a reorganization of titles within the Office. The bill also removes intent language from the act which attempts to restrict collective bargaining rights for deputy sheriffs. This is in response to a 2003 determination by the Florida Supreme Court that deputy sheriffs are "employees" for purposes of the constitutional right to collectively bargain.

Additionally, the bill adjusts the commencement of the two-year terms of personnel board members from the second Tuesday of January, to the same day in February; reduces the term of the chairman of the board from two years to one year; revises the effective date of the initial probationary period for employees; and makes minor technical changes to language in the special act.

According to the Economic Impact Statement, no fiscal effects are anticipated as a result of the bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

In 1988, the Legislature authorized a personnel system for deputies, employees and members of the Sheriff's Office of Polk County (ch. 88-443, L.O.F.). This "classified service" includes all certified deputy sheriffs, certified detention deputies and noncertified support staff, and specifically excludes the sheriff, the undersheriff, colonels, directors, legal advisors, personnel holding the rank of major or above or equivalent noncertified support positions, contract personnel, nonsalaried personnel, any special deputy sheriff appointed pursuant to s. 30.09(4), F.S.,<sup>1</sup> members of the Mounted Enforcement Unit, or Auxiliary or Reserve Unit, or any person appointed as a part-time employee. Eligible employees become members of the classified service after serving at least one year probationary service, and appointments take effect upon the date the person appointed reports to duty. Currently, no employees within the Polk County Sheriff's Office are represented by a collective bargaining agent.<sup>2</sup>

The Sheriff is authorized to appoint a five-member personnel board to hear appeals and complaints and to make recommendations regarding the same. To ensure continuity, board members are appointed by the Sheriff to two-year terms on an alternating schedule effective the second Tuesday of January. The Human Resources Administrator serves as secretary to the board, and as an ex officio member. Board members elect one member to serve as their chair for a two-year period.

A three-person Members Nominating Committee nominates candidates for appointment to the board. These individuals are elected from each department of the Sheriff's Office by classified service members, and also serve two-year terms.

##### **Effect of Proposed Changes**

HB 757 amends ch. 88-443, L.O.F., as amended, relating to the classified service of the Polk County Sheriff's Office, and changes references to positions excluded from this system (from the "undersheriff" and "colonels" to the "chief of staff," "chief of detention," "chief of law enforcement," "chief of criminal investigations," and "executive director of the Office of Business Affairs") to reflect a reorganization of titles within the Office. This language refers to the same individuals and, thus, has no impact.

The bill also removes intent provisions from the act which attempt to restrict collective bargaining rights for deputy sheriffs. This deletion is in reaction to a 2003 Florida Supreme Court decision<sup>3</sup> which held

that deputy sheriffs were "employees" for purposes of the constitutional right to collectively bargain.<sup>4</sup>

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<sup>1</sup>This section applies to those special deputy sheriffs appointed: (a) to attend elections on election days; (b) to perform undercover investigative work; (c) for specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only; (d) for special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners; (e) to aid in preserving law and order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck or a similar accident; (f) to raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy; and (g) to serve as certain parking enforcement specialists.

<sup>2</sup> Telephone conversation with Scott Wilder, Director of Communications, Polk County Sheriff's Office, February 14, 2006.

<sup>3</sup> Coastal Florida Police Benevolent Association, Inc. v. Williams, 838 So.2d 543 (Fla. 2003).

The bill adjusts the commencement of the two-year terms of personnel board members from the second Tuesday of January, to the same day in February, in order to accommodate the demanding schedule in the Sheriff's Office during the month of January each year. The bill also reduces the term of the chairman of the board from two years to one year in order to allow more opportunities for service in this position. Additionally, the bill revises the effective date of the initial probationary period for employees from the time that an individual reports to duty to when an individual successfully completes all entry level training. This change reflects current practice. The Sheriff's Office often hires non-certified or non-sworn civilians who then attend the law enforcement or corrections academy—i.e., "entry level training." These individuals are paid while in training. Once they successfully complete the academy, they are appointed as deputy sheriffs or detention deputy sheriffs, and begin a one-year probationary period.<sup>5</sup>

The bill also makes minor technical changes to language in the special act.

#### C. SECTION DIRECTORY:

Section 1: Amends ch. 88-443, L.O.F., as amended by ch. 98-516, L.O.F., as follows:

Section 1: Provides for use of current titles for positions excluded from the classified service. Deletes intent language.

Section 2: Provides clarifying language. Changes the name of the Human Resources Section to the Human Resources Division. Changes the title of the ranking officer of the Division.

Section 3: Changes the effective date of personnel board members' terms.

Section 5: Changes the term of the board chair.

Section 8: Removes unnecessary language.

Section 9: Specifies that the Members Nominating Committee shall be elected from a certain office and two departments.

Section 11: Corrects obsolete description.

Section 12: Corrects obsolete description.

Section 13: Provides for the initial probationary period.

Section 14: Provides clarifying language.

Section 15: Provides clarifying language.

Section 16: Provides clarifying language.

Section 17: Provides clarifying language.

Section 2: Provides an effective date.

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<sup>4</sup> Section 6, Art. I of the State Constitution provides: "Right to work.—The right 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."

<sup>5</sup> Polk County Sheriff's Office General Order 22.10, 12. (f) 2): "Members (deputy sheriff and detention deputy) shall be classified as probationary for a period of twelve (12) months commencing upon the date they take their Oath of Office. [FCAC 4.04]." FCAC refers to the Florida Corrections Accreditation Commission; 4.04 means that this general order complies with standard 4.04.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 19, 2005.

WHERE? *The Polk County Democrat*, a semi-weekly newspaper published in Polk County.

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

According to the Economic Impact Statement, no fiscal effects are anticipated as a result of this bill.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, Effect of Proposed Changes section re: s. 6, Art. I of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

### **Drafting Issues**

Line 77 provides new language which could be interpreted to mean that a member's conflict could be attributed to an alternate's business affairs. The sponsor may wish to consider an amendment which retains current language.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.