

House Bill No. 601

An act relating to Palm Beach County; amending chapter 93-367, Laws of Florida, as amended; revising provisions relating to employees of the Palm Beach County Sheriff; revising the definition of “career service employee” and providing restrictions for reduction in rank of certain employees; providing applicability; specifying rights of such employees; revising procedures for appeal of disciplinary actions and complaints against employees; revising provisions for the appointment of boards to hear appeals and procedures with respect thereto; revising provisions relating to monetary emoluments based on performance; providing an effective date.

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

Section 1. Chapter 93-367, Laws of Florida, as amended, is amended to read:

Section 1. Employees of the Palm Beach County Sheriff; applicability of act; permanent status of employees; transition; administration.—

(1) CAREER SERVICE EMPLOYEES.—The term “career service employee” as used in this act shall mean those employees hired at the entry level (nonsupervisory, nonmanagement position) who have successfully completed their probationary period. Employees who are hired directly into supervisory or management positions below the rank of Major, or its civilian equivalent, must complete 10 years of full-time service to be considered a career service employee. Colonels, Majors, Directors, or their executive staff equivalents promoted through the ranks (hired at entry level and successfully completed probationary period as a nonsupervisory, nonmanagement employee, and successfully completed the probationary period in all successive promotions through ranks in which the employee served) shall be considered career service employees, and during any transition may only be reduced to the rank of Captain or its civilian equivalent. The sworn officer status and Florida Retirement System Special Risk status of sworn staff may not be affected through actions taken pursuant to this section. Colonels, Majors, Directors, Assistant Directors, or their executive staff equivalents directly appointed by the Sheriff laterally to those ranks must have completed 10 years of service in the appointed rank to be considered career service employees. The Undersheriff shall at no time be considered a career service employee. Career service employees below the rank of Major or its civilian equivalent shall not be subject to dismissal or demotion without just cause.

(2) APPLICABILITY.—

(a) The provisions of this act shall apply to all certified and noncertified persons in the employ of the Sheriff of Palm Beach County, including deputy sheriffs. The provisions of this act do not apply to the Sheriff, Undersheriff, special deputies appointed pursuant to s. 30.09(4), Florida Statutes, members of the Sheriff’s posse, reserve units or persons 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 Office of the Sheriff. As used in this act, the terms “employee,” “employ,” and “employment” refer to all persons, whether employed or appointed, to whom the act applies.

(b) Nothing in this act shall be construed as affecting the budget-making authority and power of the Palm Beach County Board of County Commissioners.

(c) Approved and authorized reductions in staff shall be accomplished on a seniority basis within the Office of the Sheriff.

(3) CAREER SERVICE STATUS; CAUSE FOR SUSPENSION OR DISMISSAL.—

(a) When an employee of the Sheriff to whom the provisions of this act apply has served in such employment for a period of 1 calendar year from the date the employee first enters the Sheriff’s orientation program or the beginning of field training, whichever comes first, such employee shall have attained career service status in the Office of the Sheriff; however, if an employee is placed on disciplinary probation for a period of 6 months or more or is terminated and rehired at a later date, the employee shall be required to complete 1 calendar year of service from the date of the disciplinary action before being granted the right to appeal as provided in section 2. Any employee who is required to serve a probationary period attendant to a promotion shall retain permanent status in the Office of the Sheriff, but may be returned to his or her prior rank during such probationary period without the right of appeal as provided in section 2. For the purpose of determining career service status as defined by the provisions of this act, all time in the employment of the Office of the Sheriff while in the police academy or other comparable training for certification as a sworn officer or deputy sheriff shall not be counted or considered in any manner in determining whether the employee has attained 1 calendar year of minimum service for career service protection.

(b) Any employee who has achieved career service status in the Office of the Sheriff may only be suspended or dismissed for cause, provided that, prior to such action, the employee has been furnished written notice of the proposed action and has been offered an opportunity to respond to the reasons for the suspension or dismissal. In extraordinary situations, however, such as when delay could result in damage or injury, an employee may be suspended or dismissed immediately and then provided notice thereof and reasons therefor within 48 hours, or as soon as is practical if circumstances surrounding such extraordinary situation makes notice within 48 hours impractical. Cause for suspension or dismissal includes, but is not limited to, negligence, inefficiency, or inability to perform assigned duties, insubordination, violation of provisions of law or office rules, conduct unbecoming a public employee, misconduct, proof of alcohol abuse, proof of abuse of prescription drugs, or proof of use of illegal drugs. Cause for suspension or dismissal also includes, but is not limited to, adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of nolo contendere, or a

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 by a law enforcement agency of felony, misdemeanor, or major traffic infraction charges against an employee or an arrest of an employee for such infractions constitutes cause for suspension.

