

House Bill No. 1133

An act relating to Levy County; providing for career service for members of the Levy County Sheriff's Office; providing for application of the act, career status of members, and administration; providing for a procedure with respect to complaints against members; providing for appeals; providing for certain protections during the transition of a new Sheriff; providing for a Career Service Appeal Board; providing for status as career members; providing that the board is not governed by the Administrative Procedure Act; prohibiting certain actions to circumvent the act; providing for exclusions; providing severability; providing an effective date.

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

Section 1. Members of the Levy County Sheriff's Office; applicability of the act; career status of the members; administration.—

(1) APPLICABILITY.—

(a) This act shall apply to all full-time certified and noncertified persons in the employ of the Levy County Sheriff's Office except as specifically described in section 6.

(b) As used in this act, the terms "member," "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 any rights not specifically stated in this act beyond the provisions of this act to persons in the employ of the Levy County Sheriff's Office who do not otherwise have those rights pursuant to law.

(2) CAREER STATUS; CAUSE FOR TERMINATION OF EMPLOYMENT.—

(a) After a member of the Levy County Sheriff's Office to whom the provisions of this act apply has served in such employment for a period of 1 calendar year and successfully completed a probationary training program, such employee shall have attained career status with the Levy County Sheriff's Office, provided that, if an employee is terminated and rehired at a later date, said employee shall be required to complete 1 calendar year of service from the date of rehire before being granted the right of appeal provided in section 4 of this act.

(b) Any employee who has achieved career status with the Levy County Sheriff's Office may only be terminated for just cause, provided that prior to such action the employee shall be furnished written notice of the proposed action and offered an opportunity to respond to the reasons for the termination. However, in situations in which delay could result in damage or injury, an employee may be relieved of duty immediately and provided notice thereof and reasons therefor within 24 hours.

(c) Just cause for initiating an internal investigation that may result in termination of employment shall include violation of the provisions of law or office rules or direct violation of published Sheriff's Office policy.

(d) Just cause for initiating an internal investigation shall also include, with respect to any felony or misdemeanor, adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of nolo contendere, or adjudication of guilt withheld and the accused placed on probation.

(e) The filing of felony or misdemeanor charges by the state attorney against an employee shall constitute just cause for initiating an internal investigation.

(3) TRANSITION OF CAREER SERVICE EMPLOYEES.—

(a) When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the employment of all currently employed career personnel unless just cause for termination of employment, as provided herein, exists. However, the incoming Sheriff shall have the option of maintaining the current personnel assigned to the positions of Lieutenant and above, Executive Assistants, Executive Office Managers, and Administrative Positions of Trust.

(b) Positions of Trust include the Comptroller, the Director of Property Management, and Special Investigators assigned and involved in conducting internal inquiries or internal investigations.

(c) If the incoming Sheriff fills the positions of Lieutenant and above, Executive Assistants, Executive Office Managers, and Administrative Positions of Trust with new personnel, the current occupants of those positions may be reduced to the next lower existing rank or civilian designation and transferred to another assignment within the same division or a salary adjustment of up to 10 percent downward, or both. In the event no position is available downward, as in a one-person department, the occupant may be transferred to another assignment within the Sheriff's Office with up to a 10-percent pay reduction.

(d) The new rank of the individuals shall be the permanent rank of the individuals for a period of 6 months and then may be later changed by independent disciplinary action.

(e) Initial actions taken pursuant to this subsection affecting the Lieutenants and above and other Executive Positions of Trust and within the guidelines of section 3 shall not be subject to appeal under section 4.

(4) ADMINISTRATION.—

(a) The Sheriff shall have the authority to adopt such rules and regulations as are necessary for the implementation and administration of this act.

(b) The promulgation of rules and regulations related to this act by the Sheriff are at his or her sole discretion; however, nothing in this act shall be construed as affecting the budget-making powers of the Board of County Commissioners of Levy County.

Section 2. Complaints against employees; procedure.—

(1) A complaint receipt and processing procedure shall be established in order to provide adequately for the prompt receipt, investigation, and disposition of complaints against members of the Levy County Sheriff's Office. The complaint procedure shall reflect the provisions in section 112.532, Florida Statutes.

(2) After written receipt of the disposition of the complaint, if an employee is dissatisfied with the decision of the Sheriff regarding disciplinary action resulting in termination of employment, the employee may appeal the action to the Career Service Appeal Board.

Section 3. Disciplinary appeal procedure.—

(1) An appeal of disciplinary action resulting in termination of employment shall result in the opportunity for a hearing before a Career Service Appeal Board as specified in said procedure.

