

House Bill No. 757

An act relating to Polk County; amending chapter 88-443, Laws of Florida, as amended; excluding certain positions from the classified service of the Sheriff's Office of Polk County; removing legislative intent; revising names of units and titles of persons in the Sheriff's Office; revising terminology; revising the effective date of appointments to the personnel board; reducing the term of the chairperson of the board; specifying the office and departments from which members are elected to the Members Nominating Committee; revising the effective date of the initial probationary period; providing an effective date.

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

Section 1. Chapter 88-443, Laws of Florida, as amended by chapter 98-516, Laws of Florida, is amended to read:

Section 1. The terms of this act shall apply to the classified service of the Polk County Sheriff's Office, which shall include all certified deputy sheriffs, certified detention deputies, and noncertified support staff of the Polk County Sheriff's Office. The provisions of this act shall not include the sheriff or chief of staff, chief of detention, chief of law enforcement, chief of criminal investigations, executive director of the Office of Business Affairs under sheriff, 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)(b), Florida Statutes, members of the Mounted Enforcement Unit, or Auxiliary or Reserve Unit, or any person appointed as a part-time employee. It is the intent of this act to authorize an advisory personnel system, to maintain the full powers of the Sheriff, and to continue to respect the legal limitations on the right of collective bargaining and other rights under part II of chapter 447, Florida Statutes, and not to grant such rights to any deputy, member, or employee of the Polk County Sheriff's Office who, prior to the effective date of this act, did not otherwise have such rights pursuant to law.

Section 2. The Sheriff of Polk County is hereby authorized to appoint a personnel board, hereafter referred to as the "board," to act as an advisory agency of and to the Sheriff, which board shall be composed of five members to be appointed as follows:

(1) Two members of the board shall be selected and appointed by the Sheriff.

(2) Two members of the board shall be appointed by the Sheriff after being elected in an election among members of the classified service from a group of three nominations chosen by a majority vote of a three-person committee known as the Members Nominating Committee representing the classified members of the Sheriff's Office as described in section 9. Each of

three candidates nominated by the Members Nominating Committee shall possess qualifications for board membership as outlined in subsections (5) and (6).

(3) The fifth member shall be selected by the four appointed members of the board and shall be appointed by the Sheriff.

(4) All members shall be appointed by the Sheriff and shall also possess the qualifications for board membership outlined in subsections (5) and (6).

(5) No member appointed pursuant to subsection (1), subsection (2), or subsection (3), or that member's ~~his or her~~ alternate, may be:

(a) A member ~~An employee~~ of the Sheriff's Office or of any city or county of this state or of the State of Florida or the United States; or

(b) A member of any national, state, or county committee of a political party; or

(c) A candidate for, or incumbent of, any paid public office; or

(d) The spouse, parent or grandparent, child or grandchild, brother or sister, aunt or uncle, niece or nephew, by consanguinity or affinity, of a member of the classified service; or

(e) Situated so as to have a conflict of interest in the terms of the member's or alternate's ~~his or her~~ related business, duties, or responsibilities in connection with the board.

(6) All the members of the personnel board shall be at least 21 years of age; of good moral character; of good reputation in the community; citizens of the United States; permanent residents of Florida; and residents of Polk County for at least 2 years prior to the date of appointment.

(7) Two alternates to the board shall be appointed by the Sheriff. In the event that a vacancy occurs in that a board member terminates or that a matter before the board involves a conflict of interest, the alternate member shall serve for the hearing or term of office as the case may be.

(8) The ranking officer in charge of the Human Resources Division ~~Section~~ shall be designated as the Human Resources Director ~~Administrator~~ and shall serve as secretary to the board and as an ex officio member of the board but shall have no vote.

Section 3. To ensure continuity, board members shall be appointed by the Sheriff to 2-year terms on an alternating schedule effective the second Tuesday of February ~~January~~. Two members shall be appointed during even numbered years, and three members shall be appointed during odd numbered years. Nothing contained herein shall prohibit board members from being reappointed by the Sheriff for additional terms.

Section 4. Members of the board shall receive no salary, but each shall be paid a monthly allowance, the amount to be determined by the Sheriff, for expenses incurred in performing the duties of the board.