(4) TRANSITION OF EMPLOYEES.—

(a) When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the employment of all currently employed career service personnel unless cause for dismissal, as provided herein, exists. The incoming Sheriff may maintain the current staff personnel assigned to the position of Undersheriff, Colonel, Major, Director, or their executive staff equivalents. However, in the event that the incoming Sheriff fills such positions with new personnel, the current occupants of those positions who are career service employees shall be reduced to no lower than the rank of Captain, or its equivalent, which rank shall be permanent unless later reduced by disciplinary demotion or increased through subsequent promotion. Their regular base salaries may be reduced or increased accordingly. Actions taken pursuant to this subsection affecting the ~~Undersheriff~~, Colonels, Majors, Directors, or their executive staff equivalents shall not be appealable under section 2.

(b) Dismissals or demotions pursuant to across-the-board actions directed by the Palm Beach County Board of County Commissioners, resulting from county fiscal impacts, shall not be appealable under the provisions of section 2.

(5) ADMINISTRATION.—~~The Sheriff shall have the full authority to~~ adopt such rules, regulations, and procedures necessary for the administration and implementation of this act. The rules, regulations, and procedures shall meet or exceed approved Standards of Accreditation for Law Enforcement Agencies.

Section 2. Hearing review boards; function; membership; procedures.—

(1) FUNCTION OF BOARDS.—Ad hoc hearing review boards shall be appointed as provided herein for the purpose of hearing appeals of career service employees arising from personnel actions brought under the rules, regulations, or policies of the Office of the Sheriff which result in dismissal, suspension, demotion, or reduction in pay. Lateral transfers, shift changes, reprimands, oral or written, and suspensions of 2 working days or less shall not be appealable to the board; however, no more than one such action of suspension may occur within 1 calendar year without the right to appeal. The scope of the review board is limited to disciplinary proceedings and termination actions. Review boards have the authority to conduct hearings and make findings of fact and recommendations to the Sheriff. The Sheriff shall not be bound by the findings or recommendations of such boards, but will consider them in making his or her final decision. Except in the case of termination, the decision of the Sheriff is final and not appealable within the office.

(2) MEMBERSHIP AND RESPONSIBILITY OF BOARD.—

(a) The Hearing Review Board shall consist of five members of the Office of the Sheriff. The Sheriff shall select two members, with at least one member above the rank of Lieutenant to serve as the board chairperson. Two members shall be selected by the employee requesting the hearing. The fifth member shall be selected by the other four members. Each selected member shall have the right to decline to serve.

(b) All members of the Hearing Review Board shall be selected on the basis of fairness, objectivity, and impartiality. The board shall have no investigative powers and shall function in the capacity of a fact finder in an effort to arrive at a fair and equitable recommendation in all matters brought before it. Selected members shall have no involvement with the issues under consideration. Membership ~~on~~ of the board is not mandatory voluntary and without remuneration. Members will not discuss matters to be heard before the board until the board convenes and then may only discuss said matters during the officially convened sessions of the board.

(c) The Hearing Review Board chairperson shall have the responsibility to:

1. Chair all meetings utilizing parliamentary rules of order.
2. Convene an organizational meeting of the board to select a fifth member.
3. Request that the employee provide the names of any witnesses.
4. Schedule and provide written notification of all meetings to the Internal Affairs Bureau, witnesses, board members, and employees.
5. Provide copies of all charges to board members.
6. Ensure compliance with hearing procedures.

(3) PROCEDURE WITH RESPECT TO HEARINGS.—

(a) Any career service employee may request a hearing before the Hearing Review Board for any appealable disciplinary action of his or her superiors which adversely affects his or her employment.

(b) Requests for a hearing shall be made in writing to the employee's immediate supervisor within 10 working days of notice of appealable disciplinary action. The request shall contain a brief statement of the matters to be considered by the board and the names of the two employees selected to be members of the board.

(c) The immediate supervisor shall forward the hearing request to the Sheriff and the appropriate division commander without delay. The Hearing Review Board will be impaneled and a hearing date will be scheduled by the Sheriff within 10 working days of receipt.

(d) Legal questions or case law must be submitted to the chairperson 10 days before the board convenes.

(e) The employee and his or her representative have ~~has~~ the right to be present, to present ~~the employee's~~ his case, to explain or defend, and to cross examine all witnesses and complainants, provided that neither the employee nor his or her representative shall disrupt the proceedings. The qualification of disruptive conduct shall be in the exclusive determination of the chairperson of the Hearing Review Board.

