

House Bill No. 963

An act relating to Indian River County; providing for career service for employees of the Indian River County Sheriff's Office; providing for application of the act, permanent status of employees, and administration; providing for a procedure with respect to complaints against employees; providing for a disciplinary procedure and for appeals; providing for career service appeals boards; providing for status as permanent employees; providing severability; prohibiting certain actions to circumvent the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Employees of the Indian River County Sheriff's Office; applicability of the act; permanent status of the employees; administration.—

(1) Applicability.—The provisions of this act shall apply to all full-time sworn and civilian persons in the employ of the Indian River County Sheriff's Office. The provisions of this act shall not apply to the Sheriff; or to special deputy sheriffs appointed pursuant to section 30.09(4), Florida Statutes, members of the Sheriff's Posse or Reserve Unit, and individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless any such person is also employed full-time by the Indian River County Sheriff's Office. As used in this act, the terms "employee," "employ," and "employment" shall refer to all persons, whether employed or appointed, to whom the act applies. It is not, however, the intent of this act to grant the right of collective bargaining to persons in the employ of the Indian River County Sheriff's Office who do not otherwise have that right pursuant to law.

(2) Permanent status; cause for suspension or dismissal.—

(a) After an employee of the Sheriff to whom the provisions of this act apply has served in such employment for a period of one calendar year, such employees shall have attained permanent status with the Indian River County Sheriff's Office; provided that if an employee is terminated and rehired at a later date, said employee shall be required to complete one calendar year of service from the date of rehire before being granted the right of appeal provided in section 4.

(b) Any employee who has achieved permanent status with the Indian River County Sheriff's Office may only be suspended or dismissed for cause; provided that prior to such action the employee must be furnished written notice of the proposed action and offered an opportunity to respond to the reasons for the suspension or dismissal. However, in extraordinary situations such as when delay could result in damage or injury, an employee may be suspended or dismissed for cause immediately and provided notice thereof and reasons therefor within 24 hours. Cause for suspension or dismissal shall include, but not be limited to, negligence, inefficiency or ability to perform assigned duties, insubordination, willful violation of the provi-

sions of law or office rules, conduct unbecoming a public employee, misconduct, or habitual drug abuse. Cause for suspension or dismissal shall also include adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of 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.

(3) Transition of career service employees.—When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the employment of all currently employed permanent personnel unless cause for dismissal, as provided herein, exists. However, the incoming Sheriff shall have the option of maintaining the current personnel assigned to the positions of Captain up through Undersheriff, and Executive Secretary. If the incoming Sheriff fills the positions of Captain up to Undersheriff with new personnel, the current occupant of that position shall be reduced to the next lower then-existing rank at the current maximum pay step, which rank shall be permanent unless later reduced by disciplinary demotion. If the incoming Sheriff fills the Executive Secretary position with a new employee, the current occupant of the position shall be reduced to the position of Administrative Assistant at the current maximum pay step, which shall be permanent unless later reduced by disciplinary demotion. Actions taken pursuant to this subsection affecting the Captain through Undersheriff positions and the Executive Secretary position shall not be appealable under section 4.

(4) Administration.—The Sheriff shall have the authority to adopt such rules and regulations as are necessary for the implementation and administration of this act; however, nothing in this act shall be construed as affecting the budgetmaking powers of the Board of Commissioners of Indian River County.

Section 2. Complaints against employees; procedure.—

(1) Complaints against employees.—A complaint receipt and processing procedure shall be established in order to provide adequately for the prompt receipt, investigation, and disposition of complaints against employees of the Indian River County Sheriff's Office.

(2) Procedure with respect to complaints.—Any employee of the Sheriff is authorized to receive a complaint against any other employee of the Sheriff. All complaints shall be reduced to writing and shall be resolved as provided herein:

(a) If a complaint is received by an employee during normal working hours, the complaint shall be referred to the appropriate Division Captain unless the receiving employee is able to resolve the complaint, in which case the complaint and resolution shall be reported, in writing, to the Division Captain.