(2) Immediately following the hearing, the board shall report to the Sheriff via the director of human resources or other person so designated by the Sheriff.

Section 4. Career Service Appeal Board; creation; membership; duties.—

(1) FUNCTION OF BOARD.—

(a) An ad hoc Career Service Appeal Board shall be appointed as provided herein for the purpose of hearing appeals from career employees brought under the provisions of this act or the Sheriff's Office rules or policies that result in termination of employment.

(b) A board may also, upon the request of the Sheriff, provide assistance and advice to the Sheriff in matters concerning disciplinary actions and may take any other actions as authorized by the Sheriff.

(2) MEMBERSHIP OF BOARD.—

(a) When needed upon the call of the Sheriff or the filing of an appeal of a termination of employment, an ad hoc Career Service Appeal Board shall be appointed. The membership of each such board shall consist of two members selected by the Sheriff from among any full-time eligible employees from within the Sheriff's Office; two members selected by the employee filing the appeal from among any full-time eligible employees within the Sheriff's Office; and one member, who is a full-time eligible member from within the Levy County Sheriff's Office, selected by the other members of the board, who shall serve as chairperson.

(b) If a noncertified member requests an appeal, the two members selected by the noncertified member may be from among any full-time eligible employees from any division of the Sheriff's Office.

(c) The appealing member shall have 7 calendar days from the date that the request for a hearing was delivered directly to the Sheriff, or to one of

the administrative assistants in the Sheriff's Office, to select two qualified members willing to serve as members of the board and deliver their names directly to Human Resources. If, within the 7-day period, the appealing member fails to submit the names of two qualified members as outlined in this paragraph and paragraphs (a) and (b) who have been contacted and are willing to serve, the option to be heard by a Career Service Appeal Board is procedurally waived and ceases to exist.

(d) The Sheriff shall, within this same 7-day period, deliver to Human Resources the names of his or her two selections to serve as members of the board. If, within the 7-day period, the Sheriff fails to submit the names of two qualified members as outlined in this paragraph and paragraph (a), the action against the employee is procedurally waived and ceases to exist.

(e) The four members shall then have 5 calendar days to select the fifth member from the list of remaining qualified members.

(f) If an impartial chairperson cannot be agreed upon within 5 calendar days after the first four members are selected, a judge from within the Third Circuit of the state shall, within 5 days, appoint a chairperson who is a full-time eligible member within the Levy County Sheriff's Office.

(g) The ranking officer or his or her designee in charge of personnel matters shall serve as an ex officio member of the board for the purpose of providing procedural guidance to the board concerning the application of this act and any rules or regulations of this act and any rules or regulations adopted by the Sheriff relating thereto, but such ex officio member shall have no vote.

(h) The Sheriff may, at his or her own initiative, appoint a Career Service Appeal Board for the purpose of receiving, considering, and making a recommendation on matters related to the formation or streamlining of rules related to this act or to consider any other matter deemed appropriate by the Sheriff, excluding disciplinary termination of employment. If the issue to be under consideration involves a specific member of the Sheriff's Office and may result in some disciplinary recommendation by the board, the Sheriff shall notify the individual and offer the opportunity for the individual to provide two members to the board to consider the specific question at issue. If no specific member is involved, the Sheriff shall appoint two members from the Civil Division and two members from the Criminal Division, and the Captain of the Administrative Division shall serve as the chairperson. A board appointed by initiative may only make recommendations.

(3) HEARING TIME; DATE; COMPENSATION; CONSOLIDATION; EXCLUSIONS.—

(a) Standardized dates and times of meetings shall be established by rule and shall occur during normal administrative office hours.

(b) Members selected to serve on the board shall serve without additional compensation for meetings occurring during their normal work hours. For nonwork hours, compensatory time at the rate of 150 percent for the actual hours in session shall be credited to the member.

(c) 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.

(d) A new Career Service Appeal Board shall be selected for each separate occurrence; however, multiple parties filing appeals on the same incident may request to be heard by a single board.

(e) A person may not serve as a member of an ad hoc Career Service Appeal Board who:

1. Was 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. Is currently under investigation or suspension.

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

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

(4) PROCEDURE WITH RESPECT TO AN APPEAL.—

(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 calendar days after the employee is notified of the action on which the appeal is based.

