

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 998

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Chiefs of Police

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 998 provides for notice, hearing, and other requirements relevant to terminating a police chief's employment. The bill:

- Provides findings in support of the procedural requirements and other requirements relevant to terminating a police chief's employment.
- Prohibits a person employed or appointed as police chief from being terminated without being provided written notice, including just cause for the termination, and the opportunity to defend himself or herself against termination at a public meeting or hearing. This provision does not supersede a written employment contract or agreement that provides employment, discipline, or termination standards or procedures.
- Authorizes the police chief to be represented by counsel, including at the public meeting or hearing, at his or her request.
- Prohibits a police chief from being discharged; disciplined; demoted; denied a promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, for exercising any rights provided by the bill.
- Requires a police chief who is aggrieved by an alleged violation of his or her rights as provided in the new section to provide written notice to his or her employing agency, and requires the employing agency to cure the alleged violation.
- Defines "chief of police," and "employing agency."

If the provisions of the bill have any fiscal impact on municipal governments, the impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

A police chief is appointed or hired by a city official or officials (mayor, city manager, city commission, etc.) and “charged with the responsibility to provide leadership and management of police department resources to protect and serve citizens of and visitors to those municipalities.”¹

According to the Florida Police Chiefs Association, Florida police chiefs are at-will employees.² Police chiefs are not covered under s. 112.532, F.S., commonly referred to as the Officers’ Bill of Rights, which provides procedural protections to a law enforcement officer or correctional officer under investigation or subject to interrogation by the officer’s employing agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. There does not appear to be any statutory right to notice and hearing for a police chief prior to his or her termination.³

III. Effect of Proposed Changes:

The bill creates s. 112.5321, F.S., which provides for notice, hearing, and other requirements relevant to terminating a police chief’s employment. The bill:

- Provides findings in support of the procedural requirements and other requirements relevant to terminating a police chief’s employment.
- Prohibits a person employed or appointed as police chief from being terminated without providing written notice, including just cause for the termination, and the opportunity to defend himself or herself against termination at a public meeting or hearing.⁴
- Authorizes the police chief to be represented by counsel, including at the public meeting or hearing, at his or her request.
- Prohibits a police chief from being discharged; disciplined; demoted; denied a promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, for exercising any rights provided in the new section.
- Requires a police chief who is aggrieved by an alleged violation of his or her rights as provided in the new section to provide written notice to his or her employing agency within 3 days after the alleged violation which must contain specific information relating to the alleged violation.

¹ James T. Murdaugh, *Succession and the Police Chief: An Examination of the Nature of Turnover Among Police Chiefs* (2005), (Florida State University dissertation), p. 52, available at <https://diginole.lib.fsu.edu/islandora/object/fsu:180415/datastream/PDF/view> (last visited on Apr. 4, 2023).

² E-mail from Jennifer Pritt, Executive Director, Florida Police Chiefs Association, dated March 22, 2023 (on file with Committee on Criminal Justice).

³ According to a 2005 study of Florida police chiefs, being fired ranked fifth on the reasons cited by surveyed police chiefs for their predecessor leaving office. *Supra*, at n. 1, p. 72. There do not appear to be any more recent findings on the reasons for police chiefs leaving office.

⁴ However, these requirements do not supersede any written employment contract or agreement that provides employment, discipline, or termination standards or procedures.

- Requires the employing agency to cure the alleged violation within 5 days after receipt of the written notification unless a longer time period is agreed to in writing by both parties or is necessary to satisfy notice requirements for notice of a public meeting or hearing pursuant to s. 286.011, F.S.

The bill amends s. 112.531, F.S., to provide that “chief of police” means a person, other than an elected official, who is appointed or employed full time by the state or any political subdivision thereof to be the chief law enforcement officer of a law enforcement agency and who is not covered by the protections under s. 112.532, F.S. The term does not include state law enforcement agency executives whose appointment or employment is governed by other provisions of law.

Additionally, the bill provides that “employing agency” has the same meaning as in s. 943.10(4), F.S., which defines the term as any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. Most of this definition will not actually apply to a police chief’s employing agency.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill contains procedural requirements, including notice and hearing, which may have some fiscal impact on municipal governments, but that cost, if any, is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.531 of the Florida Statutes.

This bill creates section 112.5321 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 27, 2023:

The committee substitute:

- Clarifies the intent to prohibit arbitrary termination of a police chief without the chief being provided written notice and opportunity to present a defense to the termination at a public meeting or hearing;
- Removes a provision in the bill that authorized a civil suit for damages; and
- Provides two means for extending the time for an employing agency to cure a violation of procedural requirements: by written agreement of both parties; or if necessary to satisfy notice requirements for notice of a public meeting or hearing.

B. Amendments:

None.