(b) If a complaint is received after normal working hours, it shall be referred to the Watch Commander unless the receiving employee is able to resolve the complaint, in which case the complaint and resolution shall be

reported, in writing, to the Watch Commander. The Watch Commander, in his or her discretion, shall conduct an investigation to determine if immediate action is needed to preserve the integrity of the Office of the Sheriff. If immediate action is not required, the complaint shall be referred to the appropriate Division Captain at the beginning of the next working day, or sooner if required.

(c) All complaints shall be reviewed by the Sheriff, or the Sheriff's designee. If the Sheriff, or the Sheriff's designee, has reason to believe that the complaint is well founded, he or she shall review the complaint with the employee's appropriate chain of command.

(d) If the Sheriff, or the Sheriff's designee, finds the complaint to be unfounded, a written report shall be filed for information only, and a copy of the report shall be given to the employee.

(e) If the Sheriff, or the Sheriff's designee, finds that a complaint is well founded and that a violation has occurred, the Sheriff, or the Sheriff's designee, shall decide upon appropriate disciplinary action, and the employee shall be notified of the proposed disciplinary action as provided in section 3.

(f) If an employee is dissatisfied with the decision of the Sheriff, or the Sheriff's designee, regarding disciplinary action resulting in dismissal, demotion, or suspension of more than 3 working days, the employee may appeal the action to the Career Service Appeal Board.

Section 3. Disciplinary procedure; disciplinary appeal procedure.—

(1) Disciplinary procedure.—

(a) A disciplinary procedure shall be established which contains provisions for a factual review of each disciplinary action by the Human Resources Director or the equivalent and an opportunity for the accused to respond to the charges and request a meeting with the appropriate administrator prior to the imposition of the action. A decision by an administrator to impose a disciplinary action shall result in the completion of a Notice of Disciplinary Action Form.

(b) No dismissal, demotion, or other punitive personnel action that results in loss of pay, loss of benefits, disciplinary transfer, or disciplinary reassignment shall be taken against any law enforcement officer, correctional officer, or nonsworn employee, unless such law enforcement officer, correctional officer, or nonsworn employee is notified by the receipt of a Notice of Disciplinary Action Form prior to the effective date of such action.

(2) Disciplinary appeal procedure.—

(a) An appeal of a Notice of Disciplinary Action must be made in accordance with the Sheriff's disciplinary procedure and shall result in a hearing by a disciplinary appeal board as specified in said procedure.

(b) Following the hearing, the board shall report to the Sheriff via the Director of Human Resources, or other person so designated by the Sheriff, specifying whether the appeal is affirmed or denied.

(c) The Sheriff, or the Sheriff's designee, shall review the appeal board report and will prepare, or cause to be prepared, a personnel order, with the Sheriff's final disposition on the issue.

Section 4. Career service appeals boards; creation; membership; duties.—

(1) Function of boards.—Ad hoc career service appeals boards shall be appointed as provided herein for the purpose of hearing appeals of permanent employees arising from personnel actions brought under office rules or policies which result in dismissal, suspension, demotion, or reduction in pay; provided that reprimands, oral or written, and suspension of 3 working days or less shall not be appealable to the Career Service Appeal Board. Any such board may also provide assistance and advice to the Sheriff in matters concerning disciplinary actions, and may take any other action authorized by the Sheriff.

(2) Membership of boards.—When needed upon the call of the Sheriff or the filing of an appeal, an ad hoc Career Service Appeals Board shall be appointed. The membership of each such board shall consist of two members selected by the Sheriff from among the certified law enforcement or correctional officers within the Sheriff's jurisdiction; two members selected by the employee filing the appeal from among the certified law enforcement or correctional officers within the Sheriff's jurisdiction; one member, a certified law enforcement or correctional officer currently employed by the Indian River County Sheriff's Office, selected by the other members of the board, who shall serve as chairperson. If an impartial chairperson cannot be agreed upon within 10 working days after the appeal is submitted, the Sheriff shall forward a list of current qualified Sheriff's Office employees to a Nineteenth Judicial Circuit Court Judge or Indian River County Judge who shall appoint a chairperson.

