

Council Substitute for House Bill No. 1085

An act relating to the Pinellas County Sheriff's Civil Service System; amending chapter 89-404, Laws of Florida, as amended; deleting intent relating to collective bargaining; limiting application; revising the definition of "personnel"; revising positions covered in the Classified and Unclassified Services; providing effect of participating in the Florida Retirement System's Senior Management Service Class; providing for Certified Executive Staff; providing additional causes for member suspension or dismissal; providing duties of the Civil Service Board regarding appeals; providing authority of the Division of Administrative Hearings under certain circumstances; revising provisions relating to the timeframe for filing a notice of appeal and for disposing of appeals and making findings of fact and stating a conclusion; removing a provision relating to certified personnel status as appointed officers; providing an effective date.

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

Section 1. Chapter 89-404, Laws of Florida, as amended by chapter 90-395, Laws of Florida, is amended to read:

Section 1. Intent.—It is the intent of this act to create a civil service system for members of the Classified Service, as defined herein, within the service of the Sheriff of Pinellas County, for the purposes of ensuring fairness and consistency in discipline and dismissal. ~~It is also the intent of this act to maintain the existing legal limitations on the right of collective bargaining and other rights under part II of chapter 447, Florida Statutes, and to not grant such rights to any deputy, member, or personnel of the Office of the Pinellas County Sheriff who, prior to the effective date of this act, did not possess such rights pursuant to law.~~

Section 2. Personnel of Pinellas County Sheriff; applicability of the act; authority of the Sheriff.—

(1) The provisions of this act shall apply to all certified, noncertified, and Certified Executive Staff persons within the Office of the Pinellas County Sheriff, except as otherwise provided herein. The provisions of this act shall not apply to the Sheriff, special deputy sheriffs appointed pursuant to s. 30.09(4), Florida Statutes, contract personnel, the general counsel, the associate general counsel, the director of human resources, the director of support services, the director of fiscal affairs, the public information coordinator, the director of labor relations, the jail medical director, the grants administrator, the sheriff's executive secretary, any person who is eligible to participate in the Florida Retirement System's Senior Management Service Class legal advisors, chaplains, or individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission, unless any such part-time deputy sheriff is also a full-time member in the Office of the Sheriff.

(2) For the purposes of this act, the term “personnel” shall refer to all persons working for the Pinellas County Sheriff’s Office; ~~provided that nothing stated herein shall be construed as changing the status of certified personnel from appointed officers to members covered by the provisions of chapter 447, Florida Statutes.~~

(3) 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 County Commissioners of Pinellas County.

Section 3. Classified and Unclassified Services; Certified Executive Staff; status of members of the Classified Service, Unclassified Service, and Certified Executive Staff.—

(1) The Classified Service shall consist of full-time positions held by ~~detention deputy sheriffs, corrections officers, law enforcement deputy sheriffs,~~ and noncertified personnel, except those persons not covered by the act as set forth in section 2(1), who have attained permanent status as defined herein and who are serving in any position except those persons serving in the Unclassified Service or as members of the Sheriff’s Certified Executive Staff.

(2)(a) The Unclassified Service shall consist of the following positions: all part-time positions, all full-time personnel who have not attained permanent status as defined herein, all volunteer or unpaid nonsalaried positions, school crossing guards, reserve deputies, and special deputies, and personnel eligible to participate in the Florida Retirement System’s Senior Management Service Class subsequent to membership in the Classified Service. Members of the Unclassified Service shall serve at the pleasure of the Sheriff and may be suspended, demoted, or terminated at any time without cause and without any right to appeal to the Civil Service Board.

(b) Consistent with the requirements of section 121.055(1)(b), Florida Statutes, all personnel who are members of the Classified Service who are selected by the Sheriff to serve in positions whereby they are eligible to serve in the Florida Retirement System’s Senior Management Service Class are no longer members of the Classified Service and serve without civil service protection. These personnel may be suspended, demoted, or terminated at any time without cause and without any right to appeal to the Civil Service Board.