(f) The employee has the right to be represented during the hearing by counsel or other representative of choice ~~who shall serve as an observer and advisor to the employee. If the employee elects to be represented by counsel or other representative, the employee must be present throughout the hearing and must~~ The representative may not actively participate in the proceedings.

(g) The employee shall not discuss the circumstances of the matter being brought before the board except through the chairperson.

(h) All witnesses shall be notified in writing of the date and time of the Hearing Review Board through the appropriate chain of command by the chairperson of the board. Written statements from nonemployee witnesses should be used in lieu of personal appearance. Nonemployee witnesses should only be called to appear before the board at the request of the board.

(4) CONDUCT OF HEARING.—

(a) Hearing review boards are designed to determine the truth while maintaining an atmosphere of fundamental fairness and shall not be controlled by civil or criminal rules of procedure.

(b) Board members are authorized to receive verbal or written testimony concerning any matter considered relevant by the board. The board may review any record, including, but not limited to, performance evaluations and disciplinary files.

(c) Employees and their representatives shall have an opportunity to present evidence, conduct cross examination, ~~and~~ submit rebuttal evidence, and present opening and closing statements.

(5) FINDINGS AND RECOMMENDATIONS OF THE REVIEW BOARD.—

(a) Each complaint shall receive a separate finding and recommendation by the majority of the board. Each finding shall consider the seriousness of the complaint, any extenuating circumstances, the tenure of the employee, and past conduct record. The board shall submit to the Sheriff its written findings of fact and recommendations within 5 days after the hearing.

(b) The board may place before the Sheriff any recommended disposition that the board believes may be of benefit to the Office of the Sheriff, including, but not limited to: oral or verbal reprimand; suspension; reduction of rank; termination of employment; sustaining or reversing the original decision; or recommending a more severe disposition.

(c) The Sheriff will review the findings and recommendations of the board and may either approve or disapprove them. The Sheriff has the sole discretion to overrule the findings of the board.

(d) The Sheriff will notify the employee of the final results of the Hearing Review Board and the reasons therefor.

(e) In the event the employee is exonerated, the employee shall be reinstated without prejudice or penalty.

(f) When summary discipline is imposed by any supervisor, the Sheriff may order a board to convene and review the action of the supervisor.

(g) Except for termination, there shall be no further appeals within the Office of the Sheriff. Terminations may be appealed to the Termination Review Board.

(h) All proceedings of the board shall be recorded and retained by the Internal Affairs Bureau. Rest periods shall be duly noted and there shall be no unrecorded questions or statements by any parties or witnesses. Recordings shall be properly marked and identified prior to filing.

(i) All associated reports, paperwork, and personnel action taken as a result of the Hearing Review Board shall be retained by the Internal Affairs Bureau.

(6) TERMINATION REVIEW BOARD.—

(a) In the event of termination, the employee may request that the termination decision be resubmitted to the board which originally heard the appeal within 10 days of notice of termination.

(b) Upon review of their original recommendation and the Sheriff's rationale for termination, the board may uphold or reverse the decision of the Sheriff, provided that any reversal shall require at least four members of the board voting to reverse. The reversal shall be binding upon the Sheriff, who shall reinstate the employee within 72 hours of the board's reversal. The board's original findings and decisions regarding discipline shall also be binding upon the Sheriff.

(c) In the event the termination is based upon criminal charges, the charges must be disposed of prior to a determination by the Termination Review Board.

Section 3. Preservation of employment benefits and emoluments.—

(1) The provisions of this section shall apply to all certified and noncertified persons in the employ of the Sheriff of Palm Beach County, including deputy sheriffs, as specified in section 1(2)(a) of ~~chapter 93-367, Laws of Florida~~, except that this section shall not apply to those employees beyond the rank of Captain or its civilian equivalent.

(2) Existing employer-paid benefits and emoluments for active and retired employees with regard to the pay plan, longevity plan, tuition-

reimbursement plan, career-path program, health insurance, life insurance, and disability benefits may not be substantially reduced, except in the case of exigent operational necessity, ~~except all moneys which would have been allocated to longevity pay for those at the rank of captain or its civilian equivalent shall be disbursed in accordance with objective performance-related criteria. The objective performance-related criteria shall take into consideration input from a committee including those at the rank of captain or its civilian equivalent.~~

(3) Nothing in this act shall preclude the Sheriff from enhancing those benefits and emoluments for active and retired employees and ~~appointees~~ of the Palm Beach County Sheriff's Office.

(4) Nothing in this act shall be construed as affecting the budget-making authority and power of the Palm Beach County Board of County Commissioners.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 18, 2004.

Filed in Office Secretary of State June 18, 2004.