

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1595 Law Enforcement Operations

SPONSOR(S): Judiciary Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, Yarkosky and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1588

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	18 Y, 0 N, As CS	Mwakyanjala	Darden
2) Judiciary Committee	23 Y, 1 N, As CS	Padgett	Kramer
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution provides that each county shall have a sheriff elected by the electors of the county to a four-year term. As of January 5, 2021, for all counties except Broward and Miami-Dade, a county charter may not abolish the office of sheriff or provide an alternative method for selecting the sheriff. This provision applies to all counties effective January 7, 2025. Sheriffs are given an extensive list of duties under s. 30.15, F.S., but currently the jurisdictional powers of the sheriff are not codified.

Section 166.241, F.S., provides a budget appeal process by which specified persons may challenge funding reductions in a municipal law enforcement agency's budget. If a municipality's tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency, the state attorney for the judicial circuit in which the municipality is located or a member of the governing body of the municipality who objects to the funding reduction may appeal by petition to the Administration Commission, comprised of the Governor and members of the Cabinet, within 30 days after the day the tentative budget is posted on the municipality's website. The Administration Commission conducts a hearing on the reduction and may approve the budget adopted by the governing body of the municipality, or may amend or modify each separate item within the operating budget of the municipal law enforcement agency.

CS/CS/HB 1595 amends s. 30.15, F.S., to codify the jurisdictional powers to the sheriff to clarify that the sheriff has exclusive policing jurisdiction in the unincorporated areas of each county and concurrent jurisdiction with municipal or special district law enforcement agencies in the jurisdictions of those agencies.

The bill amends s. 166.241, F.S., to revise the budget appeal process to challenge funding reductions in a municipal law enforcement agency's budget to only allow a challenge if the reduction is more than five percent of the prior year's budget; transfer the appeals process from the Administration Commission to the Division of Administrative Hearings; require that a copy of a petition be given to the affected municipality; and provide time limitations for the filing of a petition, the petition hearing, and the issuance of a final order on the petition. The bill provides guidance for administrative law judges (ALJ) in considering petitions, and requires that the ALJ's final order be based on whether the proposed reduction in the law enforcement budget will impair a law enforcement agency's ability to ensure public safety. Under the bill, the ALJ's final order is appealable pursuant to s. 120.68, F.S., and such an appeal must be sought in the First District Court of Appeal.

There could be an indeterminate fiscal impact to municipal government budgets based on the appeal process for law enforcement funding.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County Constitutional Officers

The Florida Constitution requires the Legislature to divide the state into counties.¹ Statutes divide the state into 67 counties, establishing their boundaries by providing the exact legal description of each county.² The Florida Constitution recognizes two types of county governments: those operating under a county charter and those without a charter.³ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁴ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.⁵

The electors of each county elect county constitutional officers (the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court) to a four-year term.⁶ Before 2018, a county charter could provide an alternative method of selecting county constitutional officers or abolish those offices, as long as the duties of the office prescribed by general law were transferred to another office.⁷ During the 2018 general election, voters approved Amendment 10, requiring all county constitutional officers to be elected to a four-term year and prohibiting the transfer of those duties to another office.⁸ Most counties were required to comply with this requirement by January 5, 2021, while Broward and Miami-Dade Counties were given until January 7, 2025.⁹

Office of the Sheriff

There are currently 66 elected sheriffs in Florida's 67 counties.¹⁰ Section 30.15, F.S., provides the duties and powers of sheriffs, including:

- Executing all process of the Supreme Court, circuit courts, county courts, and boards of county commissioners of this state, to be executed in their counties;
- Executing such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties;
- Attending all sessions of the circuit court and county court held in their counties;
- Executing all orders of the boards of county commissioners of their counties;
- Being conservators of the peace in their counties; and
- Suppressing tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.¹¹

Current law does not provide an explicit statement of the sheriff's jurisdictional powers.

¹ Art. VIII, s. 1(a), Fla. Const.

² See ch. 7, F.S.

³ Art. VIII, ss. 1(f), (g), Fla. Const.

⁴ Art. VIII, s. 1(f), Fla. Const.

⁵ Art. VIII, s. 1(g), Fla. Const.