(3) For the purposes of this act, the Sheriff’s Certified Executive Staff shall consist of all certified personnel who have attained the rank of captain or above, the Public Information Coordinator, the Sheriff’s executive secretary and all noncertified personnel whose salary is equal to or greater than the base salary for the rank of law enforcement captain.

(4) Members of the Sheriff’s Certified Executive Staff shall serve in those positions at the pleasure of the Sheriff. Except as provided herein, such personnel may be suspended, demoted, or dismissed at any time without cause and without any right of appeal to the Civil Service Board. However, persons serving as members of the Sheriff’s Certified Executive Staff who

have, previous to their appointment to the Certified Executive Staff, attained permanent status in the Classified Service may be returned to the highest rank ~~or position~~ such person achieved in the Classified Service without cause and without any right to appeal such return to Classified Service.

Section 4. Permanent status; effect of rehire; extension of probation; status upon election or appointment of new Sheriff.—

(1) After ~~classified~~ personnel of the Sheriff, to whom the provisions of this act apply, have served in any such position for a period of 1 calendar year without break in service, such personnel shall have attained permanent status in the Office of the Sheriff, unless such personnel are placed on an extended probation or are eligible to participate in the Florida Retirement System's Senior Management Service Class.

(2) When Classified Service personnel are terminated, resign, or are otherwise separated from service, and are rehired at a later date, they shall be required to complete 1 calendar year of service, without break in service, following such rehire before attaining permanent status in the Office of the Sheriff.

(3) Personnel in the Classified Service who are required to serve a probationary period attendant to a promotion shall retain permanent status in the Office of the Sheriff, but may be demoted to their prior rank during such probationary period for any reason and without the right of appeal as provided in this act.

(4) When, in the sole discretion of the Sheriff, an extension of a probationary period for newly hired or newly promoted personnel is warranted, such probationary period may be extended for a period up to 6 additional months. In the case of newly hired personnel, the affected personnel shall be required to satisfactorily complete the extended probationary period before attaining permanent status in the Office of the Pinellas County Sheriff.

Section 5. Effect of election or appointment of new Sheriff on status of personnel.—

(1) When a newly elected or appointed Sheriff assumes office, the new Sheriff shall continue the members of the Classified Service at their existing rank and/or salary level unless cause for demotion or dismissal, as provided herein, exists.

(2) When a newly elected or appointed Sheriff assumes office, persons then serving as members of the Sheriff's Certified Executive Staff who, previous to their appointment to the Certified Executive Staff, had attained permanent status in the Classified Service, shall not be suspended without pay for more than 1 working day or dismissed unless cause as provided herein exists. However, such personnel may be demoted to the highest rank achieved in the Classified Service without cause and without any right to appeal.

Section 6. Members of Classified Service; certain members of the Certified Executive Staff; suspension, demotion, or dismissal only for cause.—

(1) Members of the Classified Service may only be suspended, for a period in excess of 1 working day, reduced in rank or base pay, or dismissed from service for cause. Members of the Certified Executive Staff who have, previous to their appointment to the Certified Executive Staff, achieved permanent status in the Classified Service may only be dismissed or suspended for a period in excess of 1 working day or demoted to a rank or rate of base pay less than the highest rank or base pay the member attained while in the Classified Service for cause. Prior to such action described above, the member shall be furnished with written notice of the proposed action and an explanation of the reasons for the action, and offered an opportunity to respond to the reasons for the action. ~~However, nothing stated herein shall be construed as changing the status of deputy sheriffs from appointed officers to employees covered by the provisions of chapter 447, Florida Statutes.~~

(2) In situations where the delay occasioned by furnishing members of the Classified Service ~~personnel~~ such written notice and opportunity to respond could result in damage or injury, personnel may be suspended or dismissed for cause immediately and provided such written notice and opportunity to respond within 24 hours.

(3) Written notice of disciplinary action to a ~~department~~ member shall be deemed to be effective upon hand delivery, or upon mailing to the member's last known address.