(b) When a Career Service Appeal Board has been selected for purposes of hearing the appeal, the Sheriff shall publish and furnish notice to the appealing person of the date, location, and time of the hearing before the Career Service Appeal Board. In any case, the date of the hearing shall be within 15 calendar days, excluding weekends and holidays, after notification of the selection of the fifth member.

(c) The date of the hearing may be extended by mutual agreement of the parties.

(d) During the hearing, the employee filing the appeal shall have the right to be heard, to be represented by a person of his or her choice, and to present any relevant evidence on his or her behalf, and during the hearing the technical rules of evidence shall not apply.

(e) The board shall, in the conduct of a hearing, have the power to administer oaths, issue subpoenas, compel the attendance of witnesses, and require the production of books, records, accounts, papers, documents, prior statements, testimony, and investigative files related to the issue that are in the possession of or have been delivered to Human Resources a minimum of 5 business days prior to the beginning of the hearing. 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 a person resides, upon application of a 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 this state. 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. In any case, the board shall restrict its considerations and deliberations to the evidence presented at the hearing.

(f) This board is not governed by the Administrative Procedure Act, as codified in chapter 120, Florida Statutes.

(5) DISPOSITION WITH RESPECT TO A CAREER SERVICE APPEAL.—

(a) The board shall, by majority vote, dispose of the appeal for which it was appointed by making a determination of just cause and issuing a written decision. Such decision shall be based upon the simple determination of a preponderance of evidence (51 percent). In the instance of an appeal to the board concerning a termination, a majority vote of the board shall be required to overturn the Sheriff's decision to terminate. All members of the board must be present to conduct any official business of the board.

(b) If the board does not sustain the action by the Sheriff, back pay and benefits shall be reinstated. No board shall have the authority to impose on any employee any penalty that is different than that which formed the basis of the appeal. If the board sustains the action of the Sheriff, it may also make a recommendation to the Sheriff to reconsider mitigating circumstances and reconsider the termination-of-employment action. The Sheriff shall review the determination of the board and consider its recommendation prior to imposition of final action.

(c) The decision of the board, which is to be arrived at by paper ballot, shall be forwarded to the Sheriff.

(d) This final decision of the board shall be binding on the employee and the Sheriff.

(e) The Sheriff shall prepare, or cause to be prepared, an order and publish the final disposition of the appeal. The final disposition shall be binding on the employee.

(f) The board hearing and the board's deliberations shall be open to the public, recorded, and preserved for the public record.

(g) The chairperson of the board shall have the authority to receive and consider written prehearing motions that shall be presented to the full board at the hearing. He or she shall preside over the hearing, enforce the decorum of the hearing, receive requests for breaks, convene the deliberations, and cause the removal of anyone attempting to disrupt any of the proceedings.

Section 5. Included individuals; circumvention.—

(1) INCLUDED INDIVIDUALS.—All full-time certified and noncertified persons in the employ of the Levy County Sheriff's Office on the effective date of this act who have served for a period of 1 calendar year or more and successfully completed their probationary period as of such effective date of the act shall be career employees subject to the provisions of this act. All other full-time employees shall become career employees subject to the provisions of this act upon reaching their 1-calendar-year service anniversary date and successfully completing their probationary period.

(2) CIRCUMVENTION.—

(a) Promotions or demotions of members or creation of rank to circumvent the intent of this act shall be held as a valid reason to request the Sheriff to appoint a Career Service Appeals Board to consider the issue in question.

(b) No certified or noncertified full-time employee of the Levy County Sheriff's Office shall be discharged or discriminated against in regard to his or her employment or appointment, or threatened with any such treatment, by reason of his or her exercise of the rights granted by this act.

Section 6. Exclusions.—

(1) The career status provisions of this act shall not apply to the Sheriff; to Special Deputy Sheriffs appointed pursuant to section 30.09(4), Florida Statutes; to members employed pursuant to a grant whose continued existence or funding is subject to the expiration or withdrawal of the grant; to nondisciplinary termination of employment arising out of a reduction of force, layoff, or partial or total abolition or cessation of a program, service, operation, or department at the discretion of the Sheriff; to members of the Sheriff's Reserve Unit; or to 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 Levy County Sheriff's Office.

(2) This act shall not apply to an otherwise covered person who claims that a termination of employment was for lawful off-duty political activity. Claims of this nature are already covered under chapter 30, Florida Statutes.

(3) This act shall not apply to an otherwise covered person who claims that a termination of employment was for discriminatory purposes. Claims of this nature are already covered under state and federal statutes.

Section 7. Severability.—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.

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor June 27, 2007.

Filed in Office Secretary of State June 27, 2007.