⁶ Art. VIII, s. 1(d), Fla. Const.

⁷ Art. VIII, s. 1(d), Fla. Const. (2018).

⁸ See art. VIII, s. 1(d), Fla. Const.

⁹ Art. VIII, s. 6(g), Fla. Const.

¹⁰ The Miami-Dade County Charter abolishes the office of sheriff, transfers its duties and responsibilities to the mayor of Miami-Dade County, and authorizes the mayor to delegate the functions of the sheriff to a "suitable person or persons." Miami-Dade County Charter, s. 9.01. Currently, Miami-Dade Police Department Director Alfredo Ramirez III serves in the appointed position. Additionally, the Miami-Dade Police Department currently "provides basic police services throughout the unincorporated area of Miami-Dade County, Miami Lakes, Palmetto Bay and Cutler Bay," and its "specialized patrol teams include the airport, seaport, marine, motorcycle, bomb disposal and SWAT." Miami-Dade County, *Miami-Dade Police Department*, <https://www.miamidade.gov/global/police/home.page> (last visited Apr. 11, 2023).

¹¹ S. 30.15(1), F.S.

Municipal Law Enforcement Budget Appeal Procedure

A municipality is required to adopt a budget each fiscal year.¹² As part of the budget process, a municipality is required to post a tentative budget to the municipality's official website prior to a formal hearing adopting the final budget.¹³ Typically, the municipal police chief is appointed or hired by a city official or officials (mayor, city manager, city commission) and law enforcement funding is determined by the municipal governing body.

Section 166.241, F.S., provides a budget appeal process by which specified persons may challenge funding reductions in a municipal law enforcement agency's budget.¹⁴ If a municipality's tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency, the state attorney for the judicial circuit in which the municipality is located or a member of the governing body of the municipality who objects to the funding reduction may appeal by petition to the Administration Commission within 30 days after the day the tentative budget is posted on the municipality's website.¹⁵

The petition is filed with the Executive Office of the Governor (EOG), with copies served upon the governing body of the municipality or to the clerk of the circuit court of the county in which the municipality is located.¹⁶ Upon receipt of a copy of the petition, the governing body of the municipality has five working days to file a reply with EOG and serve the petitioner with a copy.

The EOG conducts a budget hearing upon receipt of the petition and submits a report of its findings and recommendations to the Administration Commission.¹⁷ Within 30 days of receipt of the report, the Administration Commission may approve the budget adopted by the governing body of the municipality, or may amend or modify each separate item within the operating budget of the municipal law enforcement agency. The budget, as approved, amended, or modified by the Administration Commission is final.

Administrative Law Judges

Administrative law judges (ALJs) preside over disputes arising under the Administrative Procedure Act¹⁸ and other state laws in which the substantial interests of a person are determined by an agency¹⁹ which involve a disputed issue of material fact.²⁰ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.²¹

¹² S. 166.241(1) and (2), F.S.

¹³ S. 166.241(3), F.S.

¹⁴ S. 166.241(4), F.S.

¹⁵ S. 166.241(4)(a), F.S. The Administration Commission consists of the Governor and Cabinet. S. 14.202, F.S.

¹⁶ S. 166.241(4)(a), F.S.

¹⁷ S. 166.241(5), F.S.

¹⁸ Ch. 120, F.S.

¹⁹ The term "agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

- The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of non-elected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.
- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

The definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S. or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. S. 120.52(1), F.S.

²⁰ S. 120.65(4), F.S.

²¹ DOAH, *Representing Yourself Before the Division of Administrative Hearings*, <https://www.doah.state.fl.us/ALJ/RepresentYourself.asp> (last visited Apr. 11, 2023).

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding five years.²² DOAH is administratively housed under the Department of Management Services (DMS); however, DOAH is not subject to the control, supervision, or direction of DMS.