(4) Cause for suspension, dismissal, or demotion shall include, but not be limited to: negligence, inefficiency, or inadequate job performance; inability to perform assigned duties, incompetence, dishonesty, insubordination, violation of the provisions of law or the rules, regulations, and operating procedures of the Office of the Sheriff, conduct unbecoming a public servant, misconduct, or proof and/or admission of use of illegal drugs. Cause for suspension or dismissal shall also include a member's acceptance into a pretrial diversion or intervention program, the adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of nolo contendere, or a verdict of guilty where adjudication of guilt is withheld and the accused is placed on probation, with respect to any felony or misdemeanor. The filing of felony or misdemeanor charges against Sheriff's Office personnel may also constitute cause for suspension. Subsequent dropping of charges shall result in automatic reinstatement, except where charges were dropped because of completion of a pretrial intervention or diversion program, provided that independent departmental charges are not pending.

(5) The listing of causes for suspension, demotion, or dismissal in this section is not intended to be exclusive. The Sheriff may, by departmental rule, add to this listing of causes for suspension, dismissal, or demotion.

Section 7. Creation and qualifications of the Civil Service Board.—

(1) The Sheriff of Pinellas County is hereby authorized to create a Civil Service Board which shall be composed of five members which shall be determined as follows:

(a) Two members of the Civil Service Board shall be appointed by the Sheriff after being elected in an election among the members of the Classi-

fied Service. The Sheriff shall appoint the two persons receiving the highest number of votes in such election.

(b) Two members shall be appointed by the Sheriff.

(c) The fifth member shall be selected by the majority of the other four Board members within 15 days of their appointments. In the event that the selection process of the fifth member results in an impasse, within 15 days, the fifth member shall be appointed by the Chief Judge of the Sixth Judicial Circuit.

(d) The five members of the Board shall then select a sixth or alternate member who shall serve upon the inability of any other member to serve.

(e) The fifth member shall be chairperson of the Civil Service Board, unless the Board elects otherwise.

(f) Four members of the Civil Service Board shall constitute a quorum.

(2) Membership qualifications and term:

(a) All members of the Civil Service 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 permanent residents of Pinellas County for at least 2 years prior to the date of their appointment.

(b) No member of the Board may be:

1. A member of any national, state, or county committee of a political party;

2. A candidate for or incumbent of any elected public office;

3. A member of the Pinellas County Sheriff's Office, or the spouse, parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, by consanguinity or affinity of a member; or

4. Positioned as to have a conflict of interest in the terms of his or her related business, duties, or responsibilities in connection with the Civil Service Board.

(c) The members of the Board shall serve a term of 1 year from the date of their election or appointment as the case may be.

(d) Members of the Board will receive no salary, but will be paid a stipend as determined by the Sheriff to offset expenses incurred in performing the duties of the Civil Service Board.

Section 8. Duties and authority of the Civil Service Board.—

(1) The Civil Service Board shall have the following authority and duties:

(a) To adopt and amend reasonable rules and regulations for its hearing procedures.

(b) To hear all appeals of the members of the Classified Service arising from personnel actions brought under the Sheriff's rules, procedures, or policies which result in dismissal, suspension for more than 1 working day without pay, demotion, or reduction in base pay for disciplinary or job performance reasons.

(c) To hear appeals of members of the Certified Executive Staff who have, previous to their appointment to the Certified Executive Staff, achieved permanent status in the Classified Service, arising from personnel actions brought under the Sheriff's rules, procedures, or policies which result in dismissal or suspension for more than 1 working day or demotion to base pay less than the highest rank or base pay the member attained while in the Classified Service.

(d) To contract with the Division of Administrative Hearings to have hearings conducted pursuant to chapter 120, Florida Statutes, as provided in section 11(8).

(2) Other than those appeals specified herein ~~in subsection (1)~~, the Civil Service Board shall not have authority to hear appeals.

(3) The authority of the Civil Service Board, and the authority of the Division of Administrative Hearings acting under contract, shall not include the establishment or deletion of the categories of conduct which constitute cause for suspension, demotion, or dismissal. In hearing appeals, the Civil Service Board shall:

(a) Determine whether the aggrieved member engaged in conduct prohibited by section 6 or by a departmental rule promulgated by the Sheriff;

(b) Determine whether the action taken against the aggrieved member is consistent with action taken against other members; and

(c) Make findings of fact and state a conclusion as specified in subsection (6).

