

## House Bill No. 1161

An act relating to Okeechobee County; providing for career service for employees of the Okeechobee County Sheriff's Office; providing for application of the act, permanent status of employees, suspension or dismissal, transition of career service employees, and administration; providing for a procedure with respect to complaints against employees; providing for ad hoc career service appeal boards and membership and responsibilities thereof; providing for a disciplinary procedure and for appeals; providing for status as permanent employees; 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 Okeechobee County Sheriff's Office; applicability of the act; permanent status of employees; administration.—

(1) APPLICABILITY.—The provisions of this act shall apply to all full-time sworn and civilian persons in the employ of the Okeechobee County Sheriff's Office. The provisions of this act do not apply to the sheriff, undersheriff, special deputies appointed pursuant to section 30.09(4), Florida Statutes, members of the sheriff's reserve/auxiliary 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 Okeechobee County Sheriff's Office. As used in this act, the terms "employee," "employ," and "employment" 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 Okeechobee County Sheriff's Office who do not otherwise have that right pursuant to law.

(2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR DISMISSAL.—

(a)1. 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, the employee shall have attained permanent status in the Okeechobee County Sheriff's Office; 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 or rehire before being granted permanent status. The term "career service employee" as used in this act means an employee who has successfully completed his or her probationary period.

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 in this act, all time in the

employment of the Office of the Sheriff while in a Criminal Justice Standards and Training Commission-approved 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.

(b) Any employee who has achieved career service status with the Okeechobee County Sheriff's Office 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 to property or persons, an employee may be suspended or dismissed immediately and then be provided notice thereof and reasons therefor within 24 hours or as soon as is practicable if circumstances surrounding such extraordinary situation make notice within 24 hours impracticable. "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, alcohol abuse, prescription drug abuse, or illegal drug use. "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 charges.

(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 career service personnel unless cause for dismissal, as provided in this section, exists. The sheriff shall have the right to replace persons serving in the rank of captain or above, including the executive secretary, with new personnel of the sheriff's choosing. The sheriff shall have the right to offer these persons any position that the sheriff chooses or to cease their employment with the department. The current employees holding the rank of lieutenant who are career service employees may be reduced to the next lowest rank at the current maximum pay step, 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 this act. Dismissals or demotions pursuant to across-the-board actions directed by the Okeechobee County Board of Commissioners, resulting from county fiscal impacts, shall not be appealable under the provisions of section 2.

(4) ADMINISTRATION.—The sheriff shall have full authority to adopt such rules, regulations, and procedures necessary for the administration and implementation of this act. However, nothing in this act shall be construed as affecting the budget-making powers of the Okeechobee County Board of Commissioners.

Section 2. Career service appeal boards; creation; membership; duties.—

(1) FUNCTION OF BOARDS.—Ad hoc career service appeal boards shall be appointed as provided in this section 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, oral or written reprimands, and suspensions of 3 working days or fewer shall not be appealable to a career service appeal board. However, no more than one such suspension may occur within 1 calendar year without the right to appeal. The scope of a career service appeal board is limited to disciplinary proceedings and termination actions. A career service appeal board shall 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 shall consider them in making his or her final decision.

(2) MEMBERSHIP AND RESPONSIBILITY OF CAREER SERVICE APPEAL BOARD.—

(a) A career service appeal board shall consist of three members of the Office of the Sheriff. The sheriff shall select one member; the employee requesting the hearing shall select one member; and these two members shall select the third member, who must hold the rank of lieutenant or above, to serve as chairperson. Each selected member shall have the right to decline to serve.

(b) All members of the career service appeal 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 of the board is voluntary and is without remuneration. Members may not discuss matters to be heard before the board until the board convenes and then they may only discuss such matters during the officially convened sessions of the board.

(c) The career service appeal board chairperson shall have the responsibility to:

1. Chair all meetings using parliamentary rules of order.
2. Request that the employee provide the names of any witnesses.
3. Schedule and provide written notification of all meetings to the witnesses, board members, and the employee.
4. Provide copies of all charges to board members.
5. Ensure compliance with hearing procedures.

(3) PROCEDURE WITH RESPECT TO HEARINGS.—

(a) Any career service employee may request a hearing before a career service appeal board for any appealable disciplinary action of his or her superiors that adversely affects his or her employment.

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

(c) The immediate supervisor shall forward the hearing request to the sheriff and the appropriate division commander without delay. A career service appeal board shall be impaneled and a hearing date scheduled by the sheriff within 10 working days after receipt of the request for a hearing unless waived in writing by the employee.

(d) The employee and his or her representative have the right to be present and to present any relevant evidence on the employee's behalf. During such hearings, the technical rules of evidence shall not apply. Neither the employee nor his or her representative may disrupt the proceedings. The qualification of disruptive conduct shall be at the exclusive determination of the chairperson of the career service appeal board.

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

(f) All witnesses shall be notified in writing by the chairperson of the board, through the appropriate chain of command, of the date and time of the convening of the career service appeal board. Nonemployee witnesses may be called to appear before the board only at the request of the board.

(g) The board shall have the power to issue subpoenas upon request of any party or upon its own motion.

#### (4) CONDUCT OF HEARING.—

(a) Career service appeal 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 may 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 opportunity to present evidence, conduct cross-examination, and submit rebuttal evidence.

#### (5) FINDINGS AND RECOMMENDATIONS OF THE CAREER SERVICE APPEAL BOARD.—

(a) Each complaint shall receive a separate finding and recommendation by a majority of the board. Each finding shall consider the seriousness of the complaint, any extenuating circumstances, the tenure of the employee, and the employee's 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, sustention or reversal of the original decision, or recommendation of a more severe disposition.

(c) The sheriff shall review the findings and recommendations of the career service appeal board and may either approve or disapprove them. The sheriff has the sole discretion to overrule the findings of the board.

(d) The sheriff shall notify the employee of the final results of the career service appeal 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 career service appeal board to convene and review the action of the supervisor.

(g) All proceedings of the board shall be retained by the Human Resources Department of the Office of the Sheriff.

(h) All associated reports, paperwork, and personnel action taken as a result of the appeal shall be retained by the Human Resources Department of the Office of the Sheriff.

Section 3. (1) All sworn and civilian persons in the employ of the Okeechobee County Sheriff's Office on the effective date of this act who have served for a period of 1 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 1-calendar-year service anniversary date.

(2) No sworn or civilian employee of the Okeechobee 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 4. 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.