Section 5. The board shall elect one member to serve as chairperson ~~the chair~~ for a 1-year period ~~2-year period~~. The chairperson ~~chair~~ shall perform such duties as are provided for by the board's rules.

Section 6. The Sheriff shall make available to the board a table of organization and a list of all employees and members, positions, and classes and the pay scale of each position and class in the Sheriff's Office.

Section 7. The board shall have the following powers and duties:

(1) To adopt and amend rules and regulations for its hearing procedures subject to approval by the Sheriff.

(2) To hear appeals and complaints in matters provided for in this act and to make recommendations to the Sheriff regarding the same. Three members shall constitute a quorum for hearing an appeal and rendering a decision.

Section 8. The Sheriff shall have the authority to adopt such rules and regulations as are necessary for ~~the implementation and administration of~~ this act.

Section 9. There shall be a three-person Members Nominating Committee which shall nominate candidates for appointment to the board. All members of the committee shall be members of the classified service. One member shall be elected from the Office of Business Affairs, the Department of Law Enforcement, and the Department of Detention ~~each department~~ by secret vote of all members of the classified service within each respective office or department. Members of the committee shall serve a 2-year term of office beginning July 1.

Section 10. The Sheriff or the Sheriff's designee may create new positions within the Sheriff's Office or combine, alter, or abolish existing positions in such manner as the Sheriff deems necessary.

Section 11. The Human Resources Director Administrator shall give public notice of vacancies and of open competitive examinations for positions in the classified service. The Human Resources Director Administrator ~~in the Sheriff's Office~~ shall establish and maintain such eligibility lists for the various job classes as are deemed necessary to meet the needs of the Sheriff's Office.

Section 12. ~~(1)~~ Whenever a vacancy occurs in any position in the classified service, the Sheriff or the Sheriff's designee shall make requisition to the Human Resources Director Administrator for the names and addresses of all persons eligible for appointment thereto. In the event that a candidate acceptable to the Sheriff or the Sheriff's designee is recommended, the Sheriff or the Sheriff's designee thereupon shall appoint this person to the position where the vacancy exists. The Sheriff or the Sheriff's designee shall immediately inform the Human Resources Director Administrator of such ~~his~~ action.

~~(1)(2)~~ In the absence of an eligibility list, the Sheriff or the Sheriff's designee may, if either he or she ~~he or she~~ determines that the necessity of adequate

law enforcement or operational efficiency so requires, appoint a person without reference to an eligibility list to fill a vacant position on a provisional basis. The Sheriff or the Sheriff's designee shall immediately inform the Human Resources Director Administrator of such ~~his~~ action. Such provisional appointee shall be a person who lawfully could be appointed within the personnel system had ~~the appointee he or she~~ been an applicant. Such provisional appointee shall acquire no rights under the system by virtue of said appointment and said appointment shall terminate immediately when an eligible person from an eligibility list is certified to and accepted by the Sheriff, or within 6 months from the date of the appointment, or 45 days after the establishment of an eligibility list, whichever is the shorter length of time. Acceptance or refusal of a provisional appointment shall not prejudice or in any way affect the standing of a person who is an applicant or who shall become an applicant for an established position.

(2)(3) In the event of an emergency, the Sheriff or the Sheriff's designee may appoint a person to fill a position not to exceed 3 calendar months during any 12-month period.

Section 13. No employee shall become a member of appointment to any position in the classified service shall be deemed complete until the expiration of a period of at least 1-year probationary service. During the initial probationary period, the Sheriff or the Sheriff's designee may terminate or otherwise discipline the employee appointee and the employee appointee shall not be eligible for a hearing before the board. The initial probationary period Appointments may be regarded as taking effect upon the date the employee successfully completes all entry-level training person appointed reports for duty.

Section 14. Whenever a position in the classified service is filled by promotion, the employee person may be returned to duty in a position at the level formerly held by ~~him or her~~ in the classified service without a hearing during the employee's his or her promotion probationary period. The member may have the opportunity for a hearing if dismissed from the service or suspended for greater than 40 hours if the member he or she has completed an initial 1-year probationary period.