Effect of Proposed Changes

CS/CS/HB 1595 amends s. 30.15, F.S., to revise the statutory duties of a sheriff by:

- Clarifying that each county must have an elected sheriff and prohibit the transfer of the sheriff's duties to another officer or office;
- Specifying that the sheriff has exclusive policing jurisdiction in the unincorporated areas of each county and concurrent jurisdiction with municipal or special district law enforcement agencies in the jurisdictions of those agencies;
- Prohibiting a county board of county commissioners, or other county legislative body, from maintaining or establishing a police department or other policing entity in unincorporated areas of the county;
- Providing that only the duly elected sheriff may provide such policing and police functions in the unincorporated areas of any county; and
- Prohibiting a county from contracting with or engaging in any manner with a municipal or special district law enforcement agency to provide any services provided by the sheriff, including policing or police functions, in the unincorporated areas of any county.

The bill provides that these duties do not inhibit the jurisdiction of any state or federal law enforcement agency and do not prohibit a sheriff from entering into mutual aid agreements with other law enforcement agencies.

The bill also amends s. 166.241, F.S., to revise the process for appealing a reduction in a municipal law enforcement budget by:

- Limiting appeals to reductions of more than five percent compared to the prior fiscal year's approved operating budget;
- Replacing the role of the Administration Commission in the appeal process with DOAH;
- Requiring a petition challenging the reduction to be filed within 10 days after the day a municipality posts a tentative budget to its official website;
- Requiring the petitioner to serve a copy of the petition on the affected municipality; and
- Requiring the governing body of the municipality to file an answer to the petition with DOAH within five days of receipt of service of such petition.

The bill requires an ALJ to hold a hearing on the petition no later than 20 days from the date a petition is filed. Under the bill, the parties may present the following information to an ALJ for consideration:

- The proposed operating budget approved by the municipality;
- The municipality's grounds for proposing a reduction in funding to the current fiscal year's law enforcement operating budget;
- The petitioner's grounds for challenging the proposed reduction in funding to the law enforcement operating budget;
- The operating budgets of other public entities within the municipality;
- The operating budgets of other law enforcement agencies in municipalities that are of comparable size;
- The municipal law enforcement agency's staffing needs and budgetary requirements from the current fiscal year and the two previous fiscal years;
- The draft municipal law enforcement agency operating budget, budget amendments, or budget meeting minutes from the current fiscal year and the two previous fiscal years;
- The revenue and projected revenue available to the municipality and any change in the amount of the revenue collected over the last three fiscal years; and
- Any other information relevant to the municipal law enforcement agency's operating budget.

²² S. 120.65(4), F.S.

The bill requires an ALJ to issue, within 15 days of the hearing, a final order either approving or rejecting the proposed operating budget for the municipal law enforcement agency by determining whether the proposed reduction will impair the law enforcement agency's overall ability to ensure public safety. In making such a determination, the ALJ must make findings regarding whether the funding reduction in the proposed operating budget of the municipal law enforcement agency will:

- Result in a reduction of the number of law enforcement officers employed by the municipality;
- Result in the reduction or elimination of public safety programs or initiatives provided by the agency; and
- Result in a lack of appropriate equipment that is necessary to ensure officer safety.

Under the bill, the ALJ's final order is appealable pursuant to s. 120.68, F.S., and such an appeal must be sought in the First District Court of Appeal.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 30.15, F.S., concerning the powers, duties, and obligations of sheriffs.

Section 2: Amends s. 166.241, concerning municipal law enforcement budgeting.

Section 3: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There could be an indeterminate fiscal impact to municipal government budgets based on the appeal process for law enforcement funding.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed provisions providing a transition process to be followed for moving from appointed to an elected sheriff and a prohibition on a county budget providing funding to certain officers or offices. The PCS revises the process by which a state attorney or a member of the municipality's governing board appeals a reduction to the operating budget of the municipal law enforcement agency.

On April 11, 2023, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Reduced the time limit for filing a petition challenging a municipal law enforcement budget from 30 days after a municipality posts a tentative budget to 10 days.
- Required a hearing on the budget challenge be held within 20 days from the date a petition is filed.
- Reduced the time limit for DOAH to issue a final order on a petition from 30 days after the hearing to 15 days.
- Required that the final order be based on whether the proposed reduction in the law enforcement budget will impair a law enforcement agency's ability to ensure public safety.
- Made the DOAH order "final" upon issuance, rather than after 90 days, and clarified that the final order is immediately appealable to the First District Court of Appeal.
- Made technical changes to improve clarity.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.