(4) The Civil Service Board may also provide assistance and advice to the Sheriff in matters concerning disciplinary actions and may take any other actions authorized by the Sheriff.

(5) The Civil Service Board, pursuant to its authority to hear appeals of members of the Classified Service, shall have the power to schedule hearings, administer oaths, take or allow the taking of depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents, testimony, and other items to effect such other discovery as it deems fit and proper upon the written request of either party.

(a) The chairperson of the Civil Service Board or his or her ~~his/her~~ designee shall be authorized to sign all notices, subpoenas, and final orders, on behalf of the Board. In the case of disobedience or failure of any person to comply with a subpoena issued by the Board or any of its members, or upon the refusal of a witness to testify on any matter on which he or she may be

lawfully interrogated, a Judge of the Circuit Court of Pinellas County, on application of the Civil Service Board, shall compel obedience by proceedings as for contempt.

(b) The service of a subpoena shall be made in the manner provided by the Florida Rules of Civil Procedure. Each witness subpoenaed by the Civil Service Board shall receive for his or her attendance, from the party requesting the subpoena, fees and mileage in the amount as provided for witnesses in civil cases. Personnel of the Sheriff's Office appearing before the Civil Service Board while on duty shall not receive witness fees or reimbursements for mileage.

(6) Within 10 days of the conclusion of the appeals hearing, or receipt of the proposed recommended order from the Division of Administrative Hearings, whichever is longer, unless the parties agree to a longer period, the Civil Service Board, by a majority vote, shall dispose of the appeal and shall make findings of fact and state a conclusion; such findings of fact and conclusion shall be separately stated and shall be in writing. Such conclusion shall either sustain, modify, or not sustain the action being appealed. Upon a finding that cause did not exist for a suspension, demotion, reduction in pay, or dismissal, the Civil Service Board shall reinstate the appellant and direct the Sheriff to pay the appellant for the period of any suspension, demotion, loss of pay, or dismissal. The Civil Service Board shall not have the authority to impose any penalty more severe than that which formed the basis of the appeal. Should the Civil Service Board be unable to reach a majority decision on any appeal, the personnel action taken shall be sustained.

(7) The decision of the Civil Service Board shall be final and binding on all parties concerned.

Section 9. Appeals procedure.—

(1) A member of the Classified Service who has been suspended without pay for more than 1 working day, demoted, reduced in base pay, or dismissed, and those members of the Certified Executive Staff to whom rights of appeal are granted pursuant to section 3, may obtain a hearing before the Civil Service Board by filing a written Notice of Appeal with the Sheriff or his or her designee. Filing shall be effected by delivery in person to the Sheriff or his or her designee, when that person is designated by the Sheriff in writing, or by U.S. mail, registered, return receipt requested. Such Notice of Appeal shall be received by 5 p.m. on the fifth filed within 5 calendar day after days of receipt of notice of the suspension, demotion, reduction in pay, or dismissal. The day upon which the member receives the notice of suspension, demotion, reduction in pay, or dismissal shall not be counted in computing the 5 days, and the 5-day period shall begin on the first day after receipt of the notice, regardless of whether that day is a weekend day or holiday. The burden is on the member requesting the appeal hearing to establish timely service in accordance with the provisions herein. Failure to file a said written notice requesting the appeal hearing as required within the 5-day period prescribed herein shall constitute a voluntary waiver of all rights to an appeal under this act.

(2) The Notice of Appeal shall contain:

(a) A statement that the person filing the Notice of Appeal is entitled to an appeal pursuant to the terms of this act as a present or former member of the Classified Service;

(b) A statement of the disciplinary action complained of and the basis for the appeal; and

(c) A request for relief consistent with relief that may be ordered by the Civil Service Board as set forth herein.

(3) The appellant shall be limited in the scope of his or her appeal to the issues raised in the Notice of Appeal.