(a) Any employee shall have the right to decline to serve as a member of the board, and employees selected to serve on the board shall serve without additional compensation or overtime compensation with respect to such service.

(b) Once selected to the board, the members thereof shall serve until final action is taken with respect to the purpose for which the board was selected, at which time the board shall be dissolved.

(c) No person may serve as a member of the ad hoc Career Service Appeals Board who:

1. Shall have been involved in the original incident that resulted in the disciplinary process that is the subject of the appeal.

2. Is related to the appellant.

3. Has been terminated from a law enforcement agency within Indian River County due to a disciplinary action.

4. Has any ongoing litigation against the Indian River County Sheriff's Office.

5. Is on probation or has received discipline within the past year.

(3) Procedure with respect to appeals.—

(a) An appeal of an action specified in section 3 shall be made to the Sheriff in writing, and must be received by the Sheriff no later than 5 working days after the employee is notified of the action on which the appeal is based.

(b) A Career Service Appeals Board shall be selected and must meet for purposes of hearing the appeal no later than 15 days, excluding weekends and holidays, after receipt of an appeal by the Sheriff. The time for hearing may be extended by mutual agreement of the parties.

(c) During any hearing, the employee filing the appeal shall have the right to be heard publicly, to be represented by a person of his or her choice, and to present any relevant evidence on his or her behalf, and during such hearings the technical rules of evidence shall not apply. The board shall, in the conduct of such hearings, have the power to administer oaths, issue subpoenas, compel the attendance of witnesses, and require the production of books, records, accounts, papers, documents, and testimony. In case of disobedience of any person to comply with an order of the board or a subpoena issued by the board, or upon the refusal of a witness to testify on any matter regarding which he or she may be lawfully interrogated, a county judge of the county in which the person resides, upon application of any member of the board, shall compel obedience by proceeding as for contempt. Each witness who appears in obedience to a subpoena before the board shall receive compensation for attendance fees and mileage as provided for witnesses in civil cases in the courts of the State of Florida. Such payments shall be made by the party calling the witness; except that with respect to any witnesses called by the board, payments shall be made by the Sheriff upon presentation of proper vouchers and approval by three members of the board. This board is not governed by the Administrative Procedure Act, as codified in chapter 120 of the Florida Statutes.

(4) Disposition with respect to career service appeals.—

(a) The board shall, by majority vote, dispose of the appeal for which it was appointed by making findings of fact and issuing a written decision. Such decision shall either sustain or not sustain the action being appealed. If an action by the Sheriff is not sustained by the board, the board shall order such remedial action as is appropriate, which may include reinstatement with back pay, and may modify any personnel action which was the subject of the appeal. No board shall have the authority to impose on any employee any penalty which is more harsh than that which formed the basis of the appeal.

(b) The decision of the board shall be final and binding on the employee and the Sheriff unless the Sheriff finds that the decision of the board is so defective that no reasonable board could have reached the decision not to sustain the action being appealed. The Sheriff shall have 10 days from receipt of the board's written decision to prepare, or cause to be prepared,

a personnel order stating the final disposition of the appeal which shall be binding on the employee.

Section 5. (1) All sworn and civilian persons in the employ of the Indian River County Sheriff's Office on the effective date of this act who have served for a period of one calendar year or more as of such date shall be permanent employees subject to the provisions of this act. All other employees shall become permanent employees subject to the provisions of this act upon reaching their one-calendar-year service anniversary date.

(2) The provisions of this act shall be severable and, if any of the provisions shall be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions. It is hereby declared to be the intent of the Legislature that this act would have been adopted had such unconstitutional provision not been included therein.

(3) Promotions or demotions of members or creation of rank to circumvent the intent of this act shall be held as invalid and shall not affect the Career Service status of any member affected by such invalid action.

(4) No sworn or nonsworn employee of the Indian River County Sheriff's Office shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this act.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor April 22, 2002.

Filed in Office Secretary of State April 22, 2002.