Section 15. It is not the intent of this act to modify the Sheriff's absolute control over the selection and retention of the Sheriff's deputies and of other members of the Sheriff's Office as provided for by the law. No dismissal, demotion, suspension, or reduction in pay shall be taken against any non-probationary member of the classified service unless notice of the action and the reason therefor is given to the member verbally or in writing prior to the action taking effect. An opportunity to respond orally and in writing to the Sheriff or the Sheriff's designee representative in the decisionmaking process may be granted prior to the effective date of the action. Following issuance of the written notice of disciplinary action, the affected member of the classified service may seek a formal hearing for a review of dismissal, demotion, suspension of greater than 40 hours, or reduction in pay, provided that the member, as a condition to seeking a hearing, shall, upon receipt of the written notice, answer the same in writing and file the answer and a request with the Sheriff within 7 calendar days after the issuance of the notice. If

a dismissal, demotion, suspension of greater than 40 hours, or reduction in pay is answered and a hearing is requested in writing within 7 calendar days, the member of the classified service may have an opportunity for a hearing before the board with all the rights and privileges afforded under section 16. In the case of a notice of dismissal, the member shall remain dismissed without pay pending the hearing and the final decision of the Sheriff. In the case of a notice of a demotion, suspension of greater than 40 hours, or reduction in pay, the disciplinary action shall not be delayed pending the review process. The board shall report in writing its findings and recommendations to the Sheriff along with any mitigating circumstances noted for review and consideration by the Sheriff. The Sheriff shall retain the right of final determination. No member of the classified service may be reinstated, with or without backpay or benefits, without the concurrence of the Sheriff. For disciplinary purposes, the Sheriff or the Sheriff's designee may reprimand, orally or in writing, or summarily suspend a member of the classified service for a period not exceeding 40 hours, and such action shall not be subject to review and recommendation of the board.

Section 16. The practice and procedure of the board with respect to any hearing by the board authorized by this act shall be in accordance with the rules and regulations ~~to be~~ established by the board. Such rules shall provide for a reasonable notice of hearing to all persons affected by a recommendation to be made by the board, with the opportunity to be heard in their ~~his or her~~ behalf at a hearing to be held for that purpose and to examine and cross-examine witnesses.

(1) The board, when conducting any hearings authorized by this act, shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In the case of the disobedience or failure of any person to comply with a subpoena issued by the board or any of its members, or on the refusal of a witness to testify on any matter on which the witness ~~he or she~~ may be lawfully interrogated, the judge of the circuit court of the county, on application of the board, shall compel the obedience by proceedings as for contempt. The service of a subpoena shall be made in the manner provided by the Florida Rules of Civil Procedure. Each witness subpoenaed by the board shall receive for the witness's ~~his or her~~ attendance, fees and mileage in the amount as provided for witnesses in civil cases, if requested.

(2) The board shall meet for the purpose of hearing the appeal promptly and no later than 30 days after receipt of the answer and request for hearing, unless good cause exists for, or the affected member agrees to, a postponement.

(3) The actions of the board and the Sheriff shall be exempt from the provisions of chapter 120, Florida Statutes.

Section 17. When a newly elected or appointed Sheriff assumes office, the service of all personnel shall continue without the necessity of formal reappointment. Notwithstanding any other provisions of this act, the incoming Sheriff shall have the option of maintaining the current personnel assigned

to the rank of major and above or equivalent noncertified support positions or transferring those personnel as described below. If the incoming Sheriff fills any of the above positions with a new person and the current occupant of the above position is a certified law enforcement ~~deputy officer~~ or detention deputy, he or she shall be reduced to the rank of captain if certified, or to the equivalent noncertified support position if not certified immediately. The member's salary shall be reduced in compliance with the salary policy in effect at that time, but shall be no less than the salary the member would have attained had the member remained in the highest classification accorded appeal rights under this act. Following the election or appointment of a Sheriff, appointments of all personnel remain at the pleasure of the Sheriff, and personnel in the classified service may be terminated by affirmative action of the Sheriff or the Sheriff's successor in office subject to the provisions of this act.

Section 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, it is the legislative intent that the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end provisions of this act are declared severable.

Section 19. This act shall not be held or construed to create any property rights or any vested interest in any position in the classified service and the right is hereby reserved to repeal, alter, or amend this act or any provision thereof at any time.

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

Approved by the Governor June 23, 2006.

Filed in Office Secretary of State June 23, 2006.