Section 10. Settlements and precedent.—In order to encourage resolutions of appeals prior to hearing, any settlement of an appeal acceptable to the appellant shall not establish a precedent against either the Sheriff, any member of the Classified Service, or any member of the Certified Executive Staff to whom the right of appeal is afforded by this act. Such settlement shall not conflict in any manner with the provisions of this act and shall not be used in any subsequent appeal hearing.

Section 11. Hearing procedure.—

(1) The Civil Service Board shall commence a hearing on an appeal within 30 days from the date upon which the Notice of Appeal was received by the Sheriff, or his or her designee, and shall proceed diligently to conclude such hearing in an expeditious fashion while affording to all parties a full and fair hearing. The Civil Service Board may grant a continuance of a hearing for good cause shown upon its own or a party's motion.

(2) The Civil Service Board shall establish appropriate rules and procedures for the conduct of all hearings pursuant to this act. All testimony of the parties and witnesses shall be made under oath or affirmation. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in and of itself to support a finding unless it would be admissible over objections in civil actions.

(3) Each party shall be entitled to call witnesses on his or her own behalf, to compel the attendance of witnesses through the service of subpoenas, to cross-examine the witnesses, to represent himself or herself, or to be represented by any other representative of his or her choosing, and to be present at such hearing.

(4) Each party shall bear his or her own costs and fees incurred with respect to such hearings. No costs or fees shall be reimbursed by one party to the other regardless of the decision of the Civil Service Board under this act.

(5) Appeal hearings shall be open to the public in accordance with the provisions of chapter 286, Florida Statutes.

(6) The Civil Service Board, its members, the Sheriff, witnesses while giving truthful testimony, and all the representatives of the parties shall be immune from all civil liability arising from actions taken pursuant to the provisions of this act.

(7) A tape recording shall be made of each Civil Service Board hearing and minutes of the hearing shall be kept. Either party shall be entitled to engage the services of a certified court reporter to record such hearing. The party engaging services of the court reporter shall be solely responsible for payment for such services.

(8) The Civil Service Board may, upon stating its reasons, elect at any stage of the hearing procedure to contract with the Division of Administrative Hearings of the Department of Management Services Administration to have the hearing conducted pursuant to chapter 120, Florida Statutes, in which case the board shall limit its considerations to the findings and recommendations of the division's ~~Department of Administration~~ hearing officer.

Section 12. Exemption from chapter 120, Florida Statutes.—Unless the election is made to proceed under section 11(8), the actions of the Civil Service Board and the Sheriff taken pursuant to this act shall be exempt from the provisions of chapter 120, Florida Statutes.

Section 13. Members' Advisory Council.—There shall be a five-person Members' Advisory Council, which shall serve in an advisory capacity to the Sheriff concerning personnel matters, policies, rules, and regulations affecting members of the Classified Service. The departmental representation of the Members' Advisory Council shall be determined by the Sheriff. All members of the Members' Advisory Council shall be permanent members of the department and members of the Classified Service. One member shall be elected from each of five areas to be determined by the Sheriff and shall be elected to serve by secret ballot of all members of the Classified Service within each respective area. Members of the Members' Advisory Council shall serve a 1-year term of office beginning July 1 of each year. The initial council shall serve from the date elected until July 1 of the following year.

~~Section 14. Certified personnel to maintain status as appointed officers.—Nothing herein shall be construed as altering the traditional status of certified personnel as appointed officers, who, as such, are excluded from coverage as employees under chapter 447, Florida Statutes.~~

Section ~~14~~ 15. Sheriff to adopt rules and regulations for review of citizen complaints and other actions.—The Sheriff shall, contemporaneous with the effective date of this act, by department rule or regulation, establish a procedure to review and resolve citizen complaints and disciplinary actions for which an appeal is not provided by this act.

Section ~~15~~ 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, 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 the provisions of this act are declared severable.

Section 16 ~~17~~. Chapter 84-514, Laws of Florida, as amended by chapter 87-424, Laws of Florida, is hereby repealed.

Section 17 ~~18~~. This act shall take effect July 1, 1989, or upon becoming a law, whichever occurs later